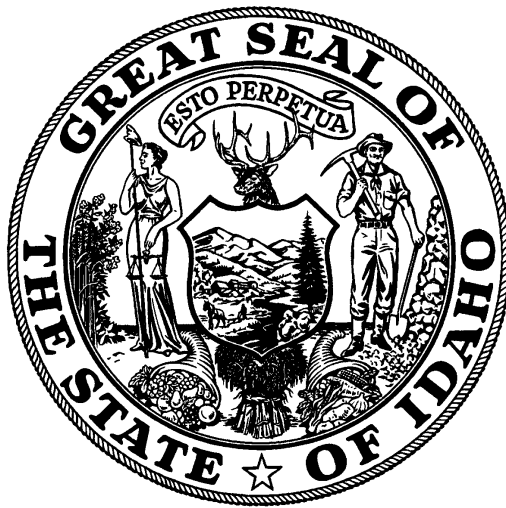


PENDING FEE RULES

COMMITTEE RULES

REVIEW BOOK

Submitted for Review Before
**House Resources &
Conservation Committee**
66th Idaho Legislature
First Regular Session – 2021



Prepared by:

*Office of the Administrative Rules Coordinator
Division of Financial Management*

January 2021



State of Idaho
DIVISION OF FINANCIAL MANAGEMENT
Executive Office of the Governor

BRAD LITTLE
Governor

ALEX J. ADAMS
Administrator

January 11, 2021

MEMORANDUM

TO: **Members of the 2021 Idaho State Legislature**

FROM: **Alex J. Adams, Administrator** *Alex J. Adams*
Bradley A. Hunt, Rules Coordinator *Bradley A. Hunt*

SUBJECT: **Overview of Executive Agency Rulemaking in 2020**

Background. Governor Little initiated a rules moratorium for calendar year 2020 and thus the volume of rulemaking is down substantially relative to most years. Most rules published in the Legislative Rules Review book are simply re-published because the 2020 Legislature adjourned *sine die* without passing a concurrent resolution approving any pending fee rules as specified in Section 67-5224, Idaho Code. The necessary fee rules were re-published in the following special bulletins:

- [April 15](#) – Temporary Fee Rules
- [September 16](#) – Proposed Fee Rules
- [November 18](#) – Pending Fee Rules

Changes in Existing Fee Rules. Since all fee rules expired upon sine die, there is no existing rule available to amend. Therefore, only a clean version of the rule chapter is able to be presented to the Legislature in January 2021. In some cases, fee rules were modified based on public comment, or to implement Executive Order [2020-13](#), among other reasons. Given the unprecedented volume, all edits are incorporated within a single docket and presented as a clean fee rule chapter. There are several ways that legislators may view previous rules for comparison purposes:

- An [archive of any rule](#) since 1996 is available on the DFM website. This allows legislators to see the evolution of a rule over time.
- The Legislative Services Office analyzes all proposed rules. You can find their analysis of proposed rules which, in some cases, may discuss changes to rules between sine die and the proposed rules. These may be found on the [Legislature's website](#).
- Changes made between the proposed and pending rule stages were noted in the [November 18th](#) bulletin where applicable.

Process for Approving/Extending Rules. Below, you will find a brief description on legislative actions and outcomes regarding the rules review process and contents of the Legislative Rules Review Books:

- Pending Fee Rules must be affirmatively approved by both bodies via adoption of concurrent resolution to become final.
- Temporary Rules must be affirmatively approved by both bodies via adoption of concurrent resolution to be extended.
- Pending Rules become final and effective sine die unless rejected, in whole or in part, via concurrent resolution adopted by both bodies.
 - Pending rules may be approved, in whole or in part, or rejected if determined to be inconsistent with legislative intent of the governing statute.
 - If rejected, new or amended language must be identified at a numerical or alphabetical designation within the rule and specified in the concurrent resolution.
- A link to LSO's proposed rule analysis is provided at the beginning of each docket and includes any required supporting documentation (e.g. Cost Benefit Analysis (CBA), Incorporation By Reference Synopsis (IBRS)) as part of the analysis.
- All 2021 review books can be accessed on the DFM website [here](#).

Contact Information. If questions arise during the rules review process, please do not hesitate to contact the Rules Coordinator, Brad Hunt: Brad.Hunt@dfm.idaho.gov; 208-854-3096.

HOUSE RESOURCES & CONSERVATION COMMITTEE

ADMINISTRATIVE RULES REVIEW

Table of Contents

2021 Legislative Session

IDAPA 13 – DEPARTMENT OF FISH AND GAME

Docket No. 13-0000-2000F	5
13.01.02 – Rules Governing Mandatory Education and Mentored Hunting	9
13.01.04 – Rules Governing Licensing	10
13.01.08 – Rules Governing the Taking of Big Game Animals	11
13.01.10 – Rules Governing the Importation, Possession, Release, Sale, or Salvage of Wildlife	12
13.01.19 – Rules for Selecting, Operating, Discontinuing, and Suspending Vendors	13

IDAPA 15 – OFFICE OF THE GOVERNOR, IDAHO FOREST PRODUCTS COMMISSION

Docket No. 15-0300-2000F	14
15.03.01 – Rules of Administrative Procedure of the Idaho Forest Products Commission	16

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

Docket No. 20-0000-2000F	18
20.02.14 – Rules for Selling Forest Products on State-Owned Endowment Lands	25
20.03.01 – Rules Governing Dredge and Placer Mining Operations in Idaho	28
20.03.02 – Rules Governing Mined Land Reclamation	51
20.03.03 – Rules Governing Administration of the Reclamation Fund	87
20.03.04 – Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho	91
20.03.05 – Riverbed Mineral Leasing in Idaho	110
20.03.08 – Easements on State-Owned Lands	115
20.03.09 – Easements on State-Owned Submerged Lands and Formerly Submerged Lands	120
20.03.13 – Administration of Cottage Site Leases on State Lands	126
20.03.14 – Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases	127
20.03.15 – Rules Governing Geothermal Leasing on Idaho State Lands	137
20.03.16 – Rules Governing Oil and Gas Leasing on Idaho State Lands	150
20.03.17 – Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands	163
20.04.02 – Rules Pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws	171
20.06.01 – Rules of the Idaho Board of Scaling Practices	181
20.07.02 – Rules Governing Conservation of Oil and Natural Gas in the State of Idaho	191

IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION

Docket No. 26-0000-2000F	229
26.01.10 – Rules Governing the Administration of Temporary Permits on Lands Owned by the Idaho Department of Parks and Recreation	232
26.01.20 – Rules Governing the Administration of Park and Recreation Areas and Facilities	237
26.01.33 – Rules Governing the Administration of the Land and Water Conservation Fund Program	253

**IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES,
IDAHO WATER RESOURCE BOARD**

Docket No. 37-0000-2000F	266
37.01.01 – Rules of Procedure of the Idaho Department of Water Resources	272
37.02.03 – Water Supply Bank Rules	300
37.03.01 – Adjudication Rules	306
37.03.02 – Beneficial Use Examination Rules	314
37.03.03 – Rules and Minimum Standards for the Construction and Use of Injection Wells	324
37.03.04 – Drilling for Geothermal Resources Rules	346
37.03.05 – Mine Tailings Impoundment Structures Rules	357
37.03.06 – Safety of Dams Rules	367
37.03.07 – Stream Channel Alteration Rules	382
37.03.08 – Water Appropriation Rules	405
37.03.09 – Well Construction Standards Rules	426
37.03.10 – Well Driller Licensing Rules	462

IDAPA 13 – DEPARTMENT OF FISH AND GAME

DOCKET NO. 13-0000-2000F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2021 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 36-104, 36-303, 36-404, 36-407, 36-409, 36-412, 36-701, 36-703, and 36-708, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending fee rule and a statement of any change between the text of the proposed fee rule and the text of the pending fee rule with an explanation of the reasons for the change.

This pending fee rule adopts and re-publishes the following existing sections within rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 13, rules of the Department of Fish and Game:

IDAPA 13

- 13.01.02.200 and 201, only, *Rules Governing Mandatory Education and Mentored Hunting*;
- 13.01.04.601, only, *Rules Governing Licensing*;
- 13.01.08.263, only, *Rules Governing the Taking of Big Game Animals*;
- 13.01.10.410, only, *Rules Governing the Importation, Possession, Release, Sale or Salvage of Wildlife*; and
- 13.01.19.102, only, *Rules for Selecting, Operating, Discontinuing, and Suspending Vendors*.

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the Sept. 16, 2020, Idaho Administrative Bulletin, [Vol. 20-9SE, pages 532-538](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

- 13.01.02.200 and 13.01.02.201 implement a statutory mandate to charge for hunter, archery, and trapping education. Section 36-412, Idaho Code, mandates that the Commission implement education programs in hunting, trapping, and archery and provides the “commission shall establish fees for each program not to exceed eight dollars (\$8).” This rule carries out this statutory mandate by implementing an eight dollar (\$8) fee for hunter, archery, and trapper education. These fees have been in effect since March 24, 2017.
- IDAPA 13.01.04.601 provides that non-resident general season and controlled hunt deer or elk tag fees may be refunded in certain circumstances. This rule establishes a \$50 processing fee for tag refunds or a sliding scale for tag refunds in these special circumstances. This fee or charge is being imposed pursuant to Sections 36-104, 36-404, 36-407, and 36-409, Idaho Code. This rule has been in effect since April 6, 2005.
- IDAPA 13.01.08.263 provides that overpayment of fees of more than five dollars (\$5) will be refunded and overpayment of five dollars (\$5) or less will not be refunded and will be retained by the Department. This fee or charge is being imposed pursuant to Sections 36-104, 36-404, 36-407, and 36-409, Idaho Code. This rule has been in effect since July 1, 1993.
- IDAPA 13.01.10.410 provides bond requirements for large commercial wildlife facilities of fifty thousand dollars (\$50,000) or an amount equal to ten percent (10%) of the total facility construction cost plus two thousand dollars (\$2,000) per animal. This bond is meant to guarantee performance of license conditions and

to reimburse the Department for any costs incurred for clean-up of abandoned or closed facilities, removal of animals from abandoned or closed facilities, capture or termination of escaped animals, or disease control. This fee or charge is being imposed pursuant to Sections 36-104, 36-701, 36-703, and 36-708, Idaho Code. This rule has been in effect since July 1, 1999.

- IDAPA 13.01.19.102 implements a \$10,000 minimum surety bond requirement for vendors that present an undue risk. This bonding requirement ensures license vendors have sufficient coverage to ensure the Department is fully reimbursed for license sales and mitigating undue risk that may otherwise be placed upon the Department in the absence of such bonding. Sections 36-106(e)(11) and 36-303, Idaho Code, authorizes the Department to require a surety bond for license vendors. These vendor bonding rules have been in place since March 20, 1997.

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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Paul Kline, Deputy Director at (208) 334-3771.

Dated this 27th day of October 2020.

Paul Kline
Deputy Director
Idaho Department of Fish and Game
600 S. Walnut, P.O. Box 25
Boise, ID 83707
Phone: (208) 334-3771
Fax: (208) 334-4885
rules@idfg.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104, 36-303, 36-404, 36-407, 36-409, 36-412, 36-701, 36-703, and 36-708, Idaho Code.

PUBLIC HEARING SCHEDULE: Opportunity for presentation of oral comments concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of the purpose of the proposed rulemaking:

This proposed rulemaking re-publishes the following existing temporary rule sections previously submitted to and reviewed by the Idaho Legislature under IDAPA 13, rules of the Department of Fish and Game:

IDAPA 13

- 13.01.02.200 and 201, only, *Rules Governing Mandatory Education and Mentored Hunting;*
- 13.01.04.601, only, *Rules Governing Licensing;*
- 13.01.08.263, only, *Rules Governing the Taking of Big Game Animals in the State of Idaho;*

- 13.01.10.410, only, *Rules Governing the Importation, Possession, Release, Sale or Salvage of Wildlife*; and
- 13.01.19.102, only, *Rules for Selecting, Operating, Discontinuing, and Suspending Vendors*.

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules.

- IDAPA 13.01.02.200.02 and 13.01.02.201.02 implement a statutory mandate to charge for hunter, archery, and trapping education. Section 36-412, Idaho Code, mandates that the Commission implement education programs in hunting, trapping, and archery and provides the “commission shall establish fees for each program not to exceed eight dollars (\$8).” This rule carries out this statutory mandate by implementing an eight dollar (\$8) fee for hunter, archery, and trapper education. These fees have been in effect since March 24, 2017.
- IDAPA 13.01.04.601.01 provides that non-resident general season and controlled hunt deer or elk tag fees may be refunded in certain circumstances. This rule establishes a \$50 processing fee for tag refunds or a sliding scale for tag refunds in these special circumstances. This rule has been in effect since April 6, 2005.
- IDAPA 13.01.08.263.01.d. provides that overpayment of fees of more than five dollars (\$5) will be refunded and overpayment of five dollars (\$5) or less will not be refunded and will be retained by the Department. This fee rule has been in effect since July 1, 1993.
- IDAPA 13.01.10.410.03 provides bond requirements for large commercial wildlife facilities of fifty thousand dollars (\$50,000) or an amount equal to ten percent (10%) of the total facility construction cost plus two thousand dollars (\$2,000) per animal. This bond is meant to guarantee performance of license conditions and to reimburse the Department for any costs incurred for cleanup of abandoned or closed facilities, removal of animals from abandoned or closed facilities, capture or termination of escaped animals, or disease control. This fee rule has been in effect since July 1, 1999.
- IDAPA 13.01.19.102.04 requires a \$10,000 minimum surety bond for vendors that present an undue risk. This bonding requirement ensures license vendors have sufficient coverage to ensure the Department is fully reimbursed for license sales and mitigating undue risk that may otherwise be placed upon the Department in the absence of such bonding. Section 36-303, Idaho Code, authorizes the Department to require a surety bond for license vendors. These vendor bonding rules have been in place since March 20, 1997.

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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Paul Kline, (208) 334-3771.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of August, 2020.

THE FOLLOWING IS THE TEXT OF OMNIBUS FEE DOCKET NO. 13-0000-2000F

13.01.02 – RULES GOVERNING MANDATORY EDUCATION AND MENTORED HUNTING

(BREAK IN CONTINUITY OF SECTIONS)

200. HUNTER AND ARCHERY EDUCATION.

01. Mandatory Hunter and Archery Education Programs. A person may obtain certification of completion of hunter/archery education to comply with Section 36-411, Idaho Code, through classroom or on-line study, or other approved methods. The Department manages the Hunter Education Program pursuant to the Idaho Hunter Education Policy and Procedure Manual. “Equivalent certification” for hunter/archery education means completed instruction by an authorized agency or association including firearms/archery safety, wildlife management, wildlife law, hunter ethics, first aid/survival, and practical experience in handling and shooting firearms/archery equipment. ()

02. Fees. The Department will charge a fee of eight dollars (\$8) to each student enrolling in the Hunter or Archery Education Program. ()

03. Parent to Attend Shooting Clinic with Student. Students under the age of twelve (12) may only attend a Hunter Education Shooting Clinic if accompanied by a parent, legal guardian or other adult designated by the parent or legal guardian. ()

201. TRAPPER EDUCATION.

01. Mandatory Trapper Education Program. No person who first purchased an Idaho trapping license on or after July 1, 2011 may be issued a trapping license unless that person presents a certificate of completion in trapper education issued by the Department or proof of equivalent certification from an authorized agency or association in Idaho or elsewhere. “Equivalent certification” for trapper education means completed instruction including safe trapping methods and rules, non-target species avoidance techniques, wildlife identification, and good conduct and respect for the rights and property of others. Trapping education specific only to wolves in Idaho or elsewhere is not equivalent certification. ()

02. Fee. The Department will charge a fee of eight dollars (\$8) to each student enrolling in the Trapper Education Program. ()

03. Exemption. Persons who are acting pursuant to Section 36-1107, Idaho Code, are exempt from Subsection 201.01. ()

(BREAK IN CONTINUITY OF SECTIONS)

13.01.04 – RULES GOVERNING LICENSING

(BREAK IN CONTINUITY OF SECTIONS)

601. REFUNDS TO NONRESIDENTS.

The Department will not refund any fee for any nonresident license (as defined in Section 36-202(aa), Idaho Code), except as follows, and provided the refund request is in writing, is accompanied by the original license and tag, and is received or postmarked on or before December 31 of the calendar year in which the license was valid. ()

01. Refund. Nonresident general or controlled hunt deer or elk tag fees and hunting license fees may be refunded due to the death of licensee; illness or injury of licensee that totally disabled the licensee for the entire length of any applicable hunting season; or military deployment of licensee due to an armed conflict; as substantiated by death certificate, published obituary, written justification by a licensed medical doctor, copy of military orders, or similar documentation. The hunting license fee will not be refunded if it was used to apply for any controlled hunt or to purchase a turkey, mountain lion, or bear tag. The amount refunded will be the amount of the applicable deer or elk tag and hunting license fees, less all issuance fees and a fifty dollar (\$50) processing fee. ()

02. Partial Refund. Nonresident general and controlled hunt deer or elk tag fees may be partially refunded for a reason other than those in the preceding subsection based on the postmark date in the below table. The hunting license fee will not be refunded.

Postmarked	Percent of Tag Fee Refunded
Before April 1	75%
In April through June	50%
In July and August	25%
September through December	0%

()

03. Department Error. The Department will refund fees when it determines that a Department employee made an error in the issuance of the license. ()

(BREAK IN CONTINUITY OF SECTIONS)

13.01.08 – RULES GOVERNING THE TAKING OF BIG GAME ANIMALS

(BREAK IN CONTINUITY OF SECTIONS)

263. REFUNDS OF CONTROLLED HUNT FEES.

01. Refunds. ()

a. Controlled hunt tag fees will be refunded to unsuccessful or ineligible applicants for moose, sheep, mountain goat, and grizzly bear. Unsuccessful applicants may donate all or a portion of refunded tag fees to Citizens Against Poaching by checking the appropriate box on the application. One dollar (\$1) of the non-refundable application fee will go to Citizens Against Poaching unless the applicant instructs otherwise. ()

b. Fees for hunting licenses will not be refunded to unsuccessful or ineligible controlled applicants. ()

c. Fees for deer or elk tags purchased prior to the drawing will not be refunded to unsuccessful or ineligible applicants. ()

d. Overpayment of fees of more than five dollars (\$5) will be refunded. Overpayment of five dollars (\$5) or less will NOT be refunded and will be retained by the Department. ()

e. Controlled hunt application fees are nonrefundable. ()

f. Fees for resident and nonresident adult controlled hunt tags subsequently designated to a minor child or grandchild are not refundable. ()

g. Fees for special controlled hunt application, tag and related hunting license are not refundable. ()

(BREAK IN CONTINUITY OF SECTIONS)

**13.01.10 – RULES GOVERNING THE IMPORTATION, POSSESSION,
RELEASE, SALE, OR SALVAGE OF WILDLIFE**

(BREAK IN CONTINUITY OF SECTIONS)

410. LARGE COMMERCIAL WILDLIFE FACILITIES.

Commercial wildlife facilities that are of a size large enough or with a large number of animals incompatible with the cage or enclosure requirements of Section 400 may, in the Director's discretion, be addressed with facility-specific license terms. Only facilities housing at least three (3) or more species or encompassing display or exhibit areas larger than one (1) acre will qualify for this consideration. ()

01. Animal Display and Security. Any cage or enclosure shall be of such structure or type of construction to prevent escape of the captive wildlife, or damage to native wildlife through habitat degradation, genetic contamination, competition, or disease. In identifying facility-specific license terms, the Department may refer to standards such as those set by the American Zoological Association for cage, open space, shelter, enclosure, and display in a natural-appearing environment and in such a way as to preserve animal dignity. Terms may include, but are not limited to, fence specifications, electric fence specifications, pits or moats, buried fencing, and display features to enhance appreciation for the species and its natural history. ()

02 Application. Application for a large commercial wildlife facility license will generally meet the requirements of Subsection 400.04, and will identify the veterinarian of record for the facility. ()

03. Bond. The Department will require, as a license condition, any large commercial wildlife facility to provide a bond to the Department in the amount of fifty thousand dollars (\$50,000), or an amount equal to ten percent (10%) of the total facility construction cost plus two thousand dollars (\$2,000) per animal, whichever is greater, executed by a qualified surety duly authorized to do business in the state of Idaho, to guarantee performance of license conditions and to reimburse the Department for any costs incurred for clean up of abandoned or closed facilities, removal of animals from abandoned or closed facilities, capture or termination of escaped animals, or disease control. With prior approval, the applicant may instead submit a cash bond to the Department including, but not limited to, certificates of deposit, registered checks, certified funds, and money orders. ()

04. Specific Requirements. The Director has discretion to identify specific license conditions, and violation of any such condition is a violation of these rules. ()

(BREAK IN CONTINUITY OF SECTIONS)

13.01.19 – RULES FOR SELECTING, OPERATING, DISCONTINUING, AND SUSPENDING VENDORS

(BREAK IN CONTINUITY OF SECTIONS)

102. SELECTION.

The following factors will be considered for selecting an applicant to become a license vendor: ()

01. Low Numbered Vendors. Applicants classified in lower-numbered vendor classifications will be given priority over applicants in higher-numbered classifications from the same general location. ()

02. Class Six Applicants. Class six (6) applicants will be approved only when they demonstrate a significant public benefit to have a license vendorship at their location. ()

03. Unsettled Debts. Applicants who have unsettled debts listed with a credit bureau will not be approved. Unsettled debts that are in dispute will not be considered against the applicant. ()

04. Surety Bond. The Department may require an applicant to provide for each location, a ten thousand dollar (\$10,000) surety bond from a corporate surety authorized to do business in the state of Idaho, which guarantees the payment of all state funds collected as a result of licenses issued by the vendor if it appears from the application or other information that an undue risk might otherwise be placed upon the Department in the absence of such bonding. Applicants who otherwise qualify for a vendorship and have been in business less than three (3) years will be required to furnish the Department a ten thousand dollar (\$10,000) surety bond in the form and length as determined by the Director. Upon request, at the completion of two (2) years of service, the Department may release the vendor from the bonding requirement based on a review of financial risk. ()

05. Permanence and Accessibility. Applicants who do not have a permanent place of business open and accessible to all segments of the public will not be approved. ()

06. Number of Existing Vendors in Area. The three (3) closest existing vendors, their hours and days of operation, classification, accessibility to the public, and other pertinent information, including their distance to the applicant, will be compared to the applicant. ()

07. Minimum Sales Volume. If the applicant is seeking to replace an existing vendor at the prior vendor's location, the prior vendor's sales volume will be used to estimate the applicant's sales volume. ()

08. Performance Record. An applicant who was a license vendor or the manager for a vendor within the past five (5) years will not be approved unless the applicant's performance record was satisfactory. ()

09. Fish and Game Violations. No owner or store manager (if the applicant is a corporation) may have had a fish and game violation other than an infraction within the past five (5) years. ()

(BREAK IN CONTINUITY OF SECTIONS)

**IDAPA 15 – OFFICE OF THE GOVERNOR
IDAHO FOREST PRODUCTS COMMISSION**

DOCKET NO. 15-0300-2000F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2021 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 38-1508, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending fee rule and a statement of any change between the text of the proposed fee rule and the text of the pending fee rule with an explanation of the reasons for the change.

This pending fee rule adopts and re-publishes the following existing rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 15.03, rules of the Idaho Forest Products Commission:

IDAPA 15.03

- IDAPA 15.03.01, *Rules of Administrative Procedure of the Idaho Forest Products Commission.*

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the Sept. 16, 2020, Idaho Administrative Bulletin, [Vol. 20-9SE, pages 539-541](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. The fees or charges specify the collection and remittance of the assessment provided in Section 38-1515, 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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Jennifer Okerlund, Director, Idaho Forest Products Commission (208) 334-3292, ifpc@idahoforests.org.

Dated this 18th day of November, 2020.

Jennifer Okerlund, Director
Idaho Forest Products Commission
350 N. 9th Street, Suite 102
Boise, Idaho 83702
(208) 334-3292
ifpc@idahoforests.org

THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 38-1508, Idaho Code.

PUBLIC HEARING SCHEDULE: Opportunity for presentation of oral comments concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of the purpose of the proposed rulemaking:

This proposed rulemaking re-publishes the following existing temporary rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 15.03, rules of the Idaho Forest Products Commission:

IDAPA 15.03

- IDAPA 15.03.01, *Rules of Administrative Procedure of the Idaho Forest Products Commission.*

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules. The fees or charges specify the collection and remittance of the assessment provided in Section 38-1515, 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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jennifer Okerlund, Director, Idaho Forest Products Commission (208) 334-3292, ifpc@idahoforests.org.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of August, 2020.

THE FOLLOWING IS THE TEXT OF OMNIBUS FEE DOCKET NO. 15-0300-2000F

**IDAPA 15 – OFFICE OF THE GOVERNOR
IDAHO FOREST PRODUCTS COMMISSION**

**15.03.01 – RULES OF ADMINISTRATIVE PROCEDURE OF THE IDAHO
FOREST PRODUCTS COMMISSION**

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 38, Chapter 15, Idaho Code. ()

001. TITLE AND SCOPE.

The title of this chapter is “Rules of Administrative Procedure of the Idaho Forest Products Commission,” and cited as IDAPA 15.03.01. These rules set forth the practices and procedures for the activities of the Idaho Forest Products Commission. ()

002. -- 003. (RESERVED)

004. DEFINITIONS.

In addition to the definitions set forth in Section 38-1502, Idaho Code, as used in this chapter: ()

01. Assessment. The fee authorized by Section 38-1515, Idaho Code, which is levied against financial supporters for their individual share of the Commission budget for the assessment year. The assessment will be based upon data compiled from the base year. ()

02. Financial Supporter. Person who pays an assessment to the Commission. ()

03. Person. An individual, partnership, association, corporation or other entity qualified to do business in the state of Idaho. ()

005. -- 099. (RESERVED)

100. NOMINATIONS, VACANCIES AND TERMS.

01. Chair and Vice-Chair. The Commission nominates and elects, by majority vote, a Chair to serve as presiding officer at all Commission meetings. The Commission may also nominate and elect, by majority vote, a Vice-Chair to accept the duties of the Chair in the event that the Chair is unable to attend a meeting of the Commission. The term of the office of Chair and Vice-Chair is one (1) year, commencing July 30 of each year. ()

02. Nominations. Nominations for expiring seats on the Commission will be made by the financial supporters of the Commission from the district in which the seat is expiring, or from all districts in the case of an at-large member, no later than June 1 of that year. The Commission will provide nomination applications to all financial supporters and will forward the names of all qualified nominees to the Governor. The Commission may also make recommendations or nominations. In making the appointments, the Governor will take into consideration recommendations made to him by the Commission and by organizations that represent or are engaged in harvesting, transporting or manufacturing forest products. ()

03. Vacancies. Vacancies in any unexpired term will be filled by the Governor for the remainder of the unexpired term. The Commission will identify qualified candidates and forward their names to the Governor. The member appointed to fill the vacancy will represent the same region and interests as the person whose seat has become vacant. The at-large member will represent all regions. ()

04. Terms. Terms of office for Commission members consist of three (3) year terms beginning on July 1 of the year of appointment. ()

101. -- 199. (RESERVED)

200. ASSESSMENTS AND FEES.

An assessment for all logs harvested, measured or processed within the state of Idaho and for all employees, including self employed, engaged in the harvest or transport of timber, logs, unfinished lumber, chips, sawdust, shavings or hog fuel in Idaho, and for each acre of forest land owned by a business entity or person that owns more

than ten thousand (10,000) acres of forest land will be set by the Commission no later than January 1 of the assessment year. Notice of the assessment will be mailed no later than the last day of the fourth week of May of the assessment year to the last known address of each financial supporter. Assessment will not be reduced for financial supporters who cease business during an assessment year. ()

01. Payment Method. Financial supporters of the Commission may choose to pay their assessment in either one (1) full payment due thirty (30) days after the date the notice of assessment is mailed, or in four (4) equal payments with payment in full made by December 31 of the assessment year. ()

02. Assessments Levied. Assessments on logs processed into various manufactured products will be levied against the forest products manufacturer that initiates the manufacturing process. ()

03. Insufficient Funds Checks. The Commission will establish a policy and schedule for insufficient funds checks that will be reviewed annually. This policy and schedule will be available to the public under the procedures set forth by the Public Records Act, Title 74, Chapter 1, Idaho Code. ()

201. -- 299. (RESERVED)

300. LATE PAYMENTS AND PENALTIES.
Whenever payment in full or a quarterly payment is not received within thirty (30) days of the posting date of an assessment invoice, the payment will be considered delinquent. Interest of one percent (1%) per calendar month on the balance due will be levied against all delinquent accounts, commencing thirty-one (31) calendar days after the posting date of the assessment invoice. The Commission may proceed with legal action against delinquent accounts in Fourth Judicial District Court or under the provisions of the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and seek attorney fees and costs in such proceedings. ()

301. -- 999. (RESERVED)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

DOCKET NO. 20-0000-2000F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULES

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: These rules have been adopted by the agency, the Idaho State Board of Land Commissioners, the Idaho Oil and Gas Conservation Commission (as to IDAPA 20.07.02), and the Idaho Board of Scaling Practices (as to IDAPA 20.06.01), and are now pending review by the 2021 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, these pending rules will not become final and effective until they have been approved by concurrent resolution of the legislature because of the fee being imposed or increased through these rulemakings. The pending fee rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted pending rules. The action is authorized pursuant to:

- Sections 38-132 and 38-402, Idaho Code;
- Title 38, Chapter 12, including Section 38-1208, Idaho Code;
- Title 47, Chapters 3, 7, 8, 13, 15, 16 and 18, including Sections 47-314(8), 47-315(8), 47-328(1), 47-710, 47-714, and 47-1316, Idaho Code;
- Title 58, Chapters 1, 3, 6, 12 and 13, including Sections 58-104, 58-105, 58-127, and 58-304 through 58-312, Idaho Code;
- Title 67, Chapter 52, Idaho Code;
- Article IX, Sections 7 and 8 of the Idaho Constitution; and
- The Equal Footing Doctrine (Idaho Admission Act of July 3, 1890, 26 Stat. 215, Chapter 656).

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending fee rules and a statement of any change between the text of the proposed fee rules and the text of the pending fee rules with an explanation of the reasons for the change.

These pending fee rules adopt and re-publish the following existing rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 20, Rules of the Idaho Department of Lands:

IDAPA 20

- 20.02.14, *Rules for Selling Forest Products on State-Owned Endowment Lands;*
- 20.03.01, *Rules Governing Dredge and Placer Mining Operations in Idaho;*
- 20.03.02, *Rules Governing Mined Land Reclamation* (as noted below);
- 20.03.03, *Rules Governing Administration of the Reclamation Fund;*
- 20.03.04, *Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho;*
- 20.03.05, *Riverbed Mineral Leasing in Idaho;*
- 20.03.08, *Easements on State-Owned Lands;*
- 20.03.09, *Easements on State-Owned Submerged Lands and Formerly Submerged Lands;*
- 20.03.13, *Administration of Cottage Site Leases on State Lands;*
- 20.03.14, *Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases;*
- 20.03.15, *Rules Governing Geothermal Leasing on Idaho State Lands;*
- 20.03.16, *Rules Governing Oil and Gas Leasing on Idaho State Lands;*
- 20.03.17, *Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands;*
- 20.04.02, *Rules Pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws;*

The Idaho Board of Scaling Practices adopts the following pending fee rule under IDAPA 20.06:

- 20.06.01, *Rules of the Idaho Board of Scaling Practices*

The Oil and Gas Conservation Commission adopts the following pending fee rule under IDAPA 20.07:

- 20.07.02, *Rules Governing Conservation of Oil and Natural Gas in the State of Idaho*

These pending fee rules adopt and publish changes to IDAPA 20.03.02, Rules Governing Mined Land Reclamation. The previously approved and codified chapter of IDAPA 20.03.02 has been amended through the negotiated rulemaking process to incorporate changes required by the passing of HB141 during the 2019 legislative session. Following are the changes to the previously codified rule: including surface impacts of underground mines, setting fees for reclamation plans, incorporating water treatment and post-closure activities in reclamation plans as needed, requiring that all reclamation tasks in a plan be completed and covered by financial assurance, estimating actual cost of reclamation and post-closure activities, expanding the types of financial assurance, and reviewing every plan at least once every five years. Also, compliance with [Executive Orders 2019-02](#) and [2020-01](#) required additional changes, and rulemaking by the Department of Environmental Quality on the Ore Processing by Cyanidation Rules (IDAPA 58.01.13) required parallel changes to IDAPA 20.03.02.

The original text of the proposed rules was published in the September 16, 2020 Idaho Administrative Bulletin (Special Edition), [Vol. 20-9SE, pages 985-1192](#). The text of the pending rule for IDAPA 20.03.02, Rules Governing Mined Land Reclamation, has been amended in accordance with Section 67-5227, Idaho Code; changes were made to the proposed rule in order to provide more clarity, further implement [Executive Order 2020-01](#), correct errors, respond to comments, and ensure continuity with IDAPA 58.01.13. This pending rule is being adopted to fully implement the changes required by HB141. These rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho, to give mine operators in Idaho more choices in providing financial assurance, and to update Idaho's mining regulations.

FEE SUMMARY: Following is the fee summary for IDAPA 20.03.02, Rules Governing Mined Land Reclamation:

HB 141 passed during the 2019 legislative session and authorized application fees for reclamation plans. Fees were implemented through a temporary rule prior to August 1, 2019 as required by HB 141. The temporary rule was extended to allow time for more negotiation toward a proposed rule. The base fees in the 2019 temporary rule have not changed, but the pending rule allows additional application fees to be charged if an application processed under Section 069 of the rules is incomplete and increases the length of the review past 20 hours of staff time. For applications processed under Section 070 of the rules, a cost recovery agreement may be entered into instead of submitting the base application fee. The proposed fees reflect cost recovery for IDL administrative costs associated with the review and approval of new plans and amended existing plans that are reviewed within the required five-year period. The proposed fees align with fees charged by other mineral-producing states in the western United States for reclamation plan review, approval, and amendments. The fees are estimated to generate annual revenue of approximately \$27,000 and will be placed into a dedicated account authorized under Idaho Code § 47-1513(f)(1). These funds are expected to offset additional IDL expenses anticipated with implementation of the five-year plan review process and increase in plan inspections now required under Idaho Code § 47-15.

For the following rule chapters, this rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature.

The following is a specific description of the fees or charges:

- 20.02.14 – Stumpage payments and associated bonding for removal of state timber from endowment land pursuant to timber sales. This charge is being imposed pursuant to Sections 58-104, 58-105 and 58-127, Idaho Code.
- 20.03.01 – Application fee, amendment fee, assignment fee, and inspection fee for all dredge and placer permits in the state of Idaho. This fee is being imposed pursuant to Sections 47-1316 and 47-1317, Idaho Code.
- 20.03.03 – Annual payment for Reclamation Fund participation. This charge is being imposed pursuant to Section 47-1803, Idaho Code.
- 20.03.04 – Application fees for encroachment permits and assignments and deposits toward the cost of newspaper publication. This fee is being imposed pursuant to Sections 58-127 and 58-1307, Idaho Code.
- 20.03.05 – Fees for applications, advertising applications, and approval of assignments for riverbed mineral leases and exploration locations. This fee is being imposed pursuant to Section 47-710, Idaho Code.
- 20.03.08 – Application fee, easement consideration fee, appraisal costs, and assignment fee for easements on state-owned lands. This fee is being imposed pursuant to Sections 58-127, 58-601, and 58-603, Idaho Code.

- 20.03.09 – Administrative fee, appraisal costs, and assignment fee for easements on state-owned submerged lands and formerly submerged lands. This fee is being imposed pursuant to Sections 58-104, 58-127 and 58-603, Idaho Code.
- 20.03.13 – Annual rental payment paid to the endowment for which the property is held. This charge is being imposed pursuant to Section 58-304, Idaho Code.
- 20.03.14 – Lease application fee, full lease assignment fee, partial lease assignment fee, mortgage agreement fee, sublease fee, rental payment, late rental payment fee, minimum lease fee, and lease payment extension request fee on state endowment trust lands. This fee or charge is being imposed pursuant to Section 58-304, Idaho Code.
- 20.03.15 – Application fee, assignment fee, late payment fee, royalty payments, and annual rental payment for geothermal leases on state-owned lands. This fee or charge is being imposed pursuant to Sections 47-1605 and 58-127, Idaho Code.
- 20.03.16 – Exploration permit fee, nomination fee, processing fee, royalty payments, and annual rental payment for oil and gas leases on endowment lands. This fee or charge is being imposed pursuant to Sections 47-805 and 58-127, Idaho Code.
- 20.03.17 – Application fee, rental rate, and assignment fee for leases on state-owned submerged lands and formerly submerged lands. This fee is being imposed pursuant to Sections 58-104, 58-127 and 58-304, Idaho Code.
- 20.04.02 – Fee imposed upon the harvest and sale of forest products to establish hazard management performance bonds for the abatement of fire hazard created by a timber harvest operation, and fees imposed upon contractors for transferring fire suppression cost liability back to the State. This fee or charge is being imposed pursuant to Sections 38-122 and 38-404, Idaho Code.
- 20.06.01 – Scaling assessment fee paid to a dedicated scaling account for all scaled timber harvested within the state of Idaho; administrative fees for registration, renewal, and transfer of log brands; fees for testing and issuance of a temporary scaling permit, specialty scaling license, and standard scaling license; fee to renew a specialty or standard scaling license; and fee for a requested check scale involving a scaling dispute. This fee is being imposed pursuant to Section 38-1209, Idaho Code.
- 20.07.02 – Bonding for oil and gas activities in Idaho and application fees for seismic operations; permit to drill, deepen or plug back; multiple zone completions; well treatment; pits and directional deviated wells. This fee or charge is being imposed pursuant to Sections 47-315(5)(e) and 47-316, 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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the fees charged under IDAPA 20.03.02 are expected to cover the additional costs imposed by HB141, and none of the other rule chapters have changed their fees.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Scott Phillips at (208) 334-0294.

Dated this 18th day of November, 2020.

Dustin Miller, Director
Idaho Department of Lands
300 N. 6th St, Suite 103
P.O. Box 83720
Boise, Idaho 83720-0050
Phone: (208) 334-0242
Fax: (208) 334-3698
rulemaking@idl.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS 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 38-132 and 38-402, Idaho Code;
- Title 38, Chapter 12, including Section 38-1208, Idaho Code;
- Title 47, Chapters 3, 7, 8, 13, 15, 16 and 18, including Sections 47-314(8), 47-315(8), 47-328(1), 47-710, 47-714, and 47-1316, Idaho Code;
- Title 58, Chapters 1, 3, 6, 12 and 13, including Sections 58-104, 58-105, 58-127, and 58-304 through 58-312, Idaho Code;
- Title 67, Chapter 52, Idaho Code;
- Article IX, Sections 7 and 8 of the Idaho Constitution; and
- The Equal Footing Doctrine (Idaho Admission Act of July 3, 1890, 26 Stat. 215, Chapter 656).

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

PUBLIC HEARING

**Wednesday, September 30, 2020
9:00 a.m. - 10:30 a.m. (MDT)**

**Joe R. Williams Building
East Conference Room
700 W. State Street
Boise, ID 83702**

**Or Join the Public Hearing via Teleconference
or Web Conference:**

Attend via Zoom web conference:

Visit <https://idl.zoom.us/j/99125556496?pwd=WmwrQXczcmUyc0VLb2VvS1puNVdfUT09>

Meeting ID: 991 2555 6496

Passcode: 104469

Watch via Facebook Live: Visit

<https://www.facebook.com/IdahoDepartmentofLands>

**Attend via telephone: Dial in using any of the following numbers
and enter meeting ID “991 2555 6496” and passcode: “104469”**

(253) 215 8782

(346) 248 7799

(408) 638 0968

(669) 900 6833

(646) 876 9923

(301) 715 8592

(312) 626 6799

The first hour of the hearing will be dedicated to public comment on the proposed rule for IDAPA 20.03.02, Rules Governing Mined Land Reclamation (9:00 to 10:00 a.m. MT). The remainder of the hearing will be dedicated to public comment on any proposed fee rule under IDAPA 20, Rules of the Idaho Department of Lands (10:00 to 10:30 a.m. MT).

The hearing site will be accessible to persons with disabilities and compliant with applicable local guidelines at the time of the hearing. 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 the required finding and concise statement of the purpose of the proposed rulemaking:

With the passing of HB 141 during the 2019 legislative session, the Department began the negotiated rulemaking process for IDAPA 20.03.02, Rules Governing Mined Land Reclamation (previous chapter title: Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities). A temporary rule was approved prior to August 1, 2019 as required by HB 141, and additional negotiation (from August through November 2019 under Docket Number 20-0302-1901 and from May through August 2020 under Docket Number 20-0302-2001) was needed to reach consensus on a proposed rule.

This proposed rulemaking incorporates the following changes into IDAPA 20.03.02, Rules Governing Mined Land Reclamation: including surface impacts of underground mines, setting fees for reclamation plans, incorporating water treatment and post-closure activities in reclamation plans as needed, requiring that all reclamation tasks in a plan be completed and covered by financial assurance, estimating actual cost of reclamation and post-closure activities, expanding the types of financial assurance, and reviewing every plan at least once every five years. Also, compliance with [Executive Orders 2019-02](#) and [2020-01](#) required additional changes, and rulemaking by the Department of Environmental Quality on the Ore Processing by Cyanidation Rules (IDAPA 58.01.13) required parallel changes to the proposed rule for IDAPA 20.03.02.

Additionally, this proposed rulemaking re-publishes the following existing temporary rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 20, Rules of the Idaho Department of Lands:

IDAPA 20

- 20.02.14, *Rules for Selling Forest Products on State-Owned Endowment Lands;*
- 20.03.01, *Rules Governing Dredge and Placer Mining Operations in Idaho;*
- 20.03.02, *Rules Governing Mined Land Reclamation* (as noted from above);
- 20.03.03, *Rules Governing Administration of the Reclamation Fund;*
- 20.03.04, *Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho;*
- 20.03.05, *Riverbed Mineral Leasing in Idaho;*
- 20.03.08, *Easements on State Owned Lands;*
- 20.03.09, *Easements on State Owned Submerged Lands and Formerly Submerged Lands;*
- 20.03.13, *Administration of Cottage Site Leases on State Lands;*
- 20.03.14, *Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases;*
- 20.03.15, *Rules Governing Geothermal Leasing on Idaho State Lands;*
- 20.03.16, *Rules Governing Oil and Gas Leasing on Idaho State Lands;*
- 20.03.17, *Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands;*
- 20.04.02, *Rules Pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws;*
- 20.06.01, *Rules of the Idaho Board of Scaling Practices;*
 - In this proposed rulemaking, the Idaho Board of Scaling Practices re-publishes the existing temporary rule previously submitted to and reviewed by the Idaho Legislature.
- 20.07.02, *Rules Governing Conservation of Oil and Natural Gas in the State of Idaho*
 - In this proposed rulemaking, the Oil and Gas Conservation Commission re-publishes the existing temporary rule previously submitted to and reviewed by the Idaho Legislature.

FEE SUMMARY: Following is the fee summary for IDAPA 20.03.02, Rules Governing Mined Land Reclamation:

HB 141 passed during the 2019 legislative session and authorized application fees for reclamation plans. Fees were implemented through a temporary rule prior to August 1, 2019 as required by HB 141. The temporary rule was extended to allow time for more negotiation toward a proposed rule. The base fees in the 2019 temporary rule have not changed, but the proposed rule allows additional application fees to be charged if an application processed under Section 069 of the rules is incomplete and increases the length of the review past 20 hours of staff time. For applications processed under Section 070 of the rules, a cost recovery agreement may be entered into instead of submitting the base application fee. The proposed fees reflect cost recovery for IDL administrative costs associated with the review and approval of new plans and amended existing plans that are reviewed within the required five-year period. The proposed fees align with fees charged by other mineral-producing states in the western United States for reclamation plan review, approval, and amendments. The fees are estimated to generate annual revenue of approximately \$27,000 and will be placed into a dedicated account authorized under Idaho Code § 47-1513(f)(1). These funds are expected to offset additional IDL expenses anticipated with implementation of the five-year plan review process and increase in plan inspections now required under Idaho Code § 47-15.

For the following rule chapters, this rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature.

The following is a specific description of the fees or charges:

- 20.02.14 – Stumpage payments and associated bonding for removal of state timber from endowment land pursuant to timber sales.
- 20.03.01 – Application fee, amendment fee, assignment fee, and inspection fee for all dredge and placer permits in the state of Idaho.
- 20.03.03 – Annual payment for Reclamation Fund participation.
- 20.03.04 – Application fees for encroachment permits and assignments and deposits toward the cost of newspaper publication.
- 20.03.05 – Fees for applications, advertising applications, and approval of assignments for riverbed mineral leases and exploration locations.
- 20.03.08 – Application fee, easement consideration fee, appraisal costs, and assignment fee for easements on state-owned lands.
- 20.03.09 – Administrative fee, appraisal costs, and assignment fee for easements on state-owned submerged lands and formerly submerged lands.
- 20.03.13 – Annual rental payment paid to the endowment for which the property is held.
- 20.03.14 – Lease application fee, full lease assignment fee, partial lease assignment fee, mortgage agreement fee, sublease fee, rental payment, late rental payment fee, minimum lease fee, and lease payment extension request fee on state endowment trust lands.
- 20.03.15 – Application fee, assignment fee, late payment fee, royalty payments, and annual rental payment for geothermal leases on state-owned lands.
- 20.03.16 – Exploration permit fee, nomination fee, processing fee, royalty payments, and annual rental payment for oil and gas leases on endowment lands.
- 20.03.17 – Application fee, rental rate, and assignment fee for leases on state-owned submerged lands and formerly submerged lands.
- 20.04.02 – Fee imposed upon the harvest and sale of forest products to establish hazard management performance bonds for the abatement of fire hazard created by a timber harvest operation, and fees imposed upon contractors for transferring fire suppression cost liability back to the State.
- 20.06.01 – Scaling assessment fee paid to a dedicated scaling account for all scaled timber harvested within the state of Idaho; administrative fees for registration, renewal, and transfer of log brands; fees for testing and issuance of a temporary scaling permit, specialty scaling license, and standard scaling license; fee to renew a specialty or standard scaling license; and fee for a requested check scale involving a scaling dispute.
- 20.07.02 – Bonding for oil and gas activities in Idaho and application fees for seismic operations; permit to drill, deepen or plug back; multiple zone completions; well treatment; pits and directional deviated wells.

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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Negotiated rulemaking for IDAPA 20.03.02, Rules Governing Mined Land Reclamation was conducted pursuant to Section 67-5220(1), Idaho Code. The following notices were published in the Idaho Administrative Bulletin:

- Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 1, 2019 Idaho Administrative Bulletin [Volume 19-5, Page 69](#), under Docket Number 20-0302-1901.
- (Second) Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the October 2, 2019 Idaho Administrative Bulletin [Volume 19-10, Page 220](#), under Docket Number 20-0302-1901.
- (New Chapter) Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 6, 2020 Idaho Administrative Bulletin [Volume 20-5, Page 95](#), under Docket Number 20-0302-2001.

Materials pertaining to the negotiated rulemaking, including rule drafts and research materials, can be found on the Department's website at: <https://www.idl.idaho.gov/news/rulemaking/minerals-rulemaking-for-idapa-20-03-02/>

Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking for the other rule chapters was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

Materials pertaining to omnibus rulemaking for IDAPA 20 can be found on the Department's website at <https://www.idl.idaho.gov/news/rulemaking/docket-no-20-0000-2000f/>.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Amy Johnson at (208) 334-0255 or rulemaking@idl.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin.

Dated this 11th day of September, 2020.

THE FOLLOWING IS THE TEXT OF OMNIBUS FEE DOCKET NO. 20-0000-2000F

20.02.14 – RULES FOR SELLING FOREST PRODUCTS ON STATE-OWNED ENDOWMENT LANDS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 38-1201, et seq.; 58-104(6); 58-105; 67-5201, et seq.; Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.02.14 “Rules for Selling Forest Products on State-Owned Endowment Lands.” ()

02. Scope. These rules govern the selling of forest products from state endowment lands. ()

002. INCORPORATION BY REFERENCE.

The following document is incorporated by reference into these rules: American National Standard Institute, 05.1, 2002 Edition, published by the Alliance for Telecommunication Industry Solutions and available to purchase on the Internet at <http://www.atis.org>. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho State Board of Land Commissioners. ()

02. Contract. Timber sale contract in a form prescribed by the Department. ()

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

04. Development Credits. A stumpage credit received by the purchaser for the construction or reconstruction of roads, bridges, or other permanent improvements. ()

05. Director. The director of the Idaho Department of Lands or his authorized representative. ()

06. Forest Products. Marketable forest materials. ()

07. Net Appraised Value. The minimum estimated sale value of the forest products after deducting the development credit. ()

08. Net Sale Value. The final sale bid value of the forest products after deducting the development credit. ()

09. Purchaser. A successful bidder for forest products from a state sale who has executed a timber sale contract. ()

10. Roads. Forest access roads used for the transportation of forest products. ()

011. -- 018. (RESERVED)

019. FIREWOOD AND OTHER PERSONAL USE PRODUCT PERMITS.

Forest product permits for personal use will be sold on a charge basis. The Director will determine permit rates and maximum permit values. ()

020. DIRECT SALES.

The sale of forest products without advertisement may be authorized by the Director if the net appraised value does not exceed the maximum value established by the Board. This type of sale is to be used to harvest isolated or by-passed parcels of timber of insufficient value and volume to justify a timber sale (refer to Section 021). The direct sale will not be used when two (2) or more potential purchasers may be interested in bidding on the forest products offered for sale. The initial duration of a direct sale is six (6) months with a provision for one six (6) month extension. The purchaser must furnish an acceptable performance bond in the amount of thirty percent (30%) of the sale value with a minimum bond of one hundred dollars (\$100). Advance payment will be required and all sales will be on a lump sum basis. ()

021. TIMBER SALES.

Timber sales exceed the net appraised value or volume for direct sales established by the Board. ()

022. -- 025. (RESERVED)

026. ANNUAL SALES PLAN.

The Department will prepare an annual sales plan which will describe the timber sales to be offered for sale during the forthcoming fiscal year. The plan will be based on recommended annual harvest volumes utilizing inventory data, local stand conditions, special management problems, and economic factors. The plan will be presented to the Board for approval annually and upon approval made available to all interested parties. The plan may be altered to respond to changing market conditions or to expedite the sale of damaged or insect-infested forest products. ()

027. -- 030. (RESERVED)

031. TIMBER SALE AUCTIONS.

01. Requirements. Timber and Delivered Products sales must be sold at public auction. ()

02. Requirements for Bidding. Bidders must: ()

a. Present a bid deposit in a form acceptable to the State in the amount of ten percent (10%) of the net appraised value. ()

b. Not be delinquent on any payments to the State at the time of sale. ()

c. Not be a minor as defined in Section 32-101, Idaho Code. ()

d. If a foreign corporation, have a completed and accepted foreign registration statement with the secretary of state and comply with Title 30, Chapter 21, Part 5, Idaho Code in order to do business in Idaho and be eligible to bid on and purchase State timber. ()

032. INITIAL DEPOSIT AND BONDS.

01. Initial Deposit. The initial deposit (ten percent (10%) of net sale value) is paid in cash and retained by the state as a cash reserve for the duration of the contract; the purchaser is not entitled to any interest earned thereon. All or a portion of the initial deposit may be applied to charges as the contract nears completion. Any remaining initial deposit will be forfeited in the event the contract is terminated without being completed. ()

02. Performance Bond. A bond of sufficient amount for carrying out in good faith all applicable laws and all the terms and conditions imposed by the Board and the sale contract or fifteen percent (15%) of the net sale value of the forest products (whichever is greater) is to be executed within thirty (30) days from the date of sale and prior to execution of the contract. Failure to perform on the contract may result in forfeiture of all or a portion of the performance bond. ()

03. Guarantee of Payment. Prior to cutting of any forest products, the purchaser must provide a bond acceptable to the Department as assurance of payment for products to be cut or removed, or both, during the next ninety (90) days. Guarantee of payment on delivered product sales will be as determined by the Department. This bond is in addition to the required initial deposit. Failure to make full and timely payment as per contract terms may result in forfeiture of all or a portion of the guarantee of payment. ()

033. -- 040. (RESERVED)

041. STUMPAGE AND INTEREST PAYMENT.

A stumpage summary of forest products measured during the prior month and a statement of account will be prepared by the Department and forwarded to the purchaser monthly. The statement will include interest computed from the date of sale to the date of the billing at a rate specified in the contract. The purchaser must make payments within thirty (30) days of the end of the billing period or the payment is considered delinquent. Interest will not be charged on delivered product sales. ()

042. TIMBER SALE CANCELLATION.

It is the purchaser's responsibility to initiate cancellation by submitting such request in writing to the respective supervisory area office. When all contractual requirements have been completed, final payments have been received, all load tickets have been accounted for, and a written request for cancellation has been received by the Department, any credit balances and all cash bonds will be returned and/or transferred to other timber sale accounts within forty-five (45) days, as requested by the purchaser. ()

043. PREMATURE TIMBER SALE TERMINATION.

01. Request. A timber sale purchaser may, for reasons of hardship, make written request to terminate a timber sale contract before harvesting is completed. In such cases, the Board will determine if a hardship exists and if the contract should be terminated. ()

02. Termination Policy. ()

a. The Board may authorize premature termination of any sale under any terms considered reasonable and appropriate. Any remaining amount of the ten percent (10%) initial deposit will be retained in full and applied towards assessed damages and may not be used as payment for forest products cut and/or removed. Assessed damages in excess of the initial deposit will be applied against the performance bond. ()

b. The following damages will be assessed by the Board for premature sale terminations. ()

i. The Board will seek payment of the value of the overbid for the uncut residual volume. For example, if white pine had been bid up by five dollars (\$5) per thousand board feet over the appraised price and there are one hundred thousand (100,000) board feet of white pine remaining on the sale area, the purchaser will be assessed five hundred dollars (\$500) upon termination. ()

ii. The Board will seek payment of the accrued stumpage interest due the endowed institutions based on the interest rate specified in the contract and calculated on all remaining volume from the date of sale to the date the Board approved termination of the contract. ()

iii. The Board will seek payment for any credits given for developments that remain incomplete at the time of termination. ()

iv. The Board will seek payment for estimated Department costs associated with reoffering the timber sale. ()

v. The Board may also seek payment for other expenses including, but not limited to, legal costs and Department staff time. ()

c. If logging has occurred on the sale, the purchaser must complete the units that have been partially logged according to contract standards and complete all development work as specified in the contract to the extent of allowances that have been credited to the purchaser. ()

d. The purchaser who has terminated a timber sale contract is not eligible to rebid that particular sale unless specifically authorized to do so by the Board. ()

044. -- 999. (RESERVED)

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 Section 47-1316, 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 permit and administrative review. ()

001. TITLE AND SCOPE.

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

02. Scope. These rules constitute the Idaho Department of Lands’ administrative procedures for implementation of the Idaho Dredge and Placer Mining Protection Act with the intent and purpose to protect the lands, streams and watercourses within the state, from destruction by dredge mining and by placer mining, and to preserve the same for the enjoyment, use and benefit of all of the people, and that clean water in the streams of Idaho is in the public interest. ()

002. ADMINISTRATIVE APPEALS.

01. Procedures for Appeals: ()

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. ()

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. ()

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. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Act. The Idaho Placer and Dredge Mining Protection Act, Title 47, Chapter 13, Idaho Code. ()

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

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. ()

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. ()

05. Department. The Idaho Department of Lands. ()

06. Director. The Director of the Department of Lands or such representative as may be designated by the Director. ()

07. Disturbed Land or Affected Land. Land, natural watercourses, or existing stockpiles and waste

piles affected by placer or dredge mining, re-mining, 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. ()

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. ()

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. ()

10. 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. ()

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. ()

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. ()

13. Mulch. Vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation. ()

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

15. 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. ()

16. Overburden Disposal Area. Land surface upon which overburden is piled or planned to be piled. ()

17. 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. ()

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. ()

19. 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. ()

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. ()

21. Pit. An excavation created by the extraction of minerals or overburden during placer mining or exploration operations. ()

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

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

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. ()

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. ()

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. ()

27. 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. ()

28. Revegetation. The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by placer or dredge mining operations. ()

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. ()

30. 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. ()

31. Surface Waters. The surface waters of the state of Idaho. ()

32. 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. ()

011. ABBREVIATIONS.

01. BMP. Best Management Practices. ()

02. DEQ. Department of Environmental Quality. ()

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. ()

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. ()

03. General Provisions. In general, these rules establish: ()

- a. Requirements for placer mine exploration operations; ()
- b. Procedures for securing a placer and dredge mining permit; ()
- c. The requirements for posting a performance bond as a condition of such permit to ensure the completion of rehabilitation operations; ()
- d. Procedures for initial and periodic inspection of placer and dredge mining operations to ensure compliance with these rules; ()
- e. Prohibition of placer and dredge mining on designated watercourses (see Section 060); and ()
- f. Prohibitions against placer and dredge mining on certain lands when not in the public interest. ()

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: ()

- 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. ()
- 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. ()
- 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. ()

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. ()

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: ()

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

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. ()

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. ()

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

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. ()

014. ADMINISTRATION.

The Department of Lands shall administer these rules under the direction of the director. ()

015. -- 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, within seven (7) days of commencing exploration, notify the Director. The notice includes the following: ()

a. The name and address of the operator; ()

b. The legal description of the exploration operation and its starting and estimated completion date; and ()

c. The anticipated size of the exploration operation and the general method of operation. ()

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

03. 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 020.04. ()

04. 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: ()

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

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)) ()

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

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. ()

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; ()

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. ()

021. APPLICATION PROCEDURE FOR PLACER OR DREDGE MINING PERMIT.

01. Approved Reclamation Plan 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 department has received a bond meeting the requirements of these rules, and the permit has been signed by the Director and the Permittee. ()

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: ()

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

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

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

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

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 preproject surface water monitoring information or ongoing monitoring data where such information or data is already required to be provided pursuant to any federal or state law and is available to the Director; ()

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 ()

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). ()

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

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. ()

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: ()

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

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

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

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; ()

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

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

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

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

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 the following: ()

a. A detailed map of the settling pond location, including: ()

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

ii. Distance from surface waters; ()

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

iv. Location of erosion control structures; and ()

v. Ten (10) year flood elevation (probable high water mark). ()

b. A detailed cross-section of the pond(s) including: ()

i. Dimensions and orientation; ()

ii. Proposed sidewall elevations; ()

iii. Proposed sidewall slope; ()

- iv. Sidewall width; ()
 - v. Distance from and elevation above all surface water; and ()
 - vi. Slope of settling pond location. ()
 - c.** Narrative of the construction method(s) describing: ()
 - i. Bottom material; ()
 - ii. Sidewall material; ()
 - iii. Pond volume; ()
 - iv. Volume of water to be used in the wash plant; ()
 - v. Discharge or land application requirements; ()
 - vi. Any pond liners or filter materials to be installed; and ()
 - viii. Compaction techniques. ()
 - d.** If the proposed ponds are: ()
 - i. Less than two thousand five hundred (2,500) feet square surface area; ()
 - ii. Less than four (4) feet high; ()
 - iii. Greater than fifty (50) feet from surface water; and ()
 - 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. ()
- 06. Requirements for Reclamation Plan.** A reclamation plan must be submitted in map and narrative form and include the following: ()
- 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; ()
 - b.** Describe and show the contour of the proposed mine site after final backfilling and/or grading, with grades listed for slopes after mining; ()
 - c.** On a drainage control map, show the best management practices to be utilized to minimize erosion on disturbed lands; ()
 - d.** Show roads to be reclaimed upon completion of mining; ()
 - e.** Show plans for both concurrent and final revegetation of disturbed lands. Indicate soil types, slopes, precipitation, seed rates, species, topsoil, or other growth medium storage and handling, time of planting, method of planting and, if necessary, fertilizer and mulching rates; ()

- f. The planned reclamation of tailings or sediment ponds; ()
- 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. ()
- h. Make a premining estimate of trees on the site by species and forest lands utilization consideration in reclamation. ()

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. ()

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

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. ()

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

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

04. Interagency Comment. Nonconfidential materials submitted under Section 021 will be forwarded by the Director 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. ()

05. Stream Alteration Permits. No permit will be issued proposing to alter, occupy or to dredge any stream or watercourse without notification to the Department of Water Resources of the pending application. The Department of Water Resources 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. ()

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

07. 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. (Section 47-1317(j), Idaho Code) ()

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. ()

09. 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, which will be processed as described in Section 022. ()

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. ()

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

023. -- 024. (RESERVED)

025. AMENDING AN APPROVED PERMIT.

01. Application to Amendment. If circumstances arise that require significant change in the reclamation plan, method of operation, increase in acreage, 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. ()

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

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 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. ()

02. Notification. Notification of such unforeseen events must be given to the 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. ()

027. TRANSFER OF PERMITS.

Placer and dredge mining permits may be transferred from an existing Permittee to a new Permittee. Transfer is made by the new Permittee filing a notarized Department Transfer of Permit form. The new Permittee is then responsible for the past Permittee's obligations under Title 47, Chapter 13, Idaho Code, these rules, the reclamation plan, and 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." ()

028. -- 029. (RESERVED)

030. PUBLIC HEARING FOR PERMIT APPLICATION.

01. Public Hearings. During any stage of the application process the Director may conduct a public hearing. ()

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

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. ()

04. 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. ()

05. Hearing Notice. The Director will give notice of the date, time, and place of the hearing to the applicant, to federal, state, local agencies, and Indian tribes which may have an interest in the decision, as shown on the application; to all 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. ()

06. 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. The two (2) consecutive weekly advertisements begin 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 area office, and the department's administrative office in Boise. ()

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. ()

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

031. -- 034. (RESERVED)

035. PERFORMANCE BOND REQUIREMENTS.

01. Submittal 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. ()

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%). 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. ()

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. ()

02. Form of Performance Bond. ()

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 submitted on a placer and dredge mining bond form, or exact copy, supplied by the Director. The bond is to be conditioned upon the Permittee faithfully performing all requirements of the act, these rules, the permit, and reclamation plan, and must be payable to the state of Idaho. ()

b. Collateral bond: This is an indemnity agreement executed by or for the Permittee, and payable to the 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: ()

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

ii. The Director will value collateral at its current market value, not face value; ()

iii. Certificates of deposit will be issued or assigned to the Department, in writing, 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, to the Permittee, or other person which posted the collateral bond; ()

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

v. Financial institutions issuing such certificates will waive all rights of set-off or liens which it has or might have against such certificates; ()

vi. Any such certificates will be automatically renewable; and ()

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. ()

c. Letters of credit: ()

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; ()

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

iii. All credits must be issued by an institution authorized to do business in the state of Idaho or through a confirming 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 ()

iv. The account party on all credits must be identical to the entity identified on the placer mining permit as the Permittee. ()

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 equal to the total of the penalties of the separate bonds being combined into a single bond. ()

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. ()

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. ()

06. Bond Reduction. Upon finding that any land bonded under a placer or dredge mining permit will not be affected by mining, the Permittee must notify the Director by submitting an application amending the permitted acreage, pursuant to Section 025. When the Director has verified that the bonding requirement for the amended permit 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. ()

07. Bond Release. Upon completion of the reclamation, specified in the permit, the Permittee must notify the Director in writing, of his desire to secure release from bonding. When the Director 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. ()

a. Any request for bond release will be answered by the Director within thirty (30) days of receiving such request unless weather conditions prevent inspection. ()

b. If the Director finds that a specific portion of the reclamation has been satisfactorily completed, the bond may be reduced to the amount required to complete the remaining reclamation. The following schedule will be used to complete these bond reductions unless the Director determines in a specific case that this schedule is not appropriate and specifies a different schedule: ()

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 ()

ii. After revegetation activities have been performed by the Permittee on the regraded lands according to the approved placer mining permit and Section 040, the department may release an additional twenty-five percent (25%) of the bond. ()

c. The remaining bond will not be released: ()

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, Chapter 1, Idaho Code; ()

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); ()

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 ()

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. ()

08. Forfeiture. In accord with Subsection 050.02, 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 act, these rules, the approved permit, and the reclamation plan. ()

09. 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. ()

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. ()

11. 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. ()

12. Insufficient Bond. In the event the amount of the bond is insufficient to reclaim the land in compliance with the act, these rules, the approved permit, and the reclamation plan, 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 act, these rules, the approved permit, and the reclamation plan. ()

036. -- 039. (RESERVED)

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

01. Nonpoint Source Sediment Control. ()

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. ()

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. ()

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: ()

- i. Keeping the disturbed land to a minimum at any given time through concurrent reclamation; ()
- ii. Shaping waste to help reduce the rate and volume of water runoff by increasing infiltration; ()
- iii. Retaining sediment within the disturbed land; ()

- iv. Diverting surface runoff to limit water coming into the disturbed land and settling ponds; ()
- v. Routing runoff through the disturbed land using protected channels or pipes so as not to increase sediment load; ()
- 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 ()
- vii. Use of adequate sediment ponds, with or without chemical treatment. ()

02. Modification of 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. ()

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. ()

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. ()

- a. Overburden/topsoil removal: ()
 - i. Any overburden/topsoil to be removed will be removed prior to any other mining activity to prevent loss or contamination; ()
 - 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. ()
 - 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. ()
- 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. ()
- 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. ()

05. Roads. ()

- 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. ()
- 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. ()

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. ()

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. ()

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

f. Roads, not abandoned, which are to continue in use under the jurisdiction of a governmental or private landowner, are the Permittee's responsibility to comply with the nonpoint source sediment control provisions of Subsection 040.01 until the successor assumes control. ()

06. Settling Ponds -- Minimum Criteria. ()

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. ()

b. No settling pond, used for process water clarification, must be constructed to block a surface water drainage. ()

c. All settling ponds must be constructed and designed to prevent surface water runoff from entering the pond. ()

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

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

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. ()

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. ()

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. ()

10. Backfilling and Grading. ()

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 040.17. 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. ()

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 040.17.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. ()

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

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, the placer or dredge mining permit, and the reclamation plan. ()

11. 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. ()

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. ()

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. ()

12. 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. ()

13. Soil Amendments. Nutrients and soil amendments must, if necessary, be applied to the graded areas to successfully achieve the revegetation requirements of the permit and reclamation plan. ()

14. Revegetating Waste Piles. The Permittee must conduct revegetation activities with respect to such waste piles in accordance with Subsection 040.17. ()

15. Mulching. Mulch must 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. ()

16. Permanent Cessation and Time Limits for Planting. ()

a. Wherever possible, but not later than one (1) year after grading, seeding and planting of disturbed lands must 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. ()

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 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. ()

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. ()

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 notice of intent and request for deferral of reclamation to the Director, in writing. If the Director determines that the Permittee plans to continue the operation within a reasonable period of time, the Director will notify the Permittee and may require actions to be taken to reduce degradation of surface resources until operations resume. If the Director 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 will proceed as though the placer or dredge mining operation has been abandoned, but the Permittee will be notified of such decision at least thirty (30) days before taking any formal administrative action. ()

17. Revegetation Activities. ()

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. ()

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. ()

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. ()

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. ()

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: ()

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

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. ()

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. ()

g. For previously mined areas that were not reclaimed to the standards required by Section 040, and that are disturbed by the placer or dredge mining operations, vegetation must be established to the extent necessary to control erosion, but not be less than that which existed before redisturbance. ()

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 may not be used in revegetation. ()

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

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. ()

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. ()

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

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; ()

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 ()

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

m. Revegetation is not required on the following areas: ()

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; ()

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

iii. Any mined land or overburden pile, where lakes are formed by rainfall or drainage run-off from adjoining lands; ()

iv. Any mineral stockpile; ()

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

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

041. -- 049. (RESERVED)

050. TERMINATION OF A PERMIT.

01. Completion of Reclamation. A placer or dredge mining permit terminates upon completion of all reclamation activity to the standards specified in the permit and reclamation plan, and final inspection and approval has been granted by the Director. Upon termination, the Director will release the remaining portion of the bond. ()

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: ()
- a. The permit does not remain bonded; ()
 - b. The placer and dredge mining operations are not commenced within two (2) years of the date of Board approval; ()
 - 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; ()
 - d. Inspection costs are delinquent; or ()
 - e. Permittee fails to comply with the act, these rules, the permit, or the reclamation plan. ()

051. ENFORCEMENT AND FAILURE TO COMPLY.

01. Inspection. The Director may inspect the operation under permit from time to time to determine compliance with the act, these rules, the permit, and the reclamation plan. The cost and expense of such inspections will be borne by the Permittee. ()

a. Cost of inspection is assessed at a flat rate of two hundred and fifty dollars (\$250) 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. ()

b. A billing for inspection costs will be made in advance each May 1, with the costs 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. ()

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

02. Department Remedies. Without affecting the penal and injunctive provisions of these rules, the department may pursue the following remedies: ()

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

b. If the Permittee fails to commence and diligently proceed to complete the requested corrective action within a specified number of days after 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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

04. Injunctive Procedures. ()

a. The Director may seek injunctive relief, as provided by Section 47-1324(b), Idaho Code, against any Permittee who is conducting placer mining or exploration operations when: ()

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

ii. A Permittee violates a provision of the act or these rules; or ()

iii. The bond, if forfeited, would not be sufficient to adequately restore the land; ()

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. ()

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. ()

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. ()

06. Civil Penalty. ()

a. Pursuant to Section 47-1324(d), Idaho Code, any person violating any of the provisions of the placer and dredge mining act or these rules or violating any determination or order pursuant to these rules, is liable for

a civil penalty of not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) for each day during which such violation continues. Such penalty is recoverable in an action brought in the name of the state of Idaho by the attorney general. ()

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. ()

07. Hearing Procedures. ()

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. ()

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. ()

c. The cost of such hearing including, but not limited to, room rental, hearing officer fees, and transcript will be assessed against the defaulting Permittee. 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. ()

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. ()

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. ()

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: ()

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; ()

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

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. ()

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. ()

061. -- 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 Mining Account to be used by the Director for placer and dredge mine reclamation purposes and related administrative costs. ()

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. ()

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. ()

071. -- 999. (RESERVED)

20.03.02 – RULES GOVERNING MINED LAND RECLAMATION

000. LEGAL AUTHORITY.

Title 47, Chapter 15 (“chapter”), Idaho Code, authorizes the Board to promulgate rules pertaining to mineral exploration; mining operations; reclamation of lands affected by exploration and mining operations, including review and approval of reclamation and permanent closure plans; requirements for financial assurance for reclamation and permanent closure, and to establish a reasonable fee for reviewing and approving reclamation plans and permanent closure plans, including the reasonable cost to employ a qualified independent party, acceptable to the applicant and the Board, to verify the accuracy of cost estimates for reclamation plans and permanent closure plans. The Board has delegated to the director of the Department the duties and powers under the chapter and these rules, however the Board retains responsibility for administrative review. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.02, “Rules Governing Mined Land Reclamation,” IDAPA 20, Title 03, Chapter 02. ()

02. Scope. These rules establish the notification requirements for exploration and the application, operation, and reclamation requirements for mined lands. In addition, they establish the application and closure requirements for cyanidation facilities. These rules also establish the reclamation and financial assurance requirements for all these activities, and describe the processes used to administer the rules in an orderly and predictable manner. ()

03. Other Laws. Operators engaged in exploration, mine operation, and operation of a cyanidation facility shall comply with all applicable laws and rules 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; IDAPA 58.01.02, “Water Quality Standards”; and IDAPA 58.01.11, “Ground Water Quality Rule,” administered by the Department of Environmental Quality (DEQ). ()

b. Requirements and procedures for hazardous and solid waste management, as established in Title 39, Chapter 44, Idaho Code, and rules promulgated thereunder including, IDAPA 58.01.05, “Rules and Standards for Hazardous Waste” and IDAPA 58.01.06, “Solid Waste Management Rules,” administered by the DEQ. ()

c. Section 39-118A, Idaho Code, and applicable rules for ore processing by cyanidation as promulgated and administered by the DEQ as defined in IDAPA 58.01.13, “Rules for Ore Processing by Cyanidation.” ()

d. Section 39-175, Idaho Code, and applicable rules for the discharge of pollutants to waters of the United States as promulgated and administered by DEQ in IDAPA 58.01.25, “Rules Regulating the Idaho Pollutant Discharge Elimination System Program.” ()

e. 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. ()

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

04. Applicability. These rules are to be read and applied in conjunction with the chapter. These rules apply to all exploration, mining operations, and permanent closure of cyanidation facilities on all lands in the state, regardless of ownership. ()

a. These rules apply to mining operations or exploration operations commenced after January 1, 1997. These rules in no way affect, alter, or modify the terms or conditions of any approved reclamation plan, reclamation plan amendment, or financial assurance for reclamation obtained prior to January 1, 1997. If a material change arises and is regulated in accordance with Subsection 090.01, then the operator shall submit a reclamation plan amendment. ()

b. These rules do not apply to: ()

i. Any surface mining operations performed prior to May 31, 1972. An operator will not be required to perform reclamation activities on any pit or overburden pile as it existed prior to May 31, 1972. ()

- ii. Mining operations for which the Idaho Dredge and Placer Mining Protection Act requires a permit, or which are otherwise regulated by that act. ()
- iii. Extraction of minerals from within the right-of-way of a public highway by a public or governmental agency for maintenance, repair or construction of a public highway, provided the affected land is an integral part of such highway. ()
- iv. Underground mines that existed prior to July 1, 2019, and have not expanded their surface disturbance by 50% or more after that date. ()
- c. Sand and gravel mining operations in state-owned beds of navigable lakes, rivers or streams shall constitute an approved mining plan for the purpose of these rules if the operator has all of the following: ()
 - i. A valid riverbed mineral lease granted by the Board in accordance with IDAPA 20.03.05, "Rules Governing Riverbed Mineral Leasing", with a valid mineral lease bond; ()
 - ii. An approved plan of operations for the riverbed mineral lease; and ()
 - iii. A valid stream channel alteration permit issued by the Idaho Department of Water Resources. ()
- d. Surface mining operations, conducted by a public or governmental agency for maintenance, repair, or construction of a public highway, which: ()
 - i. Disturb more than two (2) acres will comply with the provisions of Section 069; or ()
 - ii. Disturb less than two (2) acres will comply with Subsections 060.06.a. through 060.06.e. ()
- e. A cyanidation facility with a permit approved by the DEQ prior to July 1, 2005, is subject to the applicable laws and rules for ore processing by cyanidation in effect on June 30, 2005; however, if there is a material modification or material expansion to a cyanidation facility after July 1, 2005, these rules shall apply to the modification or expansion. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

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

- 01. Adit.** A nearly horizontal passage from the surface into an underground mine. ()
- 02. Approximate Previous Contour.** A contour that is reasonably comparable to that contour existing prior to disturbance, or that blends with the adjacent topography. ()
- 03. Best Management Practices (BMP).** 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 a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals. ()
- 04. Chapter.** The Mined Land Reclamation Act, Title 47, Chapter 15, Idaho Code. ()
- 05. Department.** The Idaho Department of Lands. ()
- 06. Discharge.** With regard to cyanidation facilities, when used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. ()
- 07. Ground Water.** Any water of the state that occurs beneath the surface of the earth in a saturated

geological formation of rock or soil. ()

08. Land Application. A process or activity involving application of liquids or slurries potentially containing cyanide from the cyanidation facility to the land surface for the purpose of treatment, neutralization, disposal, or groundwater recharge. ()

09. Material Change. A change that deviates from the approved reclamation plan or permanent closure plan and causes one (1) or more of the following to occur: ()

a. Results in a substantial adverse effect to the geotechnical stability of overburden disposal areas, topsoil, stockpiles, roads, embankments, tailings facilities, cyanidation facilities or pit walls; ()

b. Substantially modifies surface water management or a water management plan, not to include routine implementation and maintenance of BMPs; ()

c. Exceeds the permitted acreage; or ()

d. Increases overall estimated reclamation costs by more than fifteen percent (15%). ()

10. Material Modification or Material Expansion. With regard to cyanidation facilities: ()

a. Any change to a permitted cyanidation facility, except as provided in Subsection 010.10.b, that the Department determines will: ()

i. Cause or increase the potential to cause degradation of waters, such as a new cyanidation process or cyanidation facility component; or ()

ii. Change the capacity, location, or process of an existing cyanidation facility component; or ()

iii. Change the site condition in a manner that is not adequately described in the original permit application. ()

b. Reclamation and closure related activities at a cyanidation facility with an existing permit that did not actively add cyanide after January 1, 2005 are not material modifications or material expansions of the cyanidation facility. ()

11. Material Stabilization. Managing or treating spent ore, tailings, other solids and/or sludges resulting from the cyanidation process to minimize waters or all other applied solutions from migrating through the material and transporting pollutants associated with the cyanidation facility to ensure that all discharges comply with all applicable standards and criteria. ()

12. Motorized Earth-Moving Equipment. Backhoes, bulldozers, front-loaders, trenchers, core drills, and other similar equipment. ()

13. Neutralization. Treatment of process waters such that discharge or final disposal of those waters does not, or will not, violate any applicable standards and criteria. ()

14. Operating Plan. A plan that describes how a mining operation will be constructed and operated to avoid or minimize surface disturbance and potential impacts to waters of the state, and to prepare for final reclamation. ()

15. Permanent Closure. Those activities that result in neutralization, material stabilization, and decontamination of cyanidation facilities or the facilities' final reclamation. ()

16. Permit. When used without qualification, any written authorization, license, or equivalent control document issued by the DEQ. This includes authorizations issued pursuant to the application, public participation, and appeal procedures in IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," and those issued pursuant to

the application, public participation, and appeal procedures in IDAPA 58.01.25. ()

17. Pollutant. Chemicals, chemical waste, process water, biological materials, radioactive materials, or other materials that, when discharged, cause or contribute adverse effects to any beneficial use or for any other reason may impact waters of the state. ()

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

19. Real Property. Land and appurtenances as defined in Section 55-101, Idaho Code. ()

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

21. Reclamation Plan. A plan using a combination of maps, drawings, and descriptions that describes how a mine is constructed and how reclamation of a mine's affected land is accomplished. ()

22. Revegetation. The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by mining operations. ()

23. Shaft. A vertical or inclined passage from the surface into an underground mine. ()

24. Surface Waters. The surface waters of the state of Idaho. ()

25. Treatment. Any method, technique or process, including neutralization, that changes the physical, chemical, or biological character or composition of a waste for the purpose of disposal, or the end result of such action. ()

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

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

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

011. ABBREVIATIONS.

01. BMP. Best Management Practices. ()

02. DEQ. Department of Environmental Quality. ()

03. IPDES. Idaho Pollutant Discharge Elimination System. ()

04. SWPPP. Storm Water Pollution Prevention Plan. ()

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

012. -- 049. (RESERVED)

050. ADMINISTRATION.

The Department will administer these rules under the direction of the director. ()

051. -- 059. (RESERVED)

060. EXPLORATION OPERATIONS AND REQUIRED RECLAMATION.

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

02. **When Exploration Is Mining.** Exploration operations may under some circumstances constitute mining operations as described in Section 47-1503(7), Idaho Code. ()

03. **Notification.** Any operator desiring to conduct exploration using motorized earth-moving equipment to locate minerals for immediate or ultimate sale shall notify the Department within seven (7) days after beginning exploration operations. No application fee or financial assurance is required for exploration that is not a mining operation. ()

04. **Contents of Notification.** The notification shall include: ()

a. The name and address of the operator; ()

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

c. The anticipated size of the exploration and the general method of operation. ()

05. **Confidentiality.** Any such notification is treated as confidential in accord with Section 180. ()

06. **Exploration Reclamation (Less Than Two Acres).** Every operator who conducts exploration affecting less than two (2) acres shall: ()

a. Wherever possible, contour the affected lands to their approximate previous contour; and ()

b. Conduct revegetation activities in accordance with Subsection 140.11. Unless otherwise required by a federal agency, one (1) pit or trench on a federal mining claim showing discovery, may be left open pending verification by federal mining examiners. ()

c. Exploration drill holes must be plugged within thirty (30) days of drilling the holes. Upon request, the director may allow the holes to be temporarily left unplugged for up to a year, but until they are plugged the holes must be left so as to eliminate hazards to humans and animals. ()

d. Pits or trenches on mining claims showing discovery may be left open pending verification by federal mining examiners but shall not create a hazard to humans or animals. Such abandoned pits and trenches must be reclaimed within one (1) year of verification. ()

e. If water runoff from exploration causes siltation of surface waters in amounts more than normally results from runoff, the operator shall reclaim affected lands and adjoining lands under his control as is necessary to meet state water quality standards. ()

07. **Exploration Reclamation (More Than Two Acres).** Reclamation of lands where exploration has affected more than two (2) acres must be completed as set forth in Subsection 060.06 and the following additional requirements: ()

a. Abandoned exploration roads must be cross-ditched as necessary to minimize erosion. The director may request in writing, or may be petitioned in writing, that a given road or road segment be left for a specific purpose and not be cross-ditched or revegetated. If the director approves the petition, the operator cannot thereafter be required to conduct reclamation activities with respect to that given road or road segment. ()

b. Ridges of overburden must be leveled so as to have a minimum width of ten (10) feet at the top. ()

c. Peaks of overburden must be leveled so as to have a minimum width of fifteen (15) feet at the top. ()

d. Overburden piles must be reasonably prepared to control erosion. ()

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

f. Any water containment structure created in connection with exploration, must be reasonably prepared so as not to constitute a hazard to humans or animals. ()

08. Additional Reclamation. The operator and the director may agree, in writing, to complete additional reclamation beyond the requirements established in the chapter and these rules. ()

061. -- 067. (RESERVED)

068. APPLICATION FEES

01. Base Application Fees. The following base fee schedule will be used for all reclamation plans and permanent closure plans and amendments to those plans. For plans processed under Section 069 of these rules, this base fee covers up to twenty (20) hours of staff time for review and processing. For plans processed under Section 070 of these rules, the applicant may instead enter an agreement with the Department as described in Subsection 068.03 of these rules. The applicable acreage is based on the proposed reclamation plan area identified in the application:

Type of Plan	Fee (Dollars)
Section 069 of these rules, Reclamation Plan 0 to 5 acres	Five hundred (\$500)
Section 069 of these rules, Reclamation Plan >5 to 40 acres	Six hundred (\$600)
Section 069 of these rules, Reclamation Plan over 40 acres	Seven hundred fifty (\$750)
Section 070 of these rules, Reclamation Plan 0 to 100 acres	One thousand (\$1,000)
Section 070 of these rules, Reclamation Plan >100 to 1,000 acres	One thousand five hundred (\$1,500)
Section 070 of these rules, Reclamation Plan >1,000 acres	Two thousand (\$2,000)
Section 071 of these rules, Permanent Closure Plan	Five thousand (\$5,000)

()

02. Additional Fees for Applications Submitted Under Section 069. Plans processed under Section 069 of these rules that require more than twenty (20) hours of staff time due to an incomplete application will result in additional fees being charged. After a revised application has been received and determined to be complete with the exception of the fee, IDL will send an invoice to the operator at a rate of forty dollars per hour (\$40/hour) for the additional review time over the initial twenty (20) hours. If this additional fee is not paid prior to the sixty (60) day approval deadline, the application will be denied. If the additional fee is paid within 30 days of the denial, the application will be considered complete and the time requirements of Subsection 080.03 will apply. ()

03. Alternative Fee Agreement for Applications Submitted Under Section 070. In lieu of paying a fee at the time the application is submitted, an applicant under Section 070 of these rules may enter into an agreement with the Department for actual costs incurred to process an application, verify a reclamation cost estimate submitted under Idaho Code § 47-1512(c), and issue a final decision. The applicant shall not commence operations until the terms of the agreement have been met, including that the Department has been reimbursed for all actual costs incurred for the permitting process. ()

069. APPLICATION PROCEDURE AND REQUIREMENTS FOR QUARRIES, DECORATIVE STONE, BUILDING STONE, AND AGGREGATE MATERIALS INCLUDING SAND, GRAVEL AND CRUSHED ROCK.

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

02. No Operator Shall Conduct Mining Operations. No operator shall conduct mining operations on any lands in the state until the reclamation plan has been approved by the director, and the operator has filed financial assurance that meets the requirements of the chapter and these rules. ()

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

a. An application provided by the director; ()

b. A map or maps of the proposed mining operation which includes the information required under Subsection 069.04; ()

c. A reclamation plan, in map and narrative form, which includes the information required under Subsection 069.05; and ()

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

e. The correct fee listed in Section 068 of these rules. ()

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

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

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

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

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

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

f. The currently planned location and configuration of pits, overburden piles, crusher reject materials, ()

mineral stockpiles, topsoil storage, wash plant ponds and sediment ponds that will be utilized; ()

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

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

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

a. Where waters of the state are likely to be impacted or when requested by the director, documents identifying and assessing foreseeable, site-specific sources of water quality impacts from mining operations and proposed management activities, such as BMPs or other measures and practices, to comply with water quality requirements; ()

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

c. Roads to be reclaimed; ()

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

e. The planned reclamation of wash plant or sediment ponds; ()

f. A drainage control map which identifies the location of BMPs that will be implemented to control erosion and water quality impacts during mining and reclamation activities; ()

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

h. For operations over five (5) acres, an estimate of total reclamation cost to be used in establishing a financial assurance amount. The cost estimate will include, but is not limited to, the approximate cost of grading, revegetation, equipment mobilization, labor, and other pertinent direct and indirect costs of a third-party to complete reclamation. ()

i. If construction, mining, or reclamation will be completed in phases, a description of the tasks to be completed in each phase, an estimated schedule, and proposed adjustments of financial assurance related to each phase. ()

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

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

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

a. All items and information required or allowed under Section 069 of these rules; ()

b. Any additional information required by Subsection 070.04; and ()

c. An operating plan, if required by Section 47-1506(b), Idaho Code, prepared in accordance with Subsection 070.05 of these rules. ()

03. Map Requirements. Maps must be prepared in accordance with Subsection 069.04 of these rules with the addition of any tailings facilities or process fluid ponds. ()

04. Reclamation Plan Requirements. Reclamation plans must include all of the information required under Subsection 069.05, including but not limited to phases as described in Subsection 069.05.i, and the following additional information: ()

a. A description of the planned reclamation of overburden disposal areas, tailings facilities, and sediment ponds; and ()

b. An estimate of total reclamation cost to be used in establishing the financial assurance amount. The cost estimate should include the approximate cost of grading, revegetation, equipment mobilization, labor, and other pertinent costs for third party reclamation. ()

c. To assist in meeting the requirements of paragraph 069.05.a in these rules, a summary of requirements from a SWPPP, IPDES permit, ground water point of compliance, and other permits or approvals or BMPs related to foreseeable water quality impacts on the affected land. ()

d. Structures that will be built to help implement a SWPPP, IPDES permit, Point of Compliance or other permits or approvals related to foreseeable water quality impacts on the affected land. ()

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

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

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

f. The director may, after considering the type, size, and potential environmental impact of the facility, require the operator to provide a geotechnical analysis and report. If failure of these structures can reasonably be expected to impact adjacent surface or ground waters or adjacent private or state-owned lands, the analysis may be required to consider the long-term stability of these structures, the potential for ground water accumulation, and the expected seismic accelerations at the site. The report must bear the imprint of an Idaho licensed professional engineer that is both signed and dated by the engineer. The report shall show that the following features, if present, are designed in a manner that is consistent with industry standards to minimize the potential for failure: ()

i. Any waste rock or overburden stockpiles; ()

ii. Any pit walls proposed to be more than one hundred (100) feet high; and ()

iii. Any pit walls where geologic conditions could lead to failure of the wall regardless of the height. ()

g. Underground mines must provide the following additional information: ()

i. Location and dimensions of all underground mine openings at the ground surface, including but not limited to vents, shafts, and adits; and ()

ii. A description of how each mine opening in subparagraph 070.04.g.i of these rules will be secured

during reclamation to eliminate hazards to human health and safety. ()

h. A description of post-closure activities that includes the proposed length of the post-closure period and the following: ()

i. A summary of procedures and methods for water management including any likely IPDES permit, stormwater permit, and monitoring required for any ground water point of compliance, along with sufficient information to support a cost estimate for such water management activities. ()

ii. Care and maintenance for facilities after mining has ceased. ()

i. Other pertinent information the Department has determined is necessary to ensure that the operator will comply with the requirements of the chapter. ()

05. Operating Plan Requirements. A complete operating plan shall consist of: ()

a. Ore, tailings, and waste rock handling flow sheets and diagrams. ()

b. Waste rock management plan. ()

c. Water quality monitoring locations. ()

d. Anticipated concurrent reclamation prior to the cessation of mining. ()

e. Estimated throughput and timeline for mining. ()

f. Types of ore processing and beneficiation. ()

g. Process fluid pond volumes and anticipated contents, if applicable. ()

06. Monitoring Data. The Department will, as needed and through consultation with DEQ, obtain the operator's baseline data on ground water or surface water gathered during the planning and permitting process for the operation, and may require the operator to furnish additional monitoring data during the life of the project. This will not require any additional monitoring data where such data is already provided under an IPDES permit, SWPPP, ground water point of compliance, or other federal or state requirements for collecting surface or ground water data. ()

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

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

02. Permanent Closure Plan Requirements. A permanent closure plan shall: ()

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

b. Include a timeline showing: ()

i. The schedule to complete permanent closure activities, including neutralization of process waters and material stabilization, and the time period for which the operator is responsible for post-closure activities; and ()

ii. If the operator plans to complete construction, operation, and/or permanent closure of the cyanidation facility in phases, the schedule to begin each phase of construction, operation, and/or permanent closure activities and any associated post-closure activities. ()

- c.** Provide the objectives, methods, and procedures that will achieve neutralization of process waters and material stabilization during the closure period and through post-closure; ()
- d.** Provide a water management plan from the time the cyanidation facility is in permanent closure through the defined post-closure period. The plan must be prepared in accordance with IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," administered by the DEQ, as required to meet the objectives of the permanent closure plan. ()
- e.** Include the schematic drawings for all BMPs that will be used during the closure period, through the defined post-closure period, and a description of how the BMPs support the water management plan, and an explanation of the water conveyance systems that are planned for the cyanidation facility. ()
- f.** Provide proposed post-construction topographic maps and scaled cross-sections showing the configuration of the final heap or tailing facility, including the final cap and cover designs and the plan for long-term operation and maintenance of the cap. Caps and covers used as source control measures for cyanidation facilities must be designed to minimize the interaction of meteoric waters, surface waters, and ground waters with wastes containing pollutants that are likely to be mobilized and discharged to waters of the state. Prior to approval of a permanent closure plan, engineering designs and specifications for caps and covers must bear the imprint of an Idaho licensed professional engineer that is both signed and dated by the engineer; ()
- g.** Include monitoring plans for surface and ground water during closure and post-closure periods, adequate to demonstrate water quality trends and to ensure compliance with the stated permanent closure objectives and the requirements of the chapter; ()
- h.** Provide an assessment of the potential impacts to soils, vegetation, and surface and ground waters for all areas to be used for the land application system and provide a mitigation plan, as appropriate. ()
- i.** Provide information on how the operator will comply with the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; Idaho Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code; Idaho Solid Waste Management Act, Chapter 74, Title 39, Idaho Code; and appropriate state rules, during operation and permanent closure; ()
- j.** Provide sufficient detail to allow the operator to prepare an estimate of the reasonable costs to implement the permanent closure plan; ()
- k.** Provide an estimate of the reasonable estimated costs to complete the permanent closure activities specified in the permanent closure plan in the event the operator fails to complete those activities. The estimate shall: ()
- i.** Identify the incremental costs of attaining critical phases of the permanent closure plan and a proposed financial assurance release schedule; ()
- ii.** Assume that permanent closure activities will be completed by a third party whose services are contracted for by the Board as a result of a financial assurance forfeiture under Section 47-1513, Idaho Code. ()
- l.** If the proposal is to complete cyanidation facility construction, operation, and/or permanent closure activities in phases: ()
- i.** Describe how these activities will be phased and how, after the first phase of activities, each subsequent phase will be distinguished from the previous phase or phases; and ()
- ii.** Describe how any required post-closure activities will be addressed during and after each subsequent phase has begun. ()
- m.** Provide any additional information that may be required by the Department to ensure compliance

with the objectives of the permanent closure plan and the requirements of the chapter. ()

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

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

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

i. Name, location, and mailing address of the cyanidation facility; ()

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

iii. Land ownership status (federal, state, private or public); ()

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

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

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

c. A permanent closure plan as prescribed in Subsection 071.02; ()

d. The DEQ application and supporting materials; ()

e. The fee as defined in Subsection 071.05.a. ()

05. Application Fee. The application fee shall consist of two (2) parts: ()

a. Processing and review fee. ()

i. The applicant shall pay a nonrefundable five thousand dollar (\$5,000) fee upon submission of an application. Within thirty (30) days of receiving an application and this fee, the director shall provide a detailed cost estimate to the operator which includes a description of the scope of the Department's review; the assumptions on which the Department's estimate is based; and an itemized accounting of the anticipated number of labor hours, hourly labor rates, travel expenses and any other direct expenses the Department expects to incur, and indirect expenses equal to ten percent (10%) of the Department's estimated direct costs, as required to satisfy its statutory obligation pursuant to the chapter. ()

ii. If the Department's estimate is greater than five thousand dollars (\$5,000), the applicant may agree to pay a fee equal to the difference between five thousand dollars (\$5,000) and the Department's estimate, or may

commence negotiations with the Department to establish a reasonable fee. ()

iii. If, within twenty (20) days from issuance of the Department's estimate, the Department and applicant cannot agree on a reasonable application processing and review fee, the applicant may appeal to the Board. The Board shall: ()

(1) Review the Department's estimate; ()

(2) Conduct a hearing where the applicant is allowed to give testimony to the Board concerning the Department's estimate; and ()

(3) Establish the amount of the application review and processing fee. ()

iv. If the fee is more than five thousand dollars (\$5,000), the applicant shall pay the balance of the fee within fifteen (15) days of the Board's decision or withdraw the application. ()

v. Nothing in this section shall extend the time in which the Board must act on a plan submitted. ()

b. Permanent closure cost estimate verification fee. ()

i. Pursuant to Sections 47-1506(g) and 47-1508(f), Idaho Code, the Department may employ a qualified independent party, acceptable to the operator and the Board, to verify the accuracy of the permanent closure cost estimate. ()

ii. The applicant is solely responsible for paying the Department's cost to employ a qualified independent party to verify the accuracy of the permanent closure cost estimate. The applicant may participate in the Department's processes for identifying qualified parties and selecting a party to perform this work. ()

iii. If a federal agency has responsibility to establish the financial assurance amount for permanent closure of a cyanidation facility on federal land, the Department may employ the firm retained by the federal agency to verify the accuracy of the permanent closure cost estimate. If the director chooses not to employ the firm retained by the federal agency, he shall provide a written justification explaining why the firm was not employed. ()

072. -- 079. (RESERVED)

080. PROCEDURES FOR REVIEW AND DECISION UPON AN APPLICATION FOR A RECLAMATION PLAN OR PERMANENT CLOSURE PLAN.

01. Return of Application. Within thirty (30) days after receipt of a reclamation plan or permanent closure plan by the Department, an application may be returned for correction and resubmission if either the reclamation plan or permanent closure plan are incomplete. Return of an application by the director shall constitute a rejection in accordance with Section 47-1507(b), Idaho Code. ()

02. Agency Notification and Comments. ()

a. Nonconfidential materials submitted under Sections 069, 070, and 071 will be forwarded by the director to the Idaho Departments of Water Resources, Environmental Quality, and Fish and Game for review and comment. The director may decide not to circulate applications submitted under Section 069 if the director determines the impacts of the proposed activities are minor and do not involve surface or ground waters. The director may provide public notice on receipt of a reclamation plan or permanent closure plan. In addition, nonconfidential contents of an application will be provided to individuals who request the information in writing, as required by the Idaho Public Records Act. ()

b. Upon receipt of a complete application for a reclamation plan or a permanent closure plan, the director shall provide notice to the cities and counties where the mining or cyanidation facility operation is proposed, in accordance with Section 47-1505(7), Idaho Code. The notice shall include the name and address of the operator,

the procedure and schedule for the Department's review, and an invitation to review nonconfidential portions of the application, if requested in writing. Such notice will be provided upon receipt of a reclamation plan, a permanent closure plan, or any amended plan for an existing operation, or an amended cost estimate to complete permanent closure of a cyanidation facility, if required under the chapter and these rules.. ()

03. Decision on Reclamation Plans. The director shall review a new reclamation plan or an amended reclamation plan pursuant to Sections 47-1507 and 47-1508, Idaho Code. ()

a. Approval. ()

i. Within sixty (60) days of receipt of an application that complies with Subsections 069 and 070 of these rules, the Department shall provide written notice to the applicant that the reclamation plan or any amendment(s) to an approved reclamation plan is approved or denied and, if approved, the amount of the financial assurance required; or ()

ii. If the director does not take action within sixty (60) days, a reclamation plan or any amendments thereof is deemed to comply with the chapter, unless the sixty (60) day time period is extended pursuant to Section 47-1507(c), Idaho Code. ()

iii. The operator and director may agree, in writing, to implement additional actions with respect to reclamation that extend beyond the requirements set forth in these rules. ()

b. Inspections. The director may determine that an inspection of the proposed mining site location is necessary if the inspection will provide additional information or otherwise aid in processing of the application. ()

i. If the director decides to perform an inspection, the applicant will be contacted and asked that he or an authorized employee or agent be present. This rule shall not prevent the Department from making an inspection of the site if the applicant does not appear. ()

ii. If weather conditions preclude an inspection of a proposed mining operation, the director shall provide written notice to the applicant that review of the reclamation plan or an amended reclamation plan has been suspended until weather conditions permit an inspection, and that the schedule for a decision will be extended for up to thirty (30) days after weather conditions permit such inspection in accordance with Section 47-1507(c), Idaho Code. ()

04. Decision on Cyanidation Facility Permanent Closure Plans. Pursuant to Sections 47-1507 and 47-1508, Idaho Code, following review of a complete application, the director shall: ()

a. Coordination with DEQ. Initiate a coordinated interagency review of the application by providing a notice in writing to the DEQ director that the Department has received an application for permanent closure of a cyanidation facility; ()

b. Approval. ()

i. Within one-hundred eighty (180) days of receipt of an application that complies with Subsection 071.04 of these rules, the Department shall provide written notice to the applicant that the permanent closure plan is approved or denied and, if approved, the amount of the permanent closure financial assurance required; or ()

ii. If the director does not take action within one-hundred eighty (180) days, a permanent closure plan, or any amendments thereof, is deemed to comply with the provisions of the chapter, unless the one hundred eighty (180) day time period is extended in accordance with Section 47-1507(c), Idaho Code. ()

c. Inspections. The director may determine that it is necessary to inspect the proposed cyanidation facility location if the inspection will provide additional information or otherwise aid in processing of the application. ()

i. If the director determines to inspect the site, the applicant will be contacted and asked that he or an authorized employee or agent be present. The Department may proceed with an inspection if the applicant or his designated employee or agent does not appear. ()

ii. If weather conditions preclude an inspection of the proposed cyanidation facility, the director shall provide written notice to the applicant that processing of the application has been suspended until weather conditions permit an inspection, and that the schedule for a decision is extended for up to thirty (30) days after weather conditions permit such inspection in accordance with Section 47-1507(c), Idaho Code. ()

05. Permanent Closure Plan Approval. ()

a. The Department may condition its approval on issuance of a permit by the DEQ for the cyanidation facility. ()

b. Except for the concurrent and additional permanent closure requirements that may be established in a permit issued by the DEQ pursuant to Section 39-118A, Idaho Code and IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," an approved permanent closure plan shall define the nature and extent of the operator's obligation under the chapter. ()

c. The permanent closure plan, as approved by the Department in coordination with the DEQ, will be incorporated by reference into the cyanidation facility permit issued by DEQ as a permit condition and will be enforceable as such. The operator shall ensure that closure complies with the approved permanent closure plan and any additional permanent closure requirements as outlined in the permit issued by DEQ. ()

d. No sooner than one hundred and twenty (120) days after an application for a permanent closure plan has been submitted to the Department, the applicant may submit a reclamation plan as required by Section 070 of these rules. The Department will review and approve the reclamation plan in accordance with Subsection 080 of these rules. ()

e. Approval of a permanent closure plan by the Department is required even if approval of such plan has been or will be obtained from an appropriate federal agency. ()

06. Denial of an Application. If the director rejects an application, the director shall deliver in writing to the applicant a statement of the reasons the application has been rejected, the factual findings upon which the rejection is based, a statement of the applicable statute(s) and rule(s), the manner in which the application failed to fulfill the requirements of these rules, and the action that must be taken or conditions that must be satisfied to meet the requirements of the chapter and these rules. The applicant may submit an amended application in accordance with Sections 069, 070 or 071 of these rules for review and, if appropriate, approval by the Department. The director shall deny a reclamation plan, permanent closure plan, or any amendments thereof if: ()

a. The application is inaccurate or incomplete; ()

b. The cyanidation facility as proposed cannot be conditioned for construction, operation, and closure to protect public safety, health, and welfare, in accordance with the scope and intent of these rules, or to protect beneficial uses of the waters of the state, as determined by the DEQ pursuant to Section 39-118A, Idaho Code and IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation" and other DEQ rules cited therein. ()

07. Public Hearing. The director may call a public hearing to determine whether a proposed application complies with the chapter and these rules. A hearing will be conducted in accordance with Section 110 of these rules. ()

08. Referral to Board. The director may refer the decision concerning an application to the Board. This action will not extend the time period for a decision to approve or deny an application. ()

09. Appeal of Final Order. Any final order of the Board regarding an application for a mining reclamation plan or for permanent closure of a cyanidation facility may be appealed as set forth in Section 47-1514, Idaho Code. ()

081. -- 089. (RESERVED)

090. AMENDING AN APPROVED RECLAMATION PLAN.

01. Cause for Reclamation Plan Amendment. In the event circumstances arise that necessitate amendments to an approved reclamation plan, the operator shall submit an application to amend the plan and state the reasons the amendment is necessary. Either the operator or the director may initiate a process to amend an approved reclamation plan. If the director identifies a material change he believes requires a change in the reclamation plan, the director must deliver in writing to the operator a detailed statement identifying the material change and the action(s) necessary to address the material changes. Plan amendments have the same requirements as described in Section 069 and 070 of these rules. ()

02. Review of Amendment. The director will process an application to amend a plan in accordance with Sections 080 and 110 of these rules, provided, however, that no land or aspect or provision of an approved reclamation plan that would not be affected by the proposed amendment, is subject to the amendment, review or reapproval in connection with processing the application. Approval of an amendment shall not be conditioned upon the performance of any actions not required by the approved reclamation plan or the proposed amendment itself, unless the operator agrees to perform such actions. ()

03. Adjustments. Adjustments to an approved reclamation plan may be made by agreement between the director and the operator, if the adjustment is consistent with the overall objectives of the approved reclamation plan and so long as applicable surface and ground water quality standards will be met. Adjustments are due to changes that are smaller than material changes. ()

091. AMENDING AN APPROVED PERMANENT CLOSURE PLAN.

01. Cause for Permanent Closure Plan Amendment. In the event circumstances arise that necessitate amendments to an approved permanent closure plan, the operator shall submit an application to amend the permanent closure plan and state the reasons the amendment is necessary. Either the operator or the director may initiate a process to amend an approved permanent closure plan. Circumstances that could require a permanent closure plan to be amended include: ()

a. A material modification or material expansion in the cyanidation facility design or operation for which the approved permanent closure plan is no longer adequate; ()

b. Conditions substantially different from those anticipated in the original permit for which the approved permanent closure plan is no longer adequate; or ()

c. A material change as defined in Subsection 010.09 of these rules. ()

02. Modifications at an Operator's Request. Requests from an operator to modify a permanent closure plan must be submitted to the Department in writing. The director shall process an application for amendment in accordance with Section 080 of these rules. An application to amend a permanent closure plan shall include: ()

a. A written description of the circumstances that necessitate the amendment; ()

b. Data supporting the request; ()

c. The proposed amendment; ()

d. A description of how the amendment will impact the estimated cost to complete permanent closure pursuant to the chapter; ()

e. A cost estimate to implement the amended permanent closure plan, prepared in accordance with Subsection 071.02 of these rules; and ()

f. Payment of a reasonable fee as may be determined by the director in accordance with Section 47-1508, Idaho Code. ()

03. Modification at Request of Director. If, following consultation with the DEQ, the director determines that cause exists to amend the permanent closure plan the director shall notify the operator in writing of his determination and explain the circumstances that have arisen which require the permanent closure plan to be amended. Within thirty (30) days or as agreed by the operator and the Department, the operator shall submit an application to amend the permanent closure plan in accordance with Subsection 091.02. ()

04. Adjustment. Adjustments to an approved permanent closure plan may be made by agreement between the director and the operator, if the adjustment is consistent with the overall objectives of the approved permanent closure plan and so long as applicable surface and ground water quality standards will be met. ()

092. -- 099. (RESERVED)

100. DEVIATION FROM AN APPROVED RECLAMATION PLAN.

01. Unforeseen Events. If a mining operator finds that unforeseen events or unexpected conditions require immediate change from an approved plan, the operator may continue mining in accordance with the procedures dictated by the changed conditions, pending submission and approval of an amended plan, even though operations do not comply with the approved reclamation plan on file with the Department. This shall not excuse the operator from complying with the requirements of Sections 140 and 120 of these rules. ()

02. Notification. The operator shall notify the director, in writing, within ten (10) days of the discovery of conditions that require deviation from the approved plan. A proposed amendment to the reclamation plan must be submitted by the operator within thirty (30) days of the discovery of those conditions. ()

101. -- 109. (RESERVED)

110. PUBLIC HEARING.

01. Call for a Hearing. A public hearing called by the director following receipt of a complete application submitted in accordance with Sections 069, 070, or 071 of these rules is conducted in accordance with Section 47-1507(d), Idaho Code. The director may call for a hearing following his preliminary review of an application for a new operation or an amendment application for an existing operation when one (1) or more of the following circumstances arises: ()

a. Public Concern. The public, potentially affected landowners, any governmental entity, or any other interested parties who may be affected by the operations proposed under the chapter have registered, in writing, a concern with the director regarding the proposed operations or cyanidation facility. The purpose of the public hearing is to gather written and oral comments as to whether the proposed reclamation plan or permanent closure plan meets the requirements of the chapter and these rules. ()

b. Agency Concern. The director determines, after consultation with the Department of Water Resources, DEQ, the Department of Fish and Game, and affected Indian tribes that the proposed mining or cyanidation facility operations could reasonably be expected to significantly degrade adjacent surface and/or ground waters or otherwise threaten public health, safety or welfare. The purpose of a public hearing held under this subsection will be to receive written and oral comments on the measures the operator is proposing to use to protect surface and/or ground water quality from nonpoint source pollution. ()

02. Consolidation. If the director determines that a hearing should be held, he shall order that such proceedings be consolidated. The applicant and the public must be advised of the specific subjects to be discussed at the hearing at least twenty (20) days prior to the hearing. The Department will coordinate with the DEQ, as appropriate, for any hearings relating to permanent closure of a cyanidation facility to streamline application processing. ()

03. Location. A hearing will be held in the locality of the proposed mine or a proposed cyanidation facility at a reasonably convenient time and place for public participation. The director may call for more than one hearing when conditions warrant. ()

04. Notice of Hearing. The director shall provide at least twenty (20) days' advance notice of the date, time, and place of the hearing to: federal, state, and local governmental agencies, Indian tribes who may have an interest in the decision as shown on the application, and the public; to all persons who petitioned for a hearing; and to any person identified by the applicant under Subsection 070.02 as a legal owner of the land that will likely be affected by the proposed operations. Notice to the applicant must be sent by certified mail and postmarked not less than twenty (20) days before the scheduled public hearing date. ()

05. Publication of Notice. The director shall provide at least twenty (20) days advance notice to the general public of the date, time, and place of the hearing. A newspaper advertisement will be placed once a week, for two (2) consecutive weeks, in the locale of the area covered by the application. ()

a. In the event a hearing is ordered under Section 110, the notice shall describe: ()

i. The potentially significant surface water quality impacts from the proposed mining operation and the operator's description of the measures that will be used to prevent degradation of adjacent surface and ground waters from sources of pollution; or ()

ii. The objectives of a permanent closure plan that have been submitted for review. ()

b. A copy of the application will be placed for review in a public place in the local area of the proposed mining operation or cyanidation facility, in the closest Department area office, and the Department's administrative office in Boise. ()

06. Hearing Officer. The hearing will be conducted by the director or his designated representative. Both oral and written testimony will be accepted. Proceedings of the hearing will be recorded on audio tape and a verbatim transcript will be prepared. ()

07. Consideration of Hearing Record. The Department will consider the hearing record when reviewing reclamation plans or permanent closure plans for final approval or rejection. ()

111. COMPLETION OF PERMANENT CLOSURE.

01. Implementation of a Permanent Closure Plan. Unless otherwise specified in the approved permanent closure plan, an operator must begin implementation of the approved permanent closure plan as follows: ()

a. Within two (2) years of the final addition of new cyanide to the ore process circuit; or ()

b. If the product recovery phase of the cyanidation facility has been suspended for a period of more than two (2) years. ()

02. Submittal of a Permanent Closure Report. The operator must submit a permanent closure report to the Department for review and approval. A permanent closure report must be of sufficient detail for the directors of the Department and DEQ to issue a determination that permanent closure, as defined by Subsection 010.15 of these rules, has been achieved. The permanent closure report shall address: ()

a. The effectiveness of material stabilization; ()

b. The effectiveness of the water management plan and the adequacy of the monitoring plan; ()

c. The final configuration of the cyanidation facility and its operational/closure status; ()

d. The post-closure operation, maintenance, and monitoring requirements, and the estimated ()

reasonable cost to complete those activities; ()

e. The operational/closure status of any land application site of the cyanidation facilities; ()

f. Source control systems that have been constructed or implemented to eliminate, mitigate, or contain short- and long-term discharge of pollutants from the cyanidation facility, unless otherwise permitted; ()

g. The short- and long-term water quality trends in surface and ground water through the statistical analysis of the existing monitoring data pursuant to the ore-processing by cyanidation permit; ()

h. Ownership and responsibility for the site upon permanent closure during the defined post-closure period; ()

i. The future beneficial uses of the land, surface and ground waters in and adjacent to the closed cyanidation facilities; and ()

j. How the permanent closure of the cyanidation facility complies with the Resource Conservation and Recovery Act, Hazardous Waste Management Act, Solid Waste Management Act, and appropriate rules. ()

03. Review of a Permanent Closure Report. The Department will immediately forward a copy of the permanent closure report to DEQ for their review and comment. ()

112. DECISION TO APPROVE OR DISAPPROVE OF A PERMANENT CLOSURE REPORT.

01. Receipt of a Permanent Closure Report. Within sixty (60) days of receipt of a permanent closure report, the director shall issue to the operator a director's determination of approval or disapproval of the permanent closure report. ()

02. Permanent Closure Report Is Disapproved. The director's determination to approve or disapprove a permanent closure report will be based on the permanent closure report's demonstration that permanent closure has resulted in long-term neutralization of process waters and material stabilization. If a permanent closure report is disapproved, the director shall provide in writing identification of: ()

a. Errors or inaccuracies in the permanent closure report; ()

b. Issues or details that require additional clarification; ()

c. Failures to fully implement the approved permanent closure plans; ()

d. Failures to ensure protection for public health, safety, and welfare or to prevent degradation of waters of the state; ()

e. Outstanding violations or other noncompliance issues; and ()

f. Other issues supporting the Department's disagreement with the contents, final conclusions or recommendations of the permanent closure report. ()

113. -- 119. (RESERVED)

120. FINANCIAL ASSURANCE REQUIREMENTS.

01. Submittal of Financial Assurance Before Mining. Prior to beginning any mining on a mine panel covered by a reclamation plan, an operator shall submit to the director, on a Department form, financial assurance meeting the requirements of this rule. ()

02. Submittal of Financial Assurance Before Operating a Cyanidation Facility. Prior to beginning operation of a cyanidation facility an operator will submit to the director, on a Department form, financial assurance meeting the requirements of Section 47-1512(a)(2), Idaho Code. The financial assurance will be in an amount equal to the total costs estimated under paragraph 071.02.k. and Section 120 of these rules. ()

03. Timely Financial Assurance Submittal. Financial assurance must be received by the Department within twenty-four (24) months of reclamation or permanent closure plan approval or the Department will cancel the respective plan without prejudice. If financial assurance is not received within eighteen (18) months of a plan approval, the Department will notify the operator that financial assurance is required prior to the twenty-four (24) month deadline. Extensions will be granted by the director for reasonable cause given if a written request is received prior to the deadline. If financial assurance or an extension request is not received by the deadline, the plan will be canceled. The operator must then submit a new plan application and application fee to restart the approval process. ()

04. Phased Financial Assurance. If the Department approves a reclamation plan or permanent closure plan with phased financial assurance, then financial assurance may increase incrementally commensurate with the additional reclamation or permanent closure liability. After construction and operation of the initial phase has commenced and after filing by an operator of the initial financial assurance, an operator will not construct any component of a subsequent phase or phases of the subject mine or cyanidation facility before filing the additional financial assurance amount that is required by the Board. If phased financial assurance is not authorized, the operator is required to file the financial assurance amount required to complete reclamation or permanent closure of all planned phases prior to any construction of the mine or operation of the cyanidation facility. ()

05. Financial Assurance for Mines with Five (5) or Less Disturbed Acres. Financial assurance will be a minimum of five thousand dollars (\$5,000) per acre unless the operator or the Department determine that the estimated reasonable costs of reclamation require a different amount. No financial assurance may exceed fifteen thousand dollars (\$15,000) for a given acre of affected land unless the condition in Subsection 120.07 of these rules have been met. ()

06. Financial Assurance for Cyanidation Facility Affecting Five (5) or Less Disturbed Acres. The Board may require financial assurance in excess of five million dollars (\$5,000,000) if the conditions in Subsection 120.07 of these rules have been met. ()

07. Process for Requiring Higher Financial Assurance. Financial assurance in excess of the amounts in Subsections 120.05 and 06 of this rule may only be obtained if: ()

a. The Board has determined that such financial assurance is necessary to meet the requirements of the chapter; and ()

b. The Board has delivered to the operator, in writing, a notice setting forth the reasons it believes such financial assurance is necessary; and ()

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

08. Financial Assurance for Mine or Cyanidation Facility with More than Five (5) Disturbed Acres. The amount of financial assurance must be the amount necessary for the Board to pay the estimated reasonable costs of reclamation required under the reclamation plan or permanent closure plan, including indirect costs in Section 120 of these rules. ()

09. Mobilization Costs are Direct Costs. Mobilization and demobilization costs will be included in financial assurance calculations as a direct cost. Costs will be calculated to the mine from the nearest community that has at least two (2) contractors able to perform the reclamation. ()

10. Indirect Costs for Reclamation Cost Calculations. Reclamation and permanent closure cost calculations shall include the following indirect costs and should fall within the percentages given. If a different

percentage is used, then a justification must be given. Alternatively, an operator may propose the use of an industry recognized standardized reclamation cost estimation tool for use in reclamation and/or permanent closure cost estimates and the use of the tool's associated indirect costs which are established using the project direct costs as identified: ()

- a. Contractor profit at six percent to ten percent (6% to 10%) of direct costs; ()
- b. Contractor overhead at four percent to eight percent (4% to 8%) of direct costs; ()
- c. Contractor insurance at one and a half percent (1.5%) of labor costs; ()
- d. Contractor bonding at two and a half percent to three and a half percent (2.5% to 3.5%) of direct costs; ()
- e. Contract administration at five percent to nine percent (5% to 9%) of direct costs; ()
- f. Re-engineering for mines or cyanidation facilities with direct reclamation costs over five hundred thousand dollars (\$500,000). Re-engineering will be three percent to seven percent (3% to 7%) of direct costs; ()
- g. Scope contingency at six percent to eleven percent (6% to 11%) of direct costs; ()
- h. Bid contingency at six percent to eleven percent (6% to 11%) of direct costs; and ()
- i. Other site specific costs as appropriate. ()

11. Salvage Value Not Allowed. Reclamation or permanent closure costs will not be reduced by assigning a salvage value to structures or fixtures to be removed during reclamation. ()

12. Mining Operation Conducted by Public or Government. Notwithstanding any other provision of law to the contrary, the financial assurance provisions of the chapter and these rules do not apply to any surface mining operations conducted by a public or governmental agency for maintenance, repair, or construction of a public highway. ()

13. Annual Financial Assurance Review for Reclamation Plans. At the beginning of each calendar year, the operator shall notify the director of any increase in the acreage of affected land beyond that covered by the existing financial assurance which will result from planned mining activity within the next twelve (12) months. A commensurate increase in the financial assurance will be required for an increase in affected acreage. Any additional financial assurance required must be submitted on the appropriate form within ninety (90) days of operator's receipt of notice from the Department that an additional amount is required. In no event will mining operations be conducted that would affect additional acreage until the appropriate form and financial assurance has been submitted to the Department. Acreage on which reclamation is complete will be reported in accordance with Subsection 120.16 of these rules and after release of this acreage from the reclamation plan by the director, the financial assurance will be reduced by the amount appropriate to reflect the completed reclamation. ()

14. Financial Assurance Provided to the Federal Government. Any financial assurance provided to the federal government that also meets the requirements of Section 120 of these rules will be sufficient for the purposes of these rules. A mine providing financial assurance through an order under the Comprehensive Environmental Response, Compensation, and Liability Act is not required to submit financial assurance to the Department as described in Idaho Code 47-1512(n). ()

15. Financial Assurance Reduction for Mines. ()

a. An operator may petition the director for a change in the initial financial assurance amount. The director will review the petition and if satisfied with the information presented a revised financial assurance amount will be determined. The revised amount will be based upon the estimated cost that the director would incur should a forfeiture of financial assurance occur and it became necessary for the director, through contracting with a third party,

to complete reclamation to the standards established in the plan. ()

b. Upon finding that any land covered by financial assurance will not be affected by mining, the operator will notify the director. The amount of the financial assurance will be reduced by the amount being held to reclaim those lands. ()

c. Any request for financial assurance reduction will be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. ()

16. Financial Assurance Release Following Mine Reclamation. Upon completion of all or a portion of the reclamation or post-closure activity specified in the plan, the operator may notify the director of his desire to secure release from financial assurance. When the director has verified that the requirements of the reclamation plan have been substantially met as stated in the plan, the financial assurance will be released. ()

a. Any request for financial assurance release will be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. ()

b. If the director finds that a specific portion of the reclamation or post-closure has been substantially completed, the financial assurance may be reduced to the amount required to complete the remaining reclamation or post-closure. The following schedule will be used to complete these financial assurance reductions unless the director determines in a specific case that this schedule is not appropriate and specifies a different schedule, or the approved reclamation plan has a different schedule based on site-specific conditions. ()

i. Sixty percent (60%) of the financial assurance may be released when the operator completes the required backfilling, regrading, topsoil replacement, and drainage control of a specific area in accordance with the approved reclamation plan; and ()

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

c. The remaining financial assurance shall not be released: ()

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

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

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

17. Corporate Guarantee Released First. If an operator provides part of their financial assurance through a corporate guarantee, then the corporate guarantee will be released prior to any other type of financial assurance being released. Other types of financial assurance will only be released after the corporate guarantee has been completely released. ()

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

19. Permanent Closure Financial Assurance Review. The Department will periodically review all financial assurances filed for permanent closure to determine their sufficiency to complete the work required by an

approved permanent closure plan. For reviews conducted under paragraphs a and b the director may employ a qualified independent party to verify the accuracy of the revised permanent closure cost estimate as described in paragraph 071.05.b. of these rules. ()

a. Once every three (3) years, the operator must submit an updated permanent closure cost estimate to the Department for review. The director will review the updated estimate to determine whether the existing financial assurance amount is adequate to implement the permanent closure plan, as approved by the Department. Any resulting change in the financial assurance amount does not in and of itself require an amendment to the permanent closure plan as may be required by Section 091 of these rules. The director will review the estimate to determine whether the existing financial assurance amount is adequate to complete permanent closure of the cyanidation facility. ()

b. When the director determines that there has been a material change in the estimated reasonable costs to complete permanent closure: ()

i. The director will notify the operator in writing of his intent to reevaluate the financial assurance amount. Within a reasonable time period determined by the Department, the operator will provide to the Department a revised cost estimate to complete permanent closure as approved by the Department. ()

ii. Within thirty (30) days of receipt of the revised cost estimate, the director will notify the operator in writing of his determination of financial assurance adequacy. ()

iii. Within ninety (90) days of notification of the director's assessment, the operator will make the appropriate adjustment to the financial assurance or the director will reduce the financial assurance as appropriate. ()

c. The Department may conduct an internal review of the amount of each financial assurance annually to determine whether it is adequate to complete permanent closure. ()

20. Permanent Closure Financial Assurance Release. ()

a. A financial assurance filed for permanent closure of a cyanidation facility will be released according to the schedule in the permanent closure plan. The schedule will include provisions for the release of the post-closure monitoring and maintenance portions of the financial assurance. The schedule may be adjusted to reflect the operator's performance of permanent closure activities and their demonstrated effectiveness. ()

b. Upon completion of an activity required by an approved permanent closure plan, the operator may request in writing a financial assurance reduction for that activity. The Department will notify the operator within thirty (30) days whether or not the activity meets the requirements of the permanent closure plan. When the director, in consultation with DEQ, has verified that the activity meets the requirements of the permanent closure plan, the financial assurance will be reduced by an amount to reflect the activity completed. ()

c. Upon the director's determination that all activities specified in the permanent closure plan have been successfully completed, the Department will, in accordance with Section 47-1512(i), Idaho Code, release the balance remaining after partial financial assurance releases. ()

21. Liabilities for Reclamation Costs Not Covered by Financial Assurance. An operator who is not required to furnish financial assurance by these rules but fails to reclaim may be subject to civil penalty under Section 47-1513(c), Idaho Code. The amount of civil penalty will be the estimated cost of reasonable reclamation of affected lands as determined by the director. Reasonable reclamation of the site will be presumed to be in accordance with the standards established in the approved reclamation plan. The amount of the civil penalty is in addition to those described in Section 47-1513(f), Idaho Code. ()

22. Appeal Process for Financial Assurance Decisions. All decisions regarding financial assurance extension requests, plan cancellation, financial assurance reduction, or financial assurance release as described in Section 120 of these rules are subject to appeal as described in Section 58-104, Idaho Code, and Section 47-1514, Idaho Code. ()

121. (RESERVED)

122. FORM OF FINANCIAL ASSURANCE.

01. Corporate Surety Bond. ()

a. A corporate surety bond is an indemnity agreement executed for the operator and a corporate surety licensed to do business in the state of Idaho, filed on the appropriate Department form. The bond must be payable to the state of Idaho and conditioned to require the operator to faithfully perform all requirements of the chapter, and the rules in effect on the date that a reclamation plan or a permanent closure plan was approved by the Department. ()

b. 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. ()

c. When replacement financial assurance is submitted, the following rider must be filed with the Department as part of the replacement before the existing financial assurance 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 reclamation plan or permanent closure plan [number], both prior to and subsequent to the date of this rider.” ()

02. Collateral Bond. A collateral bond is an indemnity agreement executed by or for the operator, payable to the state of Idaho, pledging cash deposits, government securities, real property, time deposit receipts, or certificates of deposit of any financial institution authorized to do business in the state. Collateral bonds are subject to the following conditions. ()

a. The director shall obtain possession of cash or other negotiable collateral bonds, and, upon receipt, deposit them with the state treasurer to hold them in trust for the purpose of bonding reclamation or permanent closure performance. ()

b. The director shall value the collateral at its current market value minus any penalty for early withdrawal, not its face value. ()

c. Certificates of deposit or time deposit receipts are issued or assigned, in writing, to the 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 operator or another person who posted the collateral bond. ()

d. 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. ()

e. Financial institutions issuing 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 operator from withdrawing funds until the Department sends a written release to the bank. ()

f. Certificates of deposit and time deposit receipts must be automatically renewable. ()

03. Letters of Credit. A letter of credit is an instrument executed by a bank doing business in Idaho, 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. ()

a. All credits must be irrevocable and prepared in a format prescribed by the director. ()

b. All credits must be issued by an institution authorized to do business in the state of Idaho or through a correspondent bank authorized to do business in the state of Idaho. ()

c. The account party on all credits must be identical to the entity identified in the reclamation plan or in the permanent closure plan and on the cyanidation facility permit as the party obligated to complete reclamation or permanent closure. ()

04. Real Property. Real property used as a collateral bond must be a perfected, first lien security interest in real property located within the state of Idaho, in favor of the state of Idaho, which meets the requirements of these rules using a deed of trust form acceptable to the Department for all lands forty (40) acres or less, or a mortgage form approved by the Department for all lands over forty (40) acres. ()

a. The following information must be submitted for real property collateral: ()

i. The value of the real property. The property will be valued at the difference between the fair market value and any reasonable expense anticipated by the Department in selling the property. The fair market value will be determined by an appraisal conducted by a licensed appraiser. The appraiser will be selected by the Department and the Department will provide appraisal instructions; however, the operator may propose an appraiser to the Department. The appraisal will be performed in a timely manner, and a copy sent to the Department and the operator. The expense of the appraisal will be borne by the operator. The real property will be reappraised every three (3) years; ()

ii. A description of the property and a site improvement survey plat to verify legal descriptions of the property and to identify the existence of recorded easements; ()

iii. Proof of ownership and title to the real property; ()

iv. A current title binder which provides evidence of clear title containing no exceptions, or containing only exceptions acceptable to the director; and ()

v. Phase I environmental assessment. ()

b. Real property will not include any lands in the process of being mined, reclaimed, or planned to be mined under an approved reclamation plan. The operator may offer any lands within a reclamation plan that have received full release of financial assurances. In addition, any land used as a security will not be mined or otherwise disturbed while it is a security. The acceptance of real property within the permit boundary will be at the discretion of the director. ()

05. Trusts. Trusts are subject to the requirements of Sections 47-1512(1) and 68-101 et seq. Idaho Code. The proposed trustee, range of investments, initial funding, schedule of payments, trustee fees, and expected rate of return are subject to review and approval by the Department through a memorandum of agreement with the operator. The trustee will invest the principal and income of the fund in accordance with general investment practices. Investments can include equities, bonds, and government securities and be well diversified in accordance with the following conditions: ()

a. The joint party on the trust must be identical to the entity identified in the reclamation plan or in the permanent closure plan as the party obligated to complete reclamation or permanent closure. ()

b. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. ()

c. Equities may include stock funds, stock index funds, or individual stocks, but an individual stock may not exceed five percent (5%) of the total value of the trust. Direct investments in the operator's company or parent company are not allowed. Corporate equities must not exceed seventy percent (70%) of the total value of the trust fund. ()

d. Bonds or money market funds must be investment-grade rated securities from a nationally recognized securities rating service. Individual corporate bonds may not exceed five percent (5%) of the total value of the trust. ()

- e. Payments into the trust will be made as follows: ()
 - i. When used to cover reclamation or permanent closure costs, the trust fund will be initially funded in an amount needed to cover any surface disturbance in the first year of the trust fund. Annual payments into the trust will occur as needed prior to the disturbance of additional affected land at the mine or cyanidation facility. ()
 - ii. When used to cover a portion of reclamation or permanent closure costs in combination with other types of financial assurance, the initial and annual payments will be the pro-rata amount of the reclamation or permanent closure costs as described in subparagraph 122.05.e.i of these rules. ()
 - iii. When used to cover the anticipated post-closure costs, a payment schedule will be created in the memorandum of agreement. The trust fund, together with the anticipated earnings, must be enough at the expected start of the post-closure period to cover the costs of the post-closure period. ()
- f. Disbursements from the trust will only occur upon written authorization of the Department. Disbursements include payments to the trustee or any other payment of funds not related to financial assurance release and not specifically mentioned in the memorandum of agreement. ()
- g. Trusts will be irrevocable. ()
- h. Income accrued on trust funds will be retained in the trust, except as otherwise agreed by the director under the terms of an agreement governing the trust. ()
- 06. Corporate Guarantees.** ()
 - a. Up to fifty percent (50%) of required financial assurance for reclamation costs may be provided by a corporate guarantee. Post-closure costs for reclamation plans and permanent closure plans cannot be covered by a corporate guarantee. ()
 - b. Only operators who submit plans under Sections 070 or 071 of these rules may provide a corporate guarantee. ()
 - c. Operators who want to provide financial assurance through a corporate guarantee must provide an audited financial statement from a third-party certified public accountant that meets the requirements of IDAPA 24.30.01, the Idaho Accountancy Rule. The audited financial statement must show the operator meets two (2) of the following three (3) criteria and the criteria in paragraph d of this section: ()
 - i. Ratio of total liabilities to stockholder's equity is less than two (2) to one (1); ()
 - ii. Ratio of sum of net income plus depreciation, depletion, and amortization to total liabilities greater than ten one-hundredths (0.1) to one (1); or ()
 - iii. Ratio of current assets to current liabilities greater than one and fifty one-hundredths (1.5) to one (1). ()
 - d. The following financial criteria must also be met for a corporate guarantee: ()
 - i. Net working capital and tangible net worth are each equal to or greater than the total reclamation or permanent closure cost estimate; ()
 - ii. Tangible net worth of at least ten million dollars (\$10,000,000); and ()
 - iii. At least ninety percent (90%) of the corporation's total assets are in the United States, or the total assets in the United States are at least six (6) times greater than total reclamation or permanent closure cost estimate. ()

e. A corporate guarantee can be provided by a parent company guarantor if that guarantor meets the conditions of paragraphs (c) and (d) in this section as if it were the operator. The terms of this corporate guarantee will provide for the following: ()

i. The operator and the parent company will submit to the Department an indemnity agreement signed by corporate officers from both companies who are authorized to bind their corporations. The operator or parent company must also provide an affidavit certifying that such an agreement is valid under all applicable federal and state laws. The indemnity agreement will bind each party jointly and severally; ()

ii. If the operator fails to complete reclamation or permanent closure, the parent company guarantor will do so or the guarantor will be liable under the indemnity agreement to provide funds to the Department sufficient to complete reclamation or permanent closure as per the plan, but not to exceed the financial assurance amount; ()

iii. The corporate guarantee will remain in force unless the parent company guarantor sends notice of cancellation by certified mail to the operator and to the Department at least ninety (90) days in advance of the cancellation date, and the Department accepts the cancellation; and ()

iv. The cancellation will be accepted by the Department only if the operator obtains replacement financial assurance before the cancellation date or if the lands for which the corporate guarantee, or portion thereof, was accepted have not been disturbed. ()

v. If the operator is a partnership or joint venture, the indemnity agreement will bind each partner or member who has a beneficial interest, directly or indirectly, in the operator. ()

f. The operator, or parent company guarantor, is required to either complete the approved reclamation or permanent closure plan for the lands in default, or pay to the Department an amount necessary to complete the approved reclamation, not to exceed the amount established in Section 120 of these rules. ()

g. The operator or parent company guarantor will submit an annual update of the information required under paragraphs (c) and (d) of this section by April 1 following the issuance of the corporate guarantee. ()

h. If the operator or parent company guarantor's financial fitness falls below the eligibility for providing a corporate guarantee they will immediately notify the Department, and the Department will require the operator to submit replacement financial assurance within ninety (90) days of being notified. ()

i. The Department may require the operator or parent company guarantor to provide an update of the information in paragraphs (c) and (d) in this section at any time. The update must be provided within thirty (30) days of being requested. The requirements of paragraph (h) in this Section will then apply. ()

07. Blanket Financial Assurance. Where an operator is involved in more than one (1) reclamation plan or permanent closure plan permitted by the Department, the director may accept a blanket financial assurance in lieu of separate reclamation or permanent closure financial assurances under the approved plans. The amount of such financial assurance must be equal to the total of the requirements of the separate financial assurances being combined into a single financial assurance, as determined pursuant to Section 47-1512, Idaho Code, and in accordance with Section 120 of these rules. The principal is liable for an amount no more than the financial assurance filed for completion of reclamation activities or permanent closure activities if the Department takes action against the financial assurance pursuant to Section 47-1513, Idaho Code and Section 123 of these rules. ()

08. Reclamation Fund. Reclamation plans processed under Section 069 of these rules may provide financial assurance through the Reclamation Fund established by Section 47-18, Idaho Code, and IDAPA 20.03.03. If financial assurance is provided through the Reclamation Fund, no other type of financial assurance may be combined with it on an individual mine site. ()

09. Multiple Forms of Financial Assurance Accepted. An operator may combine more than one type of financial assurance, within the limitations of each type of financial assurance, to reach the full amount of the required financial assurance for a reclamation plan or permanent closure plan. ()

123. FORFEITURE OF FINANCIAL ASSURANCE.

A financial assurance may be forfeited in accordance with Section 47-1513, Idaho Code, when the operator has not conducted the reclamation or has not conducted permanent closure in accord with an approved plan and the applicable requirements of these rules. ()

124. -- 129. (RESERVED)

130. TRANSFER OF APPROVED PLANS.

01. Reclamation Plans. A reclamation plan may be transferred from one (1) operator to another only after the Department's approval. To complete a transfer, the new applicant must file a notarized assumption of reclamation plan form as prescribed by the Department and provide replacement financial assurance. The new operator is responsible for the past operator's obligations under the chapter, these rules, and the reclamation plan. ()

02. Permanent Closure Plans. An approved permanent closure plan permit may be transferred to a new operator if he provides written notice to the director that includes a specific date for transfer of permanent closure responsibility, coverage, and liability between the old and new operators no later than ten (10) days after the date of closure. An operator is required to provide such notice at the same time he provides notice to the DEQ as required IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation." To complete a transfer, the new applicant must: ()

- a. File a notarized assumption of permanent closure plan form as prescribed by the Department; and ()
- b. File a replacement permanent closure plan financial assurance on a form approved by the Department. ()

131. -- 139. (RESERVED)

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

These are the minimum standards expected for all activities covered by these rules. Specific standards for individual mines may be appropriate based on site specific circumstances, and must be described in the plan. ()

01. Nonpoint Source Control. ()

a. Appropriate BMPs for nonpoint source controls will be designed, constructed, and maintained with respect to site-specific mining operations or permanent closure activities. Operators shall utilize BMPs designed to achieve state water quality standards and to protect existing beneficial uses of adjacent waters of the state. State water quality standards, as administered by DEQ, is the standard that must be achieved by BMPs. ()

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

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

- a. Keeping the disturbed area to a minimum at any given time through progressive reclamation;

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

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

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

- a. Overburden/Topsoil Removal. ()
 - i. Any overburden/topsoil to be removed should be removed prior to any other mining activity to prevent loss or contamination; ()
 - ii. Where overburden/topsoil removal exposes land area to potential erosion, the director, under the reclamation plan, may require BMPs necessary to prevent violation of water quality standards; and ()
 - iii. Where the operator can show that an overburden material other than topsoil is conducive to plant growth, or where overburden other than topsoil is the only material reasonably available, such overburden may be allowed as a substitute for or a supplement to the available topsoil. ()
- b. Topsoil Storage. Topsoil stockpiles will be placed to minimize rehandling and exposure to excessive wind and water erosion. Topsoil stockpiles will 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. ()
- c. Overburden Storage. Stockpiled ridges of overburden will be leveled in such a manner as to have a minimum width of ten (10) feet at the top. Peaks of overburden will be leveled in such a manner as to have a minimum width of fifteen (15) feet at the top. The overburden piles will be reasonably prepared to control erosion using best management practices; such activities may include terracing, silt fences, chemical binders, seeding, mulching or slope reduction. ()
- d. Topsoil Placement. Abandoned affected lands must be covered with topsoil or other type of overburden that is conducive to plant growth, to the extent such materials are readily available, in order to achieve a stable uniform thickness. Excessive compaction of overburden and topsoil is to be avoided. Topsoil redistribution will be timed so that seeding, or other protective measures, can be readily applied to prevent compaction and erosion.

- ()
- e. Fill. Backfill and fill materials should be compacted in a manner to ensure stability. ()
- 05. Roads.** ()
- a. Roads must be constructed to minimize soil erosion, which may require restrictions on the length and grade of the roadbed, surfacing of roads with durable non-toxic material, stabilization of cut and fill slopes, and other techniques designed to control erosion. ()
 - 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. ()
 - 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. ()
 - d. Roads and water control structures will be maintained at periodic intervals as needed. Water control structures serving to drain roads must not be blocked or restricted in any manner to impede drainage or significantly alter the intended purpose of the structure. ()
 - e. Roads that will not be recontoured to approximate original contours upon abandonment will be cross-ditched and revegetated, as necessary, to control erosion. ()
 - f. Roads that are not abandoned and continue to be used under the jurisdiction of a governmental or private landowner, will comply with the nonpoint source sediment control provisions of Subsection 140.02 until the successor assumes control. ()
- 06. Backfilling and Grading.** ()
- a. Every operator who conducts mining or cyanidation facility operations which disturb less than two (2) acres shall, where possible, contour the disturbed land to its approximate previous contour. These lands must be revegetated in accordance with Subsection 140.11. ()
 - b. An operator who conducts mining or cyanidation facility operations which disturb two (2) acres or more shall reduce all waste piles and depressions to the lowest practicable grade. This grade shall not exceed the angle of repose or maximum slope of natural stability for such waste or generate erosion in which sediment enters waters of the state. ()
 - c. Backfill and fill materials should be compacted in a manner to ensure mass and surface stability. ()
 - d. After the disturbed area has been graded, slopes will be measured for consistency with the approved reclamation plan or the permanent closure plan. ()
- 07. Disposal of Waste in Areas Other Than Mine Excavation.** Waste material not used to backfill mined areas will be transported and placed in a manner designed to stabilize the waste piles and control erosion. ()
- a. The available disposal area should be on a moderately sloped, naturally stable area. The site should be near the head of a drainage to reduce the area of watershed above the fill. ()
 - b. All surface water flows within the disposal area must be diverted and drained using accepted engineering practices such as a system of French drains, to keep water from entering the waste pile. These measures must be implemented in accordance with standards prescribed by the Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, if applicable. ()

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

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

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

f. The operator will conduct revegetation activities with respect to such waste piles in accordance with Subsection 140.11 of these rules. ()

08. Settling Ponds; Minimum Criteria. ()

a. Sediment Storage Volume. Settling ponds will 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. ()

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

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

09. Tailings Facilities. All tailings ponds, dams, or other types of tailings facilities must be designed, constructed, operated, and decommissioned so that upon their abandonment, the dam and impoundment area will meet applicable surface and ground water quality standards and not otherwise constitute a hazard to human or animal life. ()

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

b. Topsoil will be removed from the area to be affected by the impounding structure, tailings pond, or other tailings facilities in accordance with Subsection 140.04 of these rules. ()

c. Abandonment and Decommissioning of Tailings Impoundments. ()

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

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

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

iv. Reclamation. After implementing the required dewatering, detoxification, and surface drainage

control measures, the reservoir and impounding structure will be covered with topsoil or other material conducive to plant growth, in accordance with Subsection 140.04 of these rules. Where such soils are limited in quantity or not available, and upon approval by the Department, physical or chemical methods for erosion control may be used. All such areas are to be revegetated in accordance with Subsection 140.11 of these rules, unless specified otherwise. ()

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

10. Permanent Cessation and Time Limits for Planting. ()

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

b. Reclamation activities, where possible, are encouraged to be concurrent with the mining operation and may be included in the approved reclamation plan. Final reclamation must begin within one (1) year after the mining operations have permanently ceased on a mine panel. If the operator permanently ceases disposing of overburden on a waste area or permanently ceases removing minerals from a pit or permanently ceases using a road or other affected land, the reclamation activity on each given area 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 affected land, has not permanently ceased. ()

c. An operator is presumed to have permanently ceased mining operations on a given portion of affected land when no substantial amount of mineral or overburden material has been removed or overburden placed on an overburden dump, or no significant use has been made of a road during the prior three (3) years. If an operator does not plan to use an affected area for three (3) or more years but intends thereafter to use the affected area for mining operations and desires to defer final reclamation until after its subsequent use, the operator must submit a notice of intent and request for deferral of reclamation to the director, in writing. If the director determines that the operator plans to continue the operation within a reasonable period of time, the director shall notify the operator and may require actions to be taken to reduce degradation of surface resources until operations resume. If the director determines that use of the affected land for mining operations will not be continued within a reasonable period of time, the director may proceed as though the mining operation has been abandoned, but the operator will be notified of such decision at least thirty (30) days before taking any formal administrative action. ()

11. Revegetation Activities. ()

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

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

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

ii. 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 area or adjacent reference area; ()

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

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

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

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

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

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

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

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

g. Reforestation. Tree stocking of forestlands should meet the following criteria: ()

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

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

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

h. Revegetation is not required on the following areas: ()

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

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

iii. Any mined area or overburden stockpile, where lakes are formed by rainfall or drainage runoff

- from adjoining lands; ()
- iv. Any mineral stockpile; ()
 - v. Any exploration trench which will become a part of a pit or an overburden disposal area; and ()
 - vi. Any road which is to be used in mining operations, so long as the road is not abandoned. ()
- i.** Mulching. Mulch should be used on severe sites and may be required by the reclamation or permanent closure plan where slopes are steeper than three to one (3:1) or the mean annual rainfall is less than twelve (12) inches. When used, straw or hay mulch should be obtained from certified weed free sources. "Mulch" means vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation which will provide a micro-climate more suitable for germination and growth on severe sites. Annual grains such as rye, oats, and wheat may be used as a substitute for mulch where they will provide adequate protection and will be replaced by permanent species within a reasonable length of time. ()

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

141. -- 149. (RESERVED)

150. TERMINATION OF A PLAN.

01. Terminate upon Request of the Operator. A reclamation plan shall terminate upon request of the operator, upon inspection by the director, and a determination that all reclamation activity has been completed to the standards specified in the plan, and following final approval by the director. Upon termination, the director will release the remaining financial assurance, notify the operator, and any authority to conduct any mining operations under the subject plan shall terminate. ()

02. Terminate a Permanent Closure Plan. The director shall terminate a permanent closure plan upon request of the operator, provided all the provisions and objectives of the permanent closure plan have been met, as determined by the director under Sections 111 and 112 of these rules. Upon a determination that permanent closure has been completed in accordance with the approved permanent closure plan and upon consultation with the DEQ that the operator's request to terminate a plan should be approved, the director will notify the operator that any authority to continue cyanidation operations shall cease and he will release the balance of the financial assurance in accordance with Subsection 120.20. ()

151. -- 154. (RESERVED)

155. FIVE (5) YEAR UPDATES AND PERIODIC INSPECTIONS.

01. Five (5) Year Updates. The Department may require operators to submit an update on their mining operation at least every five (5) years. The update will be on a Department form, and will be used to assist the Department in determining whether or not adjustments are needed for financial assurance or if a plan amendment is required due to a material change. Failure by an operator to complete the form and return it to the Department, or an operator providing false statements on the form, may result in the penalties in Section 47-1513(g), Idaho Code. ()

02. Right of Inspection. Authorized representatives of the Department have the right to enter upon lands affected or proposed to be affected by exploration, mining operations, or cyanidation facilities to determine compliance with the reclamation or permanent closure plans and these rules. Inspections will be conducted at reasonable times in the presence of the operator or his authorized representative. The operator shall make such a person available for the purpose of inspection. This rule does not prevent the Department from making an inspection of the site if the operator fails to make a representative available on request. ()

03. Frequency of Inspection. ()

a. Mining operations with an approved reclamation plan will be inspected at least once every five (5) years to determine compliance with the approved plan and adequacy of the financial assurance. Inspections may need to be more frequent due to the large size, rapid pace of mining, complexity of an operation, or high financial assurance. ()

b. Cyanidation facilities with an approved permanent closure plan will be inspected as often as is needed, but at least once a year. ()

156. -- 159. (RESERVED)

160. ENFORCEMENT AND FAILURE TO COMPLY.

01. Financial Assurance Forfeiture. Upon request by the director, the attorney general may institute proceedings to have the financial assurance for reclamation or permanent closure forfeited for violation of an order entered pursuant to Section 47-1513, Idaho Code and these rules. ()

02. Civil Penalty. An operator with no financial assurance, or an operator who violates these rules by performing an act which is not included in an approved reclamation plan or an approved permanent closure plan that is not subsequently approved by the Department, will be subject to a civil penalty as authorized by Section 47-1513(c), Idaho Code. ()

03. Injunctive Procedures. The director may seek injunctive relief and proceed with legal action, if necessary, to enjoin a mine operator or cyanidation facility operator who violates the provisions of the chapter, these rules, or the terms of an existing approved reclamation or permanent closure plan. Any such action will follow the procedures established in Section 47-1513, Idaho Code. ()

04. Appeal of Final Order. An operator dissatisfied with a final order of the Board may within sixty (60) days after receiving the order, file an appeal in accordance with Section 47-1514, Idaho Code. ()

161. -- 169. (RESERVED)

170. COMPUTATION OF TIME.

Computation of time will be based on calendar days. In computing any period of time prescribed by the chapter, the day on which the designated period of time begins is excluded. The last day of the period is included unless it is a Saturday, Sunday or legal holiday when the Department is not open for business. In such a case, the time 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. ()

171. -- 179. (RESERVED)

180. PUBLIC AND CONFIDENTIAL INFORMATION.

01. Information Subject to Disclosure. Information obtained by the Department pursuant to the chapter and these rules is subject to disclosure under Title 74, Chapter 1, Idaho Code ("Public Records Act"). ()

02. Use by Board. Any plans, documents, or materials submitted as confidential and held as such shall not prohibit the Board, director, or Department from using the information in an administrative hearing or judicial proceeding initiated pursuant to Section 47-1514, Idaho Code. ()

03. Plans and BMPs. An operator will not unreasonably designate as confidential portions of reclamation or permanent closure plans which detail proposed BMPs to meet state surface and ground water quality standards. Confidential portions of reclamation or permanent closure plans may be shared with DEQ in its coordinating role under these rules, as reasonably necessary. ()

181. -- 189. (RESERVED)

190. DEPOSIT OF FORFEITURES AND DAMAGES.

All fees, penalties, forfeitures, and civil damages collected pursuant to the chapter, will be deposited with the state treasurer in the following accounts as appropriate: ()

01. Mine Reclamation Fund. The mine reclamation fund to be used by the director for mined land reclamation purposes and to administer the reclamation provisions of the chapter and these rules. ()

02. Cyanidation Facility Closure Fund. The cyanidation facility closure fund to be used by the director to complete permanent closure activities and to administer the permanent closure provisions of the chapter and these rules. ()

191. -- 199. (RESERVED)

200. COMPLIANCE OF EXISTING RECLAMATION PLANS.

01. Plans Approved Prior to 2019. Reclamation plans approved prior to July 1, 2019, or reclamation plans that have permanently ceased operations prior to July 1, 2019, are not subject to the 2019 legislative amendments to the chapter regarding financial assurance and post-closure. New reclamation plans or plan amendments received after July 1, 2019, will be subject to the 2019 legislative amendments to the chapter. ()

02. Plans Submitted in 2019. Reclamation plan applications submitted prior to July 1, 2019, but not yet approved, have until July 1, 2020 to submit post-closure plans and financial assurances as described in the 2019 legislative amendments to the chapter. ()

201. -- 999. (RESERVED)

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), 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. ()

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. ()

02. Scope. These rules constitute the Department’s administrative procedures and participation criteria for the Reclamation Fund, which is 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;” Title 47, Chapter 15, Idaho Code, “Mined Land Reclamation;” 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.” ()

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.” ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

Except as provided in these rules, the Board adopts the definitions set forth in the Mineral Leasing Act, the Dredge Mining Act, and the Mined Land Reclamation Act. As used in these rules: ()

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

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

03. Board. The Idaho State Board of Land Commissioners or its authorized representative. ()

04. Department. The Idaho Department of Lands. ()

05. Disturbed Acres; Affected Lands. 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. The land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds, and other areas disturbed at a mine. The land area disturbed by motorized exploration of state land under a mineral lease. ()

06. Dredge Mining Act. Title 47, Chapter 13, Idaho Code, and IDAPA 20.03.01, “Dredge and Placer Mining Operations in Idaho.” ()

07. Financial Assurance. Cash, corporate surety bond, collateral bond, or letter of credit as described in the Dredge Mining Act, the Mineral Leasing Act, or a mineral lease. Financial assurance as defined in the Mined Land Reclamation Act. ()

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. ()

09. Mined Land Reclamation Act. Title 47, Chapter 15, Idaho Code, and IDAPA 20.03.02, “Rules

Governing Mined Land Reclamation.” ()

10. Mineral Lease. Lease executed by the Board and the mineral lessee pursuant to the Mineral Leasing Act. ()

11. Mineral Lessee. The lessee of a mineral lease. ()

12. Mineral Leasing Act. Title 47, Chapter 7, Idaho Code. ()

13. Mining Reclamation Plan. Any reclamation plan approved pursuant to the Mined Land Reclamation Act. ()

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 be considered motorized exploration regardless of intake size. ()

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, or a permit under the Dredge Mining Act, whether individually or jointly through subsidiaries, agents, employees, or contractors. ()

16. Permit. Dredge or placer mining permit issued pursuant to the Dredge Mining Act. ()

17. Reclamation Fund. The interest-bearing dedicated fund authorized pursuant to the Reclamation Fund Act. ()

18. Reclamation Fund Act. Title 47, Chapter 18, Idaho Code, and IDAPA 20.03.03, “Rules Governing Administration of the Reclamation Fund.” ()

011. -- 015. (RESERVED)

016. REQUIRED PARTICIPANTS.

Any operator, with the exception of the mines and operators listed in Section 017 of these rules, shall 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, or the Dredge Mining Act. ()

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. ()

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. ()

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

03. Phosphate Mines. Operators or mineral lessees of phosphate mines. ()

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

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. ()

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

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

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

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

10. Violators. Mines or operators in violation of the Reclamation Fund Act, Dredge Mining Act, Mined Land Reclamation Act, Mineral Leasing Act, or a mineral lease. ()

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, Mineral Leasing Act, or a mineral lease. ()

12. Other Forfeitures. An operator who has forfeited any financial assurance. ()

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. ()

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. ()

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). ()

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. ()

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. ()

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. ()

021. -- 025. (RESERVED)

026. PAYMENT.

01. Board Approved Payment Schedule. The Board will adopt a payment schedule that determines the annual Reclamation Fund payment for each operator participating in the Reclamation Fund. Any changes to the payment schedule will be approved by the Board. Participating operators shall pay all required payments annually. ()

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. ()

03. Annual Payments Non-Refundable. Payments to the Reclamation Fund 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. ()

04. 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. ()

05. 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. ()

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

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, Mineral Leasing Act, or a mineral lease, the Department will comply with the respective financial assurance forfeiture procedures. ()

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 authorized to file liens against personal property and equipment of the operator to recover costs. The operator shall be 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 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, Mineral Leasing Act, or a mineral lease. ()

032. MINIMUM BALANCE FOR THE RECLAMATION FUND.

The Board will determine a reasonable minimum balance for the Reclamation Fund. ()

033. -- 999. (RESERVED)

**20.03.04 – RULES FOR THE REGULATION OF BEDS, WATERS, AND AIRSPACE
OVER NAVIGABLE LAKES IN THE STATE OF IDAHO**

000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authorities of Sections 58-104(6), 58-104(9), 58-105, and 58-127, Idaho Code; Title 58, Chapter 13, Idaho Code; and Title 67, Chapter 52, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.04, “Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho.” ()

02. Scope. These rules govern encroachments on, in, or above navigable lakes in the state of Idaho. ()

002. ADMINISTRATIVE APPEALS.

Any person aggrieved by any final decision or order of the board is entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, IDAPA 20.01.01, Title 58, Chapter 13, Sections 58-1305 and 58-1306, Idaho Code, and Sections 025, 030, and 080 of these rules. ()

003. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: ()

01. IDAPA 24.39.10, “Rules of the Idaho Electrical Board.” IDAPA 24.39.10 is available at <https://adminrules.idaho.gov/rules/current/24/243910.pdf>. ()

02. IDAPA 24.39.20, “Rules Governing Plumbing.” This rule is available at <https://adminrules.idaho.gov/rules/current/24/243920.pdf>. ()

03. 33 CFR Part 62, revised as of July 27, 2015 (United States Aids to Navigation System). The Electronic Code of Federal Regulations (eCFR) is available at <http://www.ecfr.gov/cgi-bin/ECFR>. ()

004. -- 009. (RESERVED)

010. DEFINITIONS.

01. Adjacent. Contiguous or touching, and with regard to land or land ownership having a common boundary. ()

02. Aids to Navigation. Buoys, warning lights, and other encroachments in aid of navigation intended to improve waterways for navigation. ()

03. Artificial High Water Mark. The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line. ()

04. Beds of Navigable Lakes. The lands lying under or below the “natural or ordinary high water mark” of a navigable lake and, for purposes of these rules only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one. ()

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

06. Boat Garage. A structure with one (1) or more slips that is completely enclosed with walls, roof, and doors, but no temporary or permanent residential area. ()

07. Boat Lift. A mechanism for mooring boats partially or entirely out of the water. ()

08. Boat Ramp. A structure or improved surface extending below the ordinary or artificial high water mark whereby watercraft or equipment are launched from land-based vehicles or trailers. ()

09. Commercial Marina. A commercial navigational encroachment whose primary purpose is to provide moorage for rental or for free to the general public. ()

10. **Commercial Navigational Encroachment.** A navigational encroachment used for commercial purposes. ()
11. **Community Dock.** A structure that provides private moorage for more than two (2) adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to homeowner’s associations. No public access is required for a community dock. ()
12. **Covered Slip.** A slip, or group of slips, with a frame, fabric canopy, and eaves that do not extend beyond the underlying dock. ()
13. **Department.** The Idaho Department of Lands or its designee. ()
14. **Director.** The head of the Idaho Department of Lands or his designee. ()
15. **Encroachments in Aid of Navigation.** Includes docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake. The term “encroachments in aid of navigation” is used interchangeably with the term “navigational encroachments.” ()
16. **Encroachments Not in Aid of Navigation.** Includes all other encroachments on, in, or above the beds or waters of a navigable lake, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation, such as float homes and boat garages. The term “encroachments not in aid of navigation” is used interchangeably with the term “nonnavigational encroachments.” ()
17. **Floating Home or Float Home.** A structure that is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling and is not self-propelled. These structures are usually dependent for utilities upon a continuous utility linkage to a source originating on shore, and must have either a permanent continuous connection to a sewage system on shore, or an alternative method of sewage disposal that does not violate local, state, or federal water quality and sanitation regulations. ()
18. **Floating Toys.** Trampolines, inflatable structures, water ski courses, and other recreational equipment that are not permanently anchored to the lake bed or an encroachment and are either located between the shoreline and the line of navigability or are waterward of the line of navigability for less than twenty-four (24) consecutive hours. ()
19. **Jet Ski Ramp, Port, or Lift.** A mechanism for mooring jet skis or other personal watercraft similar to a boat lift. The lifts may be free standing or attached to a dock or pier. ()
20. **Line of Navigability.** A line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question. ()
21. **Low Water Mark.** That line or elevation on the bed of a lake marked or located by the average low water elevations over a period of years, and marks the point to which the riparian rights of adjoining landowners extend as a matter of right, in aid of their right to use the waters of the lake for purposes of navigation. ()
22. **Moorage.** A place to secure float homes and watercraft including, but not limited to, boats, personal watercraft, jet skis, etc. ()
23. **Natural or Ordinary High Water Mark.** The high water elevation in a lake over a period of years, uninfluenced by man-made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. ()
24. **Navigable Lake.** Any permanent body of relatively still or slack water, including man-made reservoirs, not privately owned and not a mere marsh or stream eddy, and capable of accommodating boats or canoes.

This definition does not include man-made reservoirs where the jurisdiction thereof is asserted and exclusively assumed by a federal agency. ()

25. Party. Each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party. ()

26. Person. A partnership, association, corporation, natural person, or entity qualified to do business in the state of Idaho and any federal, state, tribal, or municipal unit of government. ()

27. Piling. A metal, concrete, plastic, or wood post that is placed into the lakebed and used to secure floating docks and other structures. ()

28. Plans. Maps, sketches, engineering drawings, aerial and other photographs, word descriptions, and specifications sufficient to describe the extent, nature and approximate location of the proposed encroachment and the proposed method of accomplishing the same. ()

29. Public Hearing. The type of hearing where members of the public are allowed to comment, in written or oral form, on the record at a public meeting held at a set time and place and presided over by a designated representative of the Department who acts as the hearing coordinator. This type of hearing is an informal opportunity for public comment and does not involve the presentation of witnesses, cross examination, oaths, or the rules of evidence. A record of any oral presentations at such hearings will be taken by the Department by tape recorder. The hearing coordinator exercises such control at hearings as necessary to maintain order, decorum and common courtesy among the participants. ()

30. Public Trust Doctrine. The duty of the State to its people to ensure that the use of public trust resources is consistent with identified public trust values. This common law doctrine has been interpreted by decisions of the Idaho Appellate Courts and is codified at Title 58, Chapter 12, Idaho Code. ()

31. Pylon. A metal, concrete, or wood post that is placed into the lakebed and used to support fixed piers. ()

32. Riparian or Littoral Rights. The rights of owners or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters of the lake. ()

33. Riparian or Littoral Owner. The fee owner of land immediately adjacent to a navigable lake, or his lessee, or the owner of riparian or littoral rights that have been segregated from the fee specifically by deed, lease, or other grant. ()

34. Riparian or Littoral Right Lines. Lines that extend waterward of the intersection between the artificial or ordinary high water mark and an upland ownership boundary to the line of navigation. Riparian or littoral right lines will generally be at right angles to the shoreline. ()

35. Side Tie. Moorage for watercraft where the dock or pier is on only one (1) side of the watercraft. ()

36. Single-Family Dock. A structure providing noncommercial moorage that serves one (1) waterfront owner whose waterfront footage is no less than twenty-five (25) feet. ()

37. Slip. Moorage for boats with pier or dock structures on at least two (2) sides of the moorage. ()

38. Submerged Lands. The state-owned beds of navigable lakes, rivers and streams below the natural or ordinary high water marks. ()

39. Two-Family Dock. A structure providing noncommercial moorage that serves two (2) adjacent

waterfront owners having a combined waterfront footage of no less than fifty (50) feet. Usually the structure is located on the common littoral property line. ()

40. Upland. The land bordering on navigable lakes, rivers, and streams. ()

011. ABBREVIATIONS.

01. ATON. Aids to Navigation. ()

02. HDPE. High-Density Polyethylene. ()

012. POLICY.

01. Environmental Protection and Navigational or Economic Necessity. It is the express policy of the State of Idaho that the public health, interest, safety and welfare requires that all encroachments upon, in or above the beds or waters of navigable lakes of the state be regulated in order that the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment. Moreover, it is the responsibility of the State Board of Land Commissioners to regulate and control the use or disposition of state-owned lake beds, so as to provide for their commercial, navigational, recreational or other public use. ()

02. No Encroachments Without Permit. No encroachment on, in or above the beds or waters of any navigable lake in the state may be made unless approval has been given as provided in these rules. An encroachment permit does not guarantee the use of public trust lands without appropriate compensation to the state of Idaho. ()

03. Permitting of Existing Encroachments. ()

a. The provisions of Title 58, Chapter 13, Section 58-1312, Idaho Code, apply. ()

b. Any new encroachments, or any unpermitted encroachments constructed after January 1, 1975, are subject to these rules. ()

013. -- 014. (RESERVED)

015. ENCROACHMENT STANDARDS.

01. Single-Family and Two-Family Docks. The following parameters govern the size and dimensions of single-family docks and two-family docks. ()

a. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark may exceed ten (10) feet in width, excluding the slip cut out. ()

b. Total surface decking area waterward of the natural or ordinary or artificial high water mark may not exceed seven hundred (700) square feet, including approach ramp and walkway for a single-family dock and may not exceed one thousand one hundred (1,100) square feet, including approach ramp and walkway for a two-family dock. ()

c. No portion of the docking facility may extend beyond the line of navigability. Shorter docks are encouraged whenever practical and new docks normally will be installed within the waterward extent of existing docks or the line of navigability. ()

d. A variance to the standards in this Subsection 015.01 may be approved by the Department when justified by site specific considerations, such as the distance to the established line of navigability. ()

02. Community Docks. ()

a. A community dock is considered a commercial navigational aid for purposes of processing the application. ()

b. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark may exceed ten (10) feet in width except breakwaters when justified by site specific conditions and approved by the Department. ()

c. A community dock may not have less than fifty (50) feet combined shoreline frontage. Moorage facilities will be limited in size as a function of the length of shoreline dedicated to the community dock. The surface decking area of the community dock is limited to the product of the length of shoreline multiplied by seven (7) square feet per lineal feet or a minimum of seven hundred (700) square feet. However, the Department, at its discretion, may limit the ultimate size when evaluating the proposal and public trust values. ()

d. If a breakwater will be incorporated into the structure of a dock, and a need for the breakwater can be demonstrated, the Department may allow the surface decking area to exceed the size limitations of Paragraph 015.02.c of these rules. ()

e. A person with an existing community dock that desires to change the facility to a commercial marina must submit the following information to the Department: ()

i. A new application for an encroachment permit. ()

ii. Text and drawings that describe which moorage will be public and which moorage will be private. ()

03. Commercial Marina. ()

a. Commercial marinas must have a minimum of fifty percent (50%) of their moorage available for use by the general public on either a first come, first served basis for free or rent, or a rent or lease agreement for a period of time up to one (1) year. Moorage contracts may be renewed annually, so long as a renewal term does not exceed one (1) year. Moorage for use by the general public may not include conditions that result in a transfer of ownership of moorage or real property, or require membership in a club or organization. ()

b. Commercial marinas that are converted to a community dock must conform to all the community dock standards, including frontage requirements and square footage restrictions. This change of use must be approved by the Department through a new encroachment permit prior to implementing the change. ()

c. If local city or county ordinances governing parking requirements for marinas have not been adopted, commercial marinas must provide a minimum of upland vehicle parking equivalent to one (1) parking space per two (2) public watercraft or float home moorages. If private moorage is tied to specific parking spaces or designated parking areas, then one (1) parking space per one (1) private watercraft or float home moorage must be provided. In the event of conflict, the local ordinances prevail. ()

d. If a commercial marina can be accessed from a road, marina customers must be allowed access via that road. ()

e. Moorage that is not available for public use as described in Paragraph 015.03.a. of these rules is private moorage. ()

f. When calculating the moorage percentage, the amount of public moorage is to be compared to the amount of private moorage. Commercial marinas with private float home moorage are required to provide either non-private float home moorage or two (2) public use boat moorages for every private float home moorage in addition to any other required public use boat moorages. ()

g. When private moorage is permitted, the public moorage must be of similar size and quality as private moorage, except for float home moorage as provided in Paragraph 015.03.f. ()

h. Commercial marinas with private moorage must form a condominium association, co-op, or other entity that owns and manages the marina, littoral rights, upland property sufficient to maintain and operate a marina, and private submerged land, if present. This entity is responsible for obtaining and maintaining an encroachment permit under these rules and a submerged lands lease under IDAPA 20.03.17, “Rules Governing Leases on State-Owned Submerged lands and Formerly Submerged Lands.” ()

i. Existing commercial marinas that desire to change their operations and convert some of their moorage to private use must keep at least fifty percent (50%) of their moorage available for use by the general public. This change in operations must be approved by the Department through a new encroachment permit prior to implementation of the change. The permit application must describe, in text and in drawings, which moorage will be public and which moorage will be private. ()

04. Covered Slip. ()

a. Covered slips, regardless of when constructed, may not have a temporary or permanent residential area. ()

b. Slip covers should have colors that blend with the natural surroundings and are approved by the Department. ()

c. Covered slips may not be supported by extra piling nor constructed with hard roofs. ()

d. Slip covers with permanent roofs and up to three (3) walls may be maintained or replaced at their current size if they were previously permitted or if they were constructed prior to January 1, 1975. These structures may not be expanded nor converted to boat garages. ()

e. Fabric covered slips must be constructed as canopies without sides unless the following standards are followed: ()

i. At least two (2) feet of open space is left between the bottom of the cover and the dock or pier surface; and ()

ii. Fabric for canopy and sides will transmit at least seventy-five percent (75%) of the natural light. ()

05. Boat Garage. ()

a. Boat garages are considered nonnavigational encroachments. ()

b. Applications for permits to construct new boat garages, expand the total square footage of the existing footprint, or raise the height will not be accepted unless the application is to support local emergency services. ()

c. Existing permitted boat garages may be maintained or replaced with the current square footage of their existing footprint and height. ()

d. Relocation of an existing boat garage will require a permit. ()

06. Breakwaters. Breakwaters built upon the lake for use in aid of navigation will not be authorized below the level of normal low water without an extraordinary showing of need, provided, however that this does not apply to floating breakwaters secured by piling and used to protect private property from recurring wind, wave, or ice damage, or used to control traffic in busy areas of lakes. The breakwater must be designed to counter wave actions of known wave heights and wave lengths. ()

07. Seawalls. Seawalls should be placed at or above the ordinary high water mark, or the artificial high water mark, if applicable. Seawalls are not an aid to navigation, and placement waterward of the ordinary or artificial

high water mark will generally not be allowed. ()

08. Riprap. ()

a. Riprap used to stabilize shorelines will consist of rock that is appropriately sized to resist movement from anticipated wave heights or tractive forces of the water flow. The rock must be sound, dense, durable, and angular rock resistant to weathering and free of fines. The riprap must overlie a distinct filter layer which consists of sand, gravel, or nonwoven geotextile fabric. The riprap and filter layer must be keyed into the bed below the ordinary or artificial high water mark, as applicable. If the applicant wishes to install riprap with different standards, they must submit a design that is signed and stamped for construction purposes by a professional engineer registered in the state of Idaho. ()

b. Riprap used to protect the base of a seawall or other vertical walls may not need to be keyed into the bed and may not require a filter layer, at the Department’s discretion. ()

09. Mooring Buoys. Buoys must be installed a minimum of thirty (30) feet away from littoral right lines of adjacent littoral owners. One (1) mooring buoy per littoral owner may be allowed. ()

10. Float Homes. ()

a. Applications for permits to construct new float homes, or to expand the total square footage of the existing footprint, will not be accepted. ()

b. Applications for relocation of float homes within a lake or from one (1) lake to another are subject to the following requirements: ()

i. Proof of ownership or long term lease of the uplands adjacent to the relocation site must be furnished to the Department. ()

ii. The applicant must show that all wastes and waste water will be transported to shore disposal systems by a method approved by the Idaho Department of Environmental Quality or the appropriate local health authority. Applicant must either obtain a letter from the local sewer district stating that the district will serve the float home or demonstrate that sewage will be appropriately handled and treated. Applicant must also provide a statement from a professional plumber licensed in the state of Idaho that the plumbing was designed in accordance with IDAPA 24.39.20, “Rules Governing Plumbing,” as incorporated by reference in Section 003 of these rules, installed properly, and has been pressure tested. ()

c. Encroachment applications and approved local permits are required for replacement of, or adding another story to, a float home. ()

d. All plumbing work on float homes must be done in accordance with IDAPA 24.29.20, “Rules Governing Plumbing” and IDAPA 29.39.10, “Rules of the Idaho Electrical Board,” as incorporated by reference in Section 003 of these rules. ()

e. All float homes in Idaho that connect with upland sewer or septic systems must implement the following standards by December 31, 2012: ()

i. The holding tank with pump or grinder unit must be adequately sealed to prevent material from escaping and to prevent lake water from entering. The tank lid must have a gasket or seal, and the lid must be securely fastened at all times unless the system is being repaired or maintained. An audible overflow alarm must also be installed. ()

ii. Grinders or solids handling pumps must be used to move sewage from the float home to the upland system. ()

iii. If solids handling pumps are used, they must have a minimum two (2) inch interior diameter discharge, and the pipe to the shoreline must also have a minimum two (2) inch interior diameter. Connectors used on

either end of this pipe may not significantly reduce the interior diameter. ()

iv. The pipeline from the float home to the shoreline must be a continuous line with no mechanical connections. Check valves and manual shutoff valves must be installed at each end of the line. Butt fused HDPE, two hundred (200) psi black polyethylene pipe, or materials with similar properties must be used. The pipeline must contain sufficient slack to account for the maximum expected rise and fall of the lake or river level. The pipeline must be buried in the lakebed for freeze protection where it will be exposed during periods of low water. Pipelines on the bed of the lake must be appropriately located and anchored so they will not unduly interfere with navigation or other lake related uses. ()

v. Manifolds below the ordinary, or artificial if applicable, high water mark that collect two (2) or more sewer lines and then route the discharge to the shore through a single pipe are not allowed. All float homes must have an individual sewer line from the float home to a facility on the shore. ()

f. All float home permittees will have their float homes inspected by a professional plumber licensed in the state of Idaho by December 31, 2012. The inspection will be documented with a report prepared by the inspector. The report will document whether or not the float homes meet the standards in Paragraph 015.10.e. of these rules, and will be provided to the Department before the above date. ()

g. A float home permittee must request an extension, and give cause for the extension, if their float home does not meet the standards in paragraph 015.01.e. of these rules by December 31, 2012. Extensions beyond December 31, 2016 will not be allowed. A permittee's failure to either request the extension, if needed, or to meet the December 31, 2016 deadline will be a violation subject to the provisions of Section 080 of these rules. ()

h. Construction or remodel work on a float home that costs fifty percent (50%) or more of its assessed value will require an encroachment application and construction drawings stamped by an engineer licensed in the state of Idaho. ()

11. Excavated or Dredged Channel. ()

a. Excavating, dredging, or redredging channels require an encroachment permit and are processed in accordance with Section 030 of these rules. ()

b. An excavated or dredged channel or basin to provide access to navigable waters must have a clear environmental, economic, or social benefit to the people of the state, and must not result in any appreciable environmental degradation. A channel or basin will not be approved if the cumulative effects of these features in the same navigable lake would be adverse to fisheries or water quality. ()

c. Whenever practical, such channels or basins must be located to serve more than one (1) littoral owner or a commercial marina; provided, however, that no basin or channel will be approved that will provide access for watercraft to nonlittoral owners. ()

12. ATONs. Aids to Navigation will conform to the requirements established by the United States Aid to Navigation system. ()

13. General Encroachment Standards. ()

a. Square Footage. The square footage limitations in Subsections 015.01 and 015.02 include all structures beyond the ordinary or artificial high water mark such as the approach, ramp, pier, dock, and all other floating or suspended structures that cover the lake surface, except for: ()

i. Boat lifts as allowed pursuant to Paragraph 015.13.b. ()

ii. Jet ski ramp, port, or lift as allowed pursuant to Paragraph 015.13.b. ()

iii. Slip covers. ()

- iv. Undecked portions of breakwaters. ()
- b. Boat Lifts and Jet Ski Lifts. ()
 - i. Single-family docks are allowed a single boat lift and two (2) jet ski lifts, or two (2) boat lifts, without adding their footprint to the dock square footage. Additional lifts will require that fifty percent (50%) of the footprint of the largest lifts be included in the allowable square footage of the dock or pier as per Subsection 015.01. ()
 - ii. Two-family docks are allowed two (2) boat lifts and four (4) jet ski lifts, or four (4) boat lifts, without adding their footprint to the dock square footage. Additional lifts will require that fifty percent (50%) of the footprint of the largest lifts be included in the allowable square footage of the dock or pier as per Subsection 015.01. ()
 - iii. A boat lift or jet ski lift within lines drawn perpendicular from the shore to the outside dock edges will not require a separate permit if the lift is outside the ten (10) foot adjacent littoral owner setback, the lift does not extend beyond the line of navigability, and the lift does not count toward the square footage of the dock as outlined in Subparagraphs 015.13.b.i. and 015.13.b.ii. The permittee must send a revised permit drawing with the lift location as an application to the Department. If the lift meets the above conditions, the application will be approved as submitted. Future applications must include the lifts. ()
 - iv. Community docks are allowed one (1) boat lift or two (2) jet ski lifts per moorage. Boat lifts placed outside of a slip must be oriented with the long axis parallel to the dock structure. Additional lifts will require that fifty percent (50%) of their footprint be included in the allowable square footage of the dock or pier as per Subsection 015.02. ()
- c. Angle from Shoreline. ()
 - i. Where feasible, all docks, piers, or similar structures must be constructed so as to protrude as nearly as possible at right angles to the general shoreline, lessening the potential for infringement on adjacent littoral rights. ()
 - ii. Where it is not feasible to place docks at right angles to the general shoreline, the Department will work with the applicant to review and approve the applicant's proposed configuration and location of the dock and the dock's angle from shore. ()
- d. Length of Community Docks and Commercial Navigational Encroachments. Docks, piers, or other works may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water, except that no structure may extend beyond the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the Director. If a normally accepted line of navigability has not been established through use, the Director may from time to time as he deems necessary, designate a line of navigability for the purpose of effective administration of these rules. ()
- e. Presumed Adverse Effect. It will be presumed, subject to rebuttal, that single-family and two-family navigational encroachments will have an adverse effect upon adjacent littoral rights if located closer than ten (10) feet from adjacent littoral right lines, and that commercial navigational encroachments, community docks or nonnavigational encroachments will have a like adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines. Written consent of the adjacent littoral owner or owners will automatically rebut the presumption. All boat lifts and other structures attached to the encroachments are subject to the above presumptions of adverse affects. ()
- f. Weather Conditions. Encroachments and their building materials must be designed and installed to withstand normally anticipated weather conditions in the area. Docks, piers, and similar structures must be adequately secured to pilings or anchors to prevent displacement due to ice, wind, and waves. Flotation devices for docks, float homes, etc. must be reasonably resistant to puncture and other damage. ()

g. Markers. If the Department determines that an encroachment is not of sufficient size to be readily seen or poses a hazard to navigation, the permit will specify that aids to navigation be used to clearly identify the potential hazard. ()

h. Overhead Clearance. ()

i. Overhead clearance between the natural or ordinary high water mark or the artificial high water mark, if there be one, and the structure or wires must be sufficient to pass the largest vessel that may reasonably be anticipated to use the subject waters in the vicinity of the encroachment. In no case will the clearance be required to exceed thirty (30) feet unless the Department determines after public hearing that it is in the overall public interest that the clearance be in excess of thirty (30) feet. Irrespective of height above the water, approval of structures or wires presenting a hazard for boating or other water related activities may be conditioned upon adequate safety marking to show clearance and otherwise to warn the public of the hazard. The Department will specify in the permit the amount of overhead clearance and markings required. ()

ii. When the permit provides for overhead clearance or safety markings under Paragraph 015.13.h., the Department will consider the applicable requirements of the United States Coast Guard, the Idaho Transportation Department, the Idaho Public Utilities Commission and any other applicable federal, state, or local regulations. ()

i. Beaded Foam Flotation. Beaded foam flotation must be completely encased in a manner that will maintain the structural integrity of the foam. The encasement must be resistant to the entry of rodents. ()

14. Floating Toys. ()

a. Encroachment permits are not required for floating toys, except where noted in Paragraph 015.14.b. Counties and cities may regulate floating toys for public safety and related concerns. ()

b. A floating toy becomes a nonnavigational encroachment, and an encroachment permit is required, when one (1) of the following occurs: ()

i. It is anchored to the bed of the lake with a device that requires equipment to remove it from the bed of the lake, or; ()

ii. It is located waterward of the line of navigability for more than twenty-four (24) consecutive hours. ()

15. Lake Specific Encroachment Permit Terms. ()

a. The Department may use encroachment permit conditions specific to individual lakes if the permit conditions are needed to protect public trust values and the permit condition is approved by the Land Board. ()

b. Lake specific encroachment permit conditions may supplement, negate, or alter encroachment standards established in Section 015 of these rules. ()

c. Lake specific encroachment permit conditions will be used to assist with implementing lake management plans authorized by Title 39, Chapter 66, Idaho Code; Title 39, Chapter 85, Idaho Code; Title 67, Chapter 43, Idaho Code; and Title 70, Chapter 2, Idaho Code. The purpose for using such lake specific permit conditions is to address lake specific environmental concerns that require attention and create a need for a variance from what is allowed on other lakes. ()

d. Lake specific encroachment permit terms may be read at the Idaho Department of Lands website: <http://www.idl.idaho.gov/>. ()

016. -- 019. (RESERVED)

020. APPLICATIONS.

01. Encroachment Applications. No person shall hereafter make or cause to be made any encroachment on, in or above the beds or waters of any navigable lake in the state of Idaho without first making application to and receiving written approval from the department. The placing of dredged or fill material, refuse or waste matter intended as or becoming fill material, on or in the beds or waters of any navigable lake in the state of Idaho shall be considered an encroachment and written approval by the department is required. If demolition is required prior to construction of the proposed encroachment, then the application must describe the demolition activities and the steps that will be taken to protect water quality and other public trust values. No demolition activities may proceed until the permit is issued. ()

02. Signature Requirement. Only persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits. A person who has been specifically granted littoral rights or dock rights from a littoral owner shall also be eligible for an encroachment permit; the grantor of such littoral rights, however, shall no longer be eligible to apply for an encroachment permit. Except for waterlines or utility lines, the possession of an easement to the shoreline does not qualify a person to be eligible for an encroachment permit. ()

03. Other Permits. Nothing in these rules shall excuse a person seeking to make an encroachment from obtaining any additional approvals lawfully required by federal, local or other state agencies. ()

04. Repairs, Reinstallation of Structures. No permit is required to clean, maintain, or repair an existing permitted encroachment, but a permit is required to completely replace, enlarge, or extend an existing encroachment. Replacement of single-family and two-family docks may not require a permit if they meet the criteria in Section 58-1305(e), Idaho Code. Reinstalling the top or deck of a dock, wharf or similar structure shall be considered a repair; reinstallation of winter damaged or wind and water damaged pilings, docks, or float logs shall be considered a repair. Repairs, or replacements under Section 58-1305(e), Idaho Code, that adversely affect the bed of the lake will be considered a violation of these rules. ()

05. Dock Reconfiguration. ()

a. Rearrangement of single-family and two-family docks will require a new application for an encroachment permit. ()

b. Rearrangement of community docks and commercial navigational encroachments may not require a new application for an encroachment permit if the changes are only internal. The department shall be consulted prior to modifications being made, and shall use the following criteria to help determine if a new permit must be submitted: ()

i. Overall footprint does not change in dimension or orientation; ()

ii. No increase in the square footage, as described in the existing permit and in accordance with Paragraph 015.13.a., occurs. This only applies to community docks; ()

iii. The entrances and exits of the facility do not change. ()

06. Redredging. Redredging a channel or basin shall be considered a new encroachment and a permit is required unless redredging is specifically authorized by the outstanding permit. Water quality certification from the Idaho Department of Environmental Quality is required regardless of how redredging is addressed in any existing or future permit. ()

07. Forms, Filing. Applications and plans shall be filed on forms provided by the Department together with filing fees and costs of publication when required by these rules. Costs of preparation of the application, including all necessary maps and drawings, shall be paid by the applicant. ()

a. Plans shall include the following information at a scale sufficient to show the information requested: ()

i. Lakebed profile in relationship to the proposed encroachment. The lakebed profile shall show the

- summer and winter water levels. ()
- ii. Copy of most recent survey or county plat showing the full extent of the applicant’s lot and the adjacent littoral lots. ()
 - iii. Proof of current ownership or control of littoral property or littoral rights. ()
 - iv. A general vicinity map. ()
 - v. Scaled air photos or maps showing the lengths of adjacent docks as an indication of the line of navigability, distances to adjacent encroachments, and the location and orientation of the proposed encroachment in the lake. ()
 - vi. Total square footage of proposed docks and other structures, excluding pilings, that cover the lake surface. ()
 - vii. Names and current mailing addresses of adjacent littoral landowners. ()
- b.** Applications must be submitted or approved by the littoral owner or, if the encroachment will lie over or upon private lands between the natural or ordinary high water mark and the artificial high water mark, the application must be submitted or approved by the owner of such lands. When the littoral owner is not the applicant, the application shall bear the owner’s signature as approving the encroachment prior to filing. ()
- c.** If more than one (1) littoral owner exists, the application must bear the signature of all littoral owners, or the signature of an authorized officer of a designated homeowner’s or property management association. ()
- d.** Applications for noncommercial encroachments intended to improve waterways for navigation, wildlife habitat and other recreational uses by members of the public must be filed by any municipality, county, state, or federal agency, or other entity empowered to make such improvements. Application fees are not required for these encroachments. ()
- e.** The following applications shall be accompanied by the respective nonrefundable filing fees together with a deposit toward the cost of newspaper publication, which deposit shall be determined by the director at the time of filing: ()
- i. Nonnavigational encroachments require a fee of one thousand dollars (\$1,000); except that nonnavigational encroachments for bank stabilization and erosion control require a fee of five hundred fifty dollars (\$550). ()
 - ii. Commercial navigational encroachments require a base fee of two thousand dollars (\$2,000). If the costs of processing an application exceed this amount, then the applicant may be charged additional costs as allowed by Title 58, Chapter 13, Section 58-1307, Idaho Code; ()
 - iii. Community navigational encroachments require a fee of two thousand dollars (\$2,000); and ()
 - iv. Navigational encroachments extending beyond the line of navigability require a fee of one thousand dollars (\$1,000). ()
- f.** Applicants shall pay any balance due on publication costs before written approval will be issued. The Department shall refund any excess at or before final action on the application. ()
- g.** Application for a single-family or two-family dock not extending beyond the line of navigability or a nonnavigational encroachment for a buried or submerged water intake line serving four or less households shall be accompanied by a nonrefundable filing fee of four hundred twenty-five dollars (\$425). ()

h. No publication cost is required for application for noncommercial navigational encroachment not extending beyond the line of navigability or for application for installation of buried or submerged water intake lines and utility lines. ()

i. Applications and plans shall be stamped with the date of filing. ()

j. Applications that are incomplete, not in the proper form, not containing the required signature(s), or not accompanied by filing fees and costs of publication when required, shall not be accepted for filing. The department shall send the applicant a written notice of incompleteness with a listing of the application's deficiencies. The applicant will be given thirty (30) days from receipt of the notice of incompleteness to resubmit the required information. The deadline may be extended with written consent of the department. If the given deadline is not met, the department will notify the applicant that the application has been denied due to lack of sufficient information. The applicant may reapply at a later date, but will be required to pay another filing fee and publication fee, if applicable. ()

021. -- 024. (RESERVED)

025. PROCESSING OF APPLICATIONS FOR SINGLE-FAMILY AND TWO-FAMILY NAVIGATIONAL ENCROACHMENTS WITHIN LINE OF NAVIGABILITY.

01. Single-Family and Two-Family Navigational Encroachments. Applications for single-family and two-family navigational encroachments not extending beyond the line of navigability will be processed with a minimum of procedural requirements and shall not be denied except in the most unusual of circumstances. No newspaper publication, formal appearance by the applicant, or hearing is contemplated. ()

02. Notification of Adjacent Littoral Owners. The department will provide a copy of the application to the littoral owners immediately adjacent to the applicant's property. If the applicant owns one (1) or more adjacent lots, the department shall notify the owner of the next adjacent lot. If the proposed encroachment may infringe upon the littoral rights of an adjacent owner, the department will provide notice of the application by certified mail, return receipt requested; otherwise, the notice will be sent by regular mail. Notification will be mailed to the adjacent littoral owners' usual place of address, which, if not known, will be the address shown on the records of the county treasurer or assessor. The applicant may submit the adjacent littoral owners' signatures, consenting to the proposed encroachment, in lieu of the department's notification. ()

03. Written Objections. ()

a. If an adjacent littoral owner files written objections to the application with the department within ten (10) days from the date of service or receipt of notice of the completed application, the department shall fix a time and a place for a hearing. In computing the time to object, the day of service or receipt of notice of the application shall not be counted. Objections must be received within the ten (10) day period by mail or hand delivery in the local department office or the director's office in Boise. If the last day of the period is Saturday, Sunday or a legal holiday, the time within which to object shall run until the end of the first business day thereafter. ()

b. The applicant and any objectors may agree to changes in the permit that result in the objections being withdrawn. Department employees may facilitate any such agreement. Participation by department personnel in this informal mediation shall not constitute a conflict of interest for participation in the hearing process. A withdrawal of objections must be in writing, completed prior to a scheduled hearing, and contain: ()

i. Signatures of the applicant and the objecting party; ()

ii. A description of the changes or clarifications to the permit that are acceptable to the applicant, the objecting party, and the department. ()

04. Unusual Circumstances. Even though no objection is filed by an adjacent littoral owner to a noncommercial navigational encroachment, if the director deems it advisable because of the existence of unusual circumstances, he may require a hearing. ()

05. Hearings. Hearings fixed by the director following an objection pursuant to Subsection 025.03 or the Director's own determination pursuant to Subsection 025.04 shall be fixed as to time and place, but no later than sixty (60) days from date of acceptance for filing of the application. At the hearing the applicant and any adjacent riparian owner filing timely objections may appear personally or through an authorized representative and present evidence. The department may also appear and present evidence at the hearing. In such hearings the hearing coordinator shall act as a fact finder and not a party. The Director, at his discretion, will designate a Department representative to sit as the hearing coordinator. Provided, however, that the parties may agree to informal disposition of an application by stipulation, agreed settlement, consent order, or other informal means. ()

06. Decision Following a Hearing. The director shall, within forty-five (45) days after close of the hearing provided for in Subsections 025.03 or 025.04 render a final decision and give notice thereof to the parties appearing before him either personally or by certified or registered mail. The final decision shall be in writing. ()

07. Disposition Without Hearing. If a hearing is not held under Subsection 025.03 or Subsection 025.04, then the department shall act upon a complete application filed under Subsection 025.01 as expeditiously as possible but no later than sixty (60) days from acceptance of the application. Failure to act within this sixty (60) day timeframe shall constitute approval of the application. Applications determined to be incomplete under Subsection 020.07 are not subject to the sixty (60) day timeframe until the information requested by the department and required by the rules has been submitted. ()

08. Judicial Review. Any applicant aggrieved by the Director's final decision, or an aggrieved party appearing at a hearing, shall have a right to have the proceedings and final decision reviewed by the district court in the county where the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final decision. An adjacent littoral owner shall be required to deposit an appeal bond with the court, in an amount to be determined by the court but not less than five hundred dollars (\$500) insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the action of the director. The applicant need post no bond with the court to prosecute an appeal. ()

026. -- 029. (RESERVED)

030. PROCESSING OF APPLICATIONS FOR ALL OTHER TYPES OF ENCROACHMENTS.

01. Nonnavigational, Community, and Commercial Navigational Encroachments. Within ten (10) days of receiving a complete application for a nonnavigational encroachment, a community dock, a commercial navigational encroachment, or a navigational encroachment extending beyond the line of navigability, the Department will cause to be published a notice of application once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the encroachment is proposed. If, however, the Director orders a hearing on the application within the time for publication of the above notice, the Department will dispense with publication of the notice of the application and proceed instead to publish a notice of the public hearing as provided in Subsection 030.05. Applications for installation of buried or submerged water intake lines and utility lines are exempt from the newspaper publication process. ()

02. Encroachments Not in Aid of Navigation. Encroachments not in aid of navigation in navigable lakes will normally not be approved by the Department and will be considered only in cases involving major environmental, economic, or social benefits to the general public. Approval under these circumstances is authorized only when consistent with the public trust doctrine and when there is no other feasible alternative with less impact on public trust values. ()

03. Notifications. Upon request or when the Department deems it appropriate, the Department may furnish copies of the application and plans to federal, state and local agencies and to adjacent littoral owners, requesting comment on the likely effect of the proposed encroachment upon adjacent littoral property and public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, water quality, etc. ()

04. Written Comments or Objections. Within thirty (30) days of the first date of publication, an

agency, adjacent littoral owner or lessee, or any resident of the state of Idaho may do one (1) of the following: ()

a. Notify the Department of their opinions and recommendation, if any, for alternate plans they believe will be economically feasible and will accomplish the purpose of the proposed encroachment without unreasonably adversely affecting adjacent littoral property or public trust values; or ()

b. File with the Department written objections to the proposed encroachment and request a public hearing on the application. The hearing must be specifically requested in writing. Any person or agency requesting a hearing on the application must deposit and pay to the Department an amount sufficient to cover the cost of publishing notice of hearing provided in Subsection 030.05. ()

05. Hearing. Notice of the time and place of public hearing on the application will be published by the Director once a week for two (2) consecutive weeks in a newspaper in the county in which the encroachment is proposed, which hearing will be held within ninety (90) days from the date the application is accepted for filing. ()

06. Hearing Participants. Any person may appear at the public hearing and present oral testimony. Written comments will also be received by the Department. ()

07. Decision After Hearing. The Director will render a final decision within thirty (30) days after close of the public hearing. A copy of his final decision will be mailed to the applicant and to each person or agency appearing at the hearing and giving oral or written testimony in support of or in opposition to the proposed encroachment. ()

08. Decision Where No Hearing. ()

a. In the event no objection to the proposed encroachment is filed with the Department and no public hearing is requested under Subsection 030.04, or ordered by the Director under Subsection 030.01, the Department, based upon its investigation and considering the economics of the navigational necessity, justification or benefit, public or private, of such proposed encroachment as well as its detrimental effects, if any, upon adjacent real property and public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, water quality, etc. will prepare and forward to the applicant its decision. ()

b. The applicant, if dissatisfied with the Director's decision, has twenty (20) days from the date of the Director's decision to request reconsideration thereof. If reconsideration is required, the Director will set a time and place for a reconsideration hearing, not to exceed thirty (30) days from receipt of the request, at which time and place the applicant may appear in person or through an authorized representative and present briefing and oral argument. Upon conclusion of reconsideration, the Director will, by personal service or by registered or certified mail, notify the applicant of his final decision. ()

09. Judicial Review. Any applicant aggrieved by the Director's final decision, or an aggrieved party who appeared at a hearing, has the right to have the proceedings and final decision of the Director reviewed by the district court in the county in which the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final decision. The applicant need post no bond with the court to prosecute an appeal. Any other aggrieved party is required to deposit an appeal bond with the court, in an amount to be determined by the court but not less than five hundred dollars (\$500), insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the action of the Director. ()

10. Factors in Decision. In recognition of continuing private property ownership of lands lying between the natural or ordinary high water mark and the artificial high water mark, if present, the Department will consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors to be considered in granting or denying an application for either a nonnavigational encroachment or a commercial navigational encroachment not extending below the natural or ordinary high water mark. If no objections have been filed to the application and no public hearing has been requested or ordered by the Director, or, if upon reconsideration of a decision disallowing a permit, or following a public hearing, the Department determines

that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, the permit will be granted. ()

031. -- 034. (RESERVED)

035. TEMPORARY PERMITS.

01. Applicability. Temporary permits are used for construction, temporary activities related to permitted encroachments, or other activities approved by the Department. ()

02. Permit Term. These permits are generally issued for less than one (1) year, but longer terms may be approved by the Department and permits may be extended with Department approval. ()

03. Bonding. The Department may require bonds for temporary permits. ()

04. Fee. The board sets fees for temporary permits, but the fees will not be greater than the amounts listed for the respective permit types in Subsection 020.07. Fee information is available on the Internet at www.idl.idaho.gov. ()

05. Processing. These permits may be advertised if the Department deems it appropriate, with the applicant paying the advertising fee as per Subsection 020.07. ()

036. -- 049. (RESERVED)

050. RECORDATION.

Recordation of an issued permit in the records of the county in which an encroachment is located is a condition of issuance of a permit and proof of recordation must be furnished to the Department by the permittee before a permit becomes valid. Such recordation is at the expense of the permittee. Recordation of an issued permit serves only to provide constructive notice of the permit to the public and subsequent purchasers and mortgagees, but conveys no other right, title, or interest on the permittee other than validation of said permit. ()

051. -- 054. (RESERVED)

055. LEASES AND EASEMENTS.

01. Lease or Easement Required. As a condition of the encroachment permit, the Department may require a submerged land lease or easement for use of any part of the state-owned bed of the lake where such lease or easement is required in accordance with “Rules Governing Leases on State-owned Submerged Lands and Formerly Submerged Lands,” IDAPA 20.03.17, or “Rules For Easements On State-owned Submerged Lands And Formerly Submerged Lands,” IDAPA 20.03.09. A lease or easement may be required for uses including, but not limited to, commercial uses. Construction of an encroachment authorized by permit without first obtaining the required lease or easement constitutes a trespass upon state-owned public trust lands. This rule is intended to grant the state recompense for the use of the state-owned bed of a navigable lake where reasonable and it is not intended that the Department withhold or refuse to grant such lease or easement if in all other respects the proposed encroachment would be permitted. ()

02. Seawalls, Breakwaters, Quays. Seawalls, breakwaters, and quays on or over state-owned beds, designed primarily to create additional land surface, will be authorized, if at all, by an encroachment permit and submerged land lease or easement, upon determination by the Department to be an appropriate use of submerged lands. ()

056. -- 059. (RESERVED)

060. INSTALLATION.

01. Installation Only After Permit Issued. Installation or on site construction of an encroachment may commence only when the permit is issued or when the department notifies the applicant in writing that

installation may be commenced or when the department has failed to act in accordance with Subsection 025.07.

()

02. Removal of Construction Waste.

()

a. Pilings, anchors, old docks, and other structures or waste at the site of the installation or reinstallation and not used as a part of the encroachment shall be removed from the water and lakebed at the time of the installation or reinstallation to a point above normal flood water levels; provided, however, that this shall not be construed to prevent the use of trash booms for the temporary control of floatable piling ends and other floatable materials in a securely maintained trash boom, but approval for a trash boom shall be required as part of a permit.

()

b. Demolition of encroachments shall be done in a manner that does not unnecessarily damage the lakebed or shoreline. Demolition work must comply with water quality standards administered by the Department of Environmental Quality.

()

03. Compliance with Permit. All work shall be done in accordance with these rules, and the application submitted, and is subject to any condition specified in the permit.

()

04. Sunset Clause. All activities authorized within the scope of the encroachment permit must be completed within three (3) years of issuance date. If the activities are not completed within three (3) years, the permit shall automatically expire unless it was previously revoked or extended by the department. The department may issue a permit with an initial sunset clause that exceeds three (3) years, if the need is demonstrated by the applicant.

()

061. -- 064. (RESERVED)

065. ASSIGNMENTS.

01. Assignment of Encroachment Permit. Encroachment permits may be assigned upon approval of the department provided that the encroachment conforms with the approved permit. The assignor and assignee must complete a department assignment form and forward it to the appropriate area office.

()

02. Assignment Fee. The assignment fee is three hundred dollars (\$300) and is due at the time the assignment is submitted to the department.

()

03. Approval Required for Assignment. An assignment is not valid until it has been approved by the department.

()

04. Assignment With New Permit. Encroachments not in compliance with the approved permit may be assigned only if:

()

a. An application for a new permit to correct the noncompliance is submitted at the same time.

()

b. The assignee submits written consent to bring the encroachment permit into compliance.

()

066. -- 069. (RESERVED)

070. MISCELLANEOUS.

01. Water Resources Permit. A permit to alter a navigable stream issued by the Department of Water Resources pursuant to Title 42, Chapter 38, Idaho Code, may, in appropriate circumstances, contain language stating the approval of the Department of Lands to occupy the state-owned bed of the navigable stream.

()

02. Dredge and Placer Mining. Department authorization is required for dredge and placer mining in the lands, lakes and rivers within the state, whether or not the state owns the beds, pursuant to Title 47, Chapter 13,

Idaho Code. ()

03. Mineral Leases. Littoral rights do not include any right to remove bed materials from state-owned lakebeds. Applications to lease minerals, oil, gas and hydrocarbons, and geothermal resources within the state-owned beds of navigable lakes will be processed by the Department pursuant to Title 47, Chapters 7, 8 and 16, Idaho Code, and rules promulgated thereunder. ()

04. Other Laws and Rules. The permittee must comply with all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources. ()

071. -- 079. (RESERVED)

080. VIOLATIONS - PENALTIES.

01. Cease and Desist Order. When the Department determines that a violation of these rules is occurring due to the ongoing construction of an unauthorized encroachment or an unauthorized modification of a permitted encroachment, it may provide the landowner, contractor, or permittee with a written cease and desist order that consists of a short and plain statement of what the violation is, the pertinent legal authority, and how the violation may be rectified. This order will be served by personal service or certified mail. The cease and desist order is used to maintain the status quo pending formal proceedings by the Department to rectify the violation. ()

02. Notice of Noncompliance/Proposed Permit Revocation. When the Department determines that these rules have been violated, a cause exists for revocation of a lake encroachment permit, or both of these have occurred, it will provide the permittee or offending person with a notice of noncompliance/proposed permit revocation that consists of a short and plain statement of the violation including any pertinent legal authority. This notice also informs the permittee or offending person of what steps are needed to either bring the encroachment into compliance, if possible, or avoid revocation, or both. ()

03. Noncompliance Resolution. The Department will attempt to resolve all noncompliance issues through conference with the permittee or other involved party. Any period set by the parties for correction of a violation is binding. If the Department is unsuccessful in resolving the violations, then the Department may pursue other remedies under Section 080 of these rules. ()

04. Violations. The following acts or omissions subject a person to a civil penalty as allowed by Title 58, Chapter 13, Section 58-1308, Idaho Code: ()

a. A violation of the provisions of Title 58, Chapter 13, Idaho Code, or of the rules and general orders adopted and applicable to navigable lakes; ()

b. A violation of any special order of the Director applicable to a navigable lake; or ()

c. Refusal to cease and desist from any violation in regards to a navigable lake after having received a written cease and desist order from the Department by personal service or certified mail, within the time provided in the notice, or within thirty (30) days of service of such notice if no time is provided. ()

d. Willfully and knowingly falsifying any records, plans, information, or other data required by these rules. ()

e. Violating the terms of an encroachment permit. ()

05. Injunctions, Damages. The Board expressly reserves the right, through the Director, to seek injunctive relief under Title 58, Chapter 13, Section 58-1308, Idaho Code and mitigation of damages under Title 58, Chapter 13, Section 58-1309, Idaho Code, in addition to the civil penalties provided for in Subsection 080.04 of these rules. ()

06. Mitigation, Restoration. The board expressly reserves the right, through the Director, to require mitigation and restoration of damages under Title 58, Chapter 13, Section 58-1309, Idaho Code, in addition to the

civil penalties and injunctive relief provided for in Subsections 080.04 and 080.05 of these rules. The Department may consult with other state agencies to determine the appropriate type and amount of mitigation and restoration required. ()

07. Revocation of Lake Encroachment Permits. ()

a. The Department may institute an administrative action to revoke a lake encroachment permit for violation of the conditions of a permit, or for any other reason authorized by law. All such proceedings will be conducted as contested case hearings subject to the provisions of Title 67, Chapter 52, Idaho Code, and IDAPA 20.01.01, “Rules of Practice and Procedure before the State Board of Land Commissioners.” ()

b. A hearing officer appointed to conduct the revocation hearing prepares recommended findings of fact and conclusions of law and forward them to the Director for final adoption or rejection. ()

c. An aggrieved party who appeared and testified at a hearing has the right to have the proceedings and final decision of the Director reviewed by the district court of the county in which the violation or revocation occurred by filing a notice of appeal within twenty-eight (28) days from the date of the final decision. ()

081. -- 999. (RESERVED)

20.03.05 – RIVERBED 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 and 58, Chapters 7 and 1, Sections 47-710, 47-714 and 58-104, Idaho Code. ()

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). ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.05, “Riverbed Mineral Leasing in Idaho.” ()

02. Where Applicable. These rules apply to the exploration and extraction of precious metals, minerals, and construction materials from a placer deposit situated in state-owned submerged lands. ()

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

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. ()

02. Board. The State Board of Land Commissioners or its authorized representative. ()

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. ()

04. Commercial. The type of operation that engages in the removal of construction materials 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. ()

05. Construction Materials. Sand, gravel, cobble, boulders, and other similar materials. ()

06. Director. The Director of the Idaho Department of Lands or his authorized representative. ()

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. ()

08. Natural or Ordinary High Water Mark. The line that the water impresses upon the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. ()

09. Person. ()

- a. An individual of legal age; ()
- b. Any firm, association or corporation qualified to do business in the state of Idaho; or ()
- c. Any public agency or government unit, including without limitation, municipalities. ()

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. ()

11. River Mile. Five thousand two hundred eighty (5,280) feet of contiguous riverbed as measured along the approximate center of the river. ()

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. ()

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

011. -- 014. (RESERVED)

015. CASUAL EXPLORATION AND RECREATIONAL MINING.

01. Lands Open. All beds of navigable rivers 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. ()

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 (2") inch intake or less, pans, rockers, hand tools, hand operated sluices and other similar equipment. ()

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

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. ()

05. 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. ()

016. EXPLORATION LOCATIONS.

01. Lands Open. The beds of navigable rivers 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. ()

02. Size of Location. Each exploration location is limited to one-half (1/2) mile in length. ()

03. Record Keeping Requirement. 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. ()

04. When No Written Approval Required. No written approval is required from the Director for exploratory activity 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 performed under a Recreational Mining Permit as authorized under Section 015 does not serve to establish any basis for an exploration location. ()

05. When Written Approval Required. Written approval is required from the Director 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. ()

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. ()

02. Approval Required Before Operations. Prior to entry upon navigable rivers, operators are required to have written approval from the Director. ()

03. Bonding. Approved operations must be bonded as outlined in Subsection 040.01. ()

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. ()

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, 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. ()

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. ()

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. ()

026. -- 029. (RESERVED)

030. RENTAL AND ROYALTY AND LATE PAYMENTS.

01. Minimum Annual Rental. The minimum annual rental is one hundred sixty dollars (\$160) for any area up to one hundred sixty (160) acres, and one dollar (\$) for each additional acre. ()

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. ()

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. ()

04. Royalty Schedule. The appropriate Board approved royalty schedule for the commodity mined must be attached and made a part of the mineral lease. ()

05. 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. ()

031. 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. ()

02. Construction Materials. Leases for construction materials may be limited to a smaller size tract at the Board's discretion. ()

032. -- 034. (RESERVED)

035. ASSIGNMENTS.

01. Prior Written Approval. No location or lease assignment is be valid until approved in writing by the Director, and no assignment takes effect until after the first day of the month following its approval. ()

02. Partition. A location or lease may be 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, 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. ()

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. ()

036. -- 039. (RESERVED)

040. BOND.

01. Minimum Bond. Concurrent with the execution of the lease by the lessee, lessee must furnish to the Director a good and sufficient bond or undertaking 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, in favor of the state of Idaho, 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). ()

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. ()

03. Motorized Exploration. Motorized exploration on a site under 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. ()

041. -- 044. (RESERVED)

045. FEES.

The following fees apply:

()

01. Nonrefundable Application Fee for Lease. Fifty dollars (\$50) per application. ()

02. Nonrefundable Fee for Advertising Application. Forty-five dollars (\$45) per application. ()

03. Exploration Location Fee. Two hundred fifty dollars (\$250) per location. ()

04. Application Fee for Approval of Assignment. Fifty dollars (\$50) per lease or location involved in the assignment. ()

046. -- 999. (RESERVED)

20.03.08 – EASEMENTS ON STATE-OWNED LANDS

000. LEGAL AUTHORITY.

These rules are promulgated pursuant to and are to be construed in a manner consistent with the duties and responsibilities of the Idaho State Board of Land Commissioners as set forth in Idaho Code Title 58, Chapters 1 and 6, and Article IX, Sections 7 and 8 of the Idaho Constitution. ()

001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 20.03.08, “Easements on State-Owned Lands.” ()

02. **Scope.** These rules set forth procedures concerning the issuance of easements on all lands within the jurisdiction of the Idaho State Board of Land Commissioners except for state-owned submerged lands and formerly submerged lands. Further, these rules do not apply to easements for hydroelectric projects. ()

03. **Valid Existing Rights.** These rules are not be construed as affecting any valid existing rights. ()

002. ADMINISTRATIVE APPEALS.

An applicant aggrieved by a decision of the Director under these rules may request a hearing before the Board, but must do so within thirty (30) days after receipt of written notice of the Director’s decision. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Board.** The Idaho State Board of Land Commissioners or such representative as may be designated by the Board. ()

02. **Damage or Impairment of Rights to the Remainder of the Property.** The diminution of the market value of the remainder area, in the case of a partial taking. ()

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

04. **Director.** The Director of the Department of Lands or such representative as may be designated by the Director. ()

05. **Easement.** A non-possessory interest in land for a specific purpose. Such interest may be limited to a specified term. ()

06. **Endowment Lands.** Land grants made to the state of Idaho by the Congress of the United States, or real property subsequently acquired through land exchange or purchase, for the sole use and benefit of the public schools and certain other institutions of the state, comprising nine (9) grants altogether. ()

07. **Market Value.** The most probable price at a specified date, in cash, or on terms reasonably equivalent to cash, for which the property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. ()

08. **State-Owned Lands.** All lands within the jurisdiction of the Idaho State Board of Land Commissioners except for state-owned submerged lands or formerly submerged lands. ()

09. **Temporary Permit.** An instrument authorizing a specific use on state land usually issued for five (5) years or less, but that may be issued for up to ten (10) years. ()

011. -- 019. (RESERVED)

020. POLICY.

01. **Easements Required.** Easements are required for all rights-of-way of a permanent nature over state-owned land. Easements will not be granted when temporary permits will serve the required purpose or when a lease is appropriate. ()

02. Prior Grants. The Director will recognize easements on state endowment lands by grant of the federal government, or subsequent landowners, prior to title vesting with the State or by eminent domain. ()

03. Existing Easements. These rules do not apply to any use, facility or structure described in an existing easement. For amendment of an existing easement, see Section 025. ()

04. Director's Discretion. The Director may grant an easement over state-owned land for any legitimate public or private purpose upon payment of appropriate compensation. ()

05. Reciprocal Easements. The Director may seek reciprocal easements for access to state-owned lands from applicants for easements over state-owned lands. The value of the easement acquired by the state may be applied towards the cost of the easement acquired from the state. ()

06. Interest Granted. An easement grants only such interest to the grantee as is specified in the instrument, including the right to use the property for the specified purpose without interference by the grantor. The right to use the property for all other purposes not inconsistent with the grantee's interest remains with the grantor. ()

07. Limit of Director's Discretion. The Director may grant and renew easements in all cases except when the compensation will exceed twenty-five thousand dollars (\$25,000) exclusive of the value of timber and payment for any damage or impairment of rights to the remainder of the property. ()

08. Width of Easement. The width of any easement granted may not be less than eight (8) feet. ()

09. Recordation. The Department will record the easement, or easement release, with the appropriate county recorder's office. ()

10. Term Easement. The Director may grant an easement that is issued for a specific time period of ten (10) to fifty-five (55) years. ()

021. FEES AND COMPENSATION.

01. Application Fee. The application fee for new, renewed, or amended easements is one hundred dollars (\$100) and is collected from all applicants. This application fee is in addition to the easement compensation and appraisal costs, and is non-refundable unless the Director determines that the land applied for is not under the jurisdiction of the Board. ()

02. Easement Fee. The compensation for permanent easements over state-owned lands covered by these rules is as follows:

	COMPENSATION
Highways, roads, railroads, reservoirs, trails, canals, ditches, or any other improvements that require long term, exclusive or near exclusive use and occupation of the right of way	Up to 100% of land value plus payment for any damage or impairment of rights to the remainder of the property as determined by the Director and supported by specific data such as an appraisal
Overhead transmission and power lines	Up to 100% of land value depending on the exclusivity of use as determined by the Director and supported by specific data such as an appraisal plus payment for any damage or impairment of rights to the remainder of the property as determined by the Director and supported by data such as an appraisal

	COMPENSATION
Buried installations - cables, pipelines, sewerlines, waterlines	Up to 100% of land value, depending on the exclusivity use as determined by the Director and supported by specific data such as an appraisal plus payment for any damage or impairment of rights to the remainder of the property, as determined by the Director and supported by specific data such as an appraisal

()

03. Appraisal Required. An appraisal of an easement may be required where, in the opinion of the Director, the easement value will exceed the minimum compensation fee of five hundred dollars (\$500). ()

04. Performance of Appraisal. The appraisal of the easement will normally be performed by qualified department staff. If so desired by the applicant, and agreed to by the Director, the applicant may provide the appraisal that is acceptable to and meets the specifications set by the Director. ()

05. Appraisal Costs. Where the appraisal is performed by department staff, the appraisal is two hundred fifty dollars (\$250) for a market analysis, five hundred dollars (\$500) for a short form appraisal, and one thousand dollars (\$1,000) for appraisals of easements requiring Board approval. The appraisal cost is in addition to those costs outlined in Subsections 021.01 and 021.02. In no case will an applicant be charged more than one thousand dollars (\$1000) for an appraisal of an easement conducted by departmental staff. ()

06. Term Easements. Compensation for term easements will be established by appraisal. ()

07. Minimum Compensation. The minimum compensation for any easement is five hundred dollars (\$500), not including the application fee and appraisal costs. ()

022. -- 024. (RESERVED)

025. EASEMENT AMENDMENT.

Amendment of an existing easement must be processed in the same manner as a new application. Amendment includes change of use, widening the easement area, or changing the location of the easement area. Amendment does not include ordinary maintenance, repair, or replacement of existing structures such as poles, wires, cables, and culverts. ()

026. -- 029. (RESERVED)

030. EMERGENCY WORK.

The grantee is authorized to enter upon endowment lands and other lands managed by the Department for the purpose of performing emergency repairs on an easement for damage due to floods, high winds and other acts of God, provided that the grantee provides written notice to the Director within forty-eight (48) hours of the time work commences. Thereupon, the Director is authorized to assess any damages to the state lands and seek reimbursement. ()

031. -- 034. (RESERVED)

035. COOPERATIVE USE AND RECIPROCAL USE AGREEMENTS.

01. Joint Agreements. The Director may, subject to the approval of the Board, enter into joint ownership and use agreements with persons for roads providing access to state endowment lands and other lands managed by the Department. Such agreements must provide that all landowners share proportionately in the cost of building and maintaining the shared road. The proportionate shares are calculated on timber volume, acreage or other unit of value. ()

02. Reciprocal Use Agreements. The Director may enter into reciprocal use agreements with persons

for existing roads where such agreements will enhance the management of state endowment lands or other lands managed by the Department. ()

03. Applicability. Where the Director has entered into such agreements mentioned in Subsections 035.01 and 035.02 above, Sections 021, 040, and 046 do not apply. ()

036. -- 039. (RESERVED)

040. ASSIGNMENTS.

01. Fee. Easements issued by the Director or by the Board are assignable provided that the assignor and assignee complete the Department's standard assignment form and forward it and the non-refundable assignment fee of fifty dollars (\$50) to any department office. ()

02. Prior Written Consent. An assignment is not valid without the prior written consent of the Director. Such consent will not be unreasonably withheld. ()

03. Multiple Assignments. If all state easements held by a grantee are assigned at one time, only one (1) assignment fee is required. ()

041. ABANDONMENT, RELINQUISHMENT, AND TERMINATION.

01. Section 58-603, Idaho Code. The provisions of Idaho Code Section 58-603 apply to all easements over state-owned lands. ()

02. Non-Use. An easement not used for the purpose for which it was granted, for five (5) consecutive years, is presumed abandoned and automatically terminates. The Director will notify the grantee in writing of the termination. The grantee has thirty (30) days from the date of notification to reply in writing to the Director to show cause why the easement should be reinstated. Within sixty (60) days of receipt of the statement to show cause, the Director will notify the grantee in writing as to the Director's decision concerning reinstatement. The grantee has thirty (30) days of receipt of the Director's decision to appeal an adverse decision to the Board. ()

03. Removal of Improvements. Upon termination, the grantee has twelve (12) months from the date of final notice to remove any facilities and improvements. ()

04. Voluntary Relinquishment. The grantee may voluntarily relinquish the easement at any time by completing an easement relinquishment form. The Department will pay the grantee one dollar (\$1) for the relinquishment. ()

042. -- 045. (RESERVED)

046. PROCEDURE.

01. Contents of Application. An easement application contains. ()

a. A letter of request stating the purpose of the easement; ()

b. A map of right-of-way in triplicate; and ()

c. One (1) copy of an acceptable written description based on a centerline survey or a metes and bounds survey of the perimeter of the easement tract. The applicant may also describe the area occupied by existing uses, facilities or structures by platting the state-owned land affected by the use and showing surveyed or scaled ties (to a legal corner) at the points where the use enters and leaves the parcel. ()

02. Engineer Certification. As required in Section 58-601, Idaho Code, for any application for a ditch, canal or reservoir, the plats and field notes must be certified by the engineer under whose direction such surveys or plans were made and four (4) copies filed with the Department and one (1) copy with the Director, Department of

Water Resources. ()

03. Where to Submit Application. An easement application may be submitted to any office of the Department. ()

04. Notification of Approval. If approved, the applicant will be notified of the amount due to the Department. ()

05. Notification of Denial. If the application is denied, the applicant will be notified in writing of such decision. ()

047. EASEMENTS ON STATE LAND UNDER LAND SALE CONTRACT.

01. Approval of Contract Purchaser. The Director will not approve an easement on lands under contract of sale (land sale certificate) without the approval of the contract sale purchaser or without reviewing the consideration received to insure that the state's interests are protected. ()

02. Compensation. The compensation for easements on lands under land sale contract will be as set out in Section 021 except that "land value" may be the sale value. These moneys will be applied to the principal balance on the land sale contract. Additionally, the Department will collect the one hundred dollar (\$100) application fee. ()

03. Co-Signature of Contract Purchaser. The contract sale purchaser must co-sign the easement to validate the document. ()

048. -- 999. (RESERVED)

**20.03.09 – EASEMENTS ON STATE-OWNED SUBMERGED LANDS
AND FORMERLY SUBMERGED LANDS**

000. LEGAL AUTHORITY.

These rules are promulgated pursuant to, and are to be construed in a manner consistent with, the duties and responsibilities of the Idaho State Board of Land Commissioners as set forth in Title 58, Chapters 1, 6, and 13, Idaho Code, and the Equal Footing Doctrine (Idaho Admission Act of July 3, 1890, 26 Stat. 215, Chapter 656). ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.09, “Easements on State-Owned Submerged Lands and Formerly Submerged Lands.” ()

02. Purpose. These rules set forth procedures concerning the issuance of easements on state-owned submerged and formerly submerged lands. ()

03. Scope. These rules apply to the issuance of easements for all uses, other than irrigation facilities, diversion facilities, temporary irrigation berms, headgates, turnouts, and domestic water supply intake lines capable of drawing less than five (5) cubic feet per second of water; except that dams that span the entire width of a navigable stream channel regardless of their purpose are subject to these rules. ()

04. Exceptions; Permits Required. Easements will not be granted where temporary permits will serve the required purpose or when a lease is more usual and customary, such as for marinas, docks, float homes, and similar facilities. (see IDAPA 20.03.17, “Rules Governing Leases on State-owned Submerged Lands and Formerly Submerged Lands.”) ()

05. Exceptions; Temporary Structures. These rules do not apply to uses, facilities, and structures considered to be temporary in nature; more specifically, those uses that will be in effect for a period of ten (10) years or less or those facilities or structures with a lifespan of ten (10) years or less. Such uses, facilities, and structures may be authorized by revocable temporary permits. ()

002. (RESERVED)

003. ADMINISTRATIVE APPEALS.

An applicant aggrieved by a decision of the Director under these rules may request a hearing before the board, but must do so within thirty (30) calendar days after receipt of written notice of the Director’s decision. Failure to make said request within the thirty (30) day period constitutes a waiver of the applicant’s right to a hearing before the board. Pursuant to Title 67, Chapter 52, Idaho Code, the applicant may appeal an adverse decision of the Board. ()

004. -- 009. (RESERVED)

010. DEFINITIONS.

01. Artificial High Water Mark. The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line (Section 58-1302(d), Idaho Code). ()

02. Board. The Idaho State Board of Land Commissioners or such representative as may be designated by the board. ()

03. Dam. Any artificial barrier, placed across a navigable stream channel or watercourse. ()

04. Department. The Idaho Department of Lands. ()

05. Director. The Director of the Idaho Department of Lands or such representative as may be designated by the Director. ()

06. Easement. A nonpossessory interest held by one person in land of another person whereby the first person is accorded use for a portion of such land for a specific purpose. ()

07. Formerly Submerged Lands. Formerly submerged beds of state-owned navigable lakes, rivers, and streams which have either been filled or have subsequently become uplands because of human activities, i.e.,

dikes, berms, seawalls, etc. Included are islands that have been created on submerged lands by natural processes or human activities since the date of statehood (July 3, 1890). ()

08. Grantee. The party to whom the easement is granted and their assigns and successors in interest. ()

09. Grantor. The State of Idaho and its assigns and successors in interest ()

10. Hydroelectric Facilities. The dam, diversion, penstock, transmission lines, water storage area, powerhouse and other facilities related to generating electric energy from water power. ()

11. Market Value. The amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy. ()

12. Natural or Ordinary High Water Mark. The line which the water impresses upon the soil covering it for a sufficient period of time to deprive the soil of its vegetation and destroy its value for agricultural purposes (Section 58-104(9), Idaho Code). When the soil, configuration of the surface, or vegetation has been altered by man's activity, the natural or ordinary high water mark shall be located where it would have been if this alteration had not occurred. ()

13. Person. A partnership, an association, a joint venture or a corporation qualified to do business in the State of Idaho, any federal, state, county or local unit of government, or an individual. ()

14. Right-of-Way. The privilege that one (1) person, or persons particularly described, may have of passing over the land of another in some particular line. Usually an easement over the land of another. ()

15. Submerged Lands. The state-owned beds of navigable lakes, rivers, and streams lying below the natural or ordinary high water marks. ()

16. Uplands. The land bordering on navigable lakes, rivers, and streams. ()

011. POLICY.

01. Regulation of the Beds of Navigable Waters. It is the policy of the State of Idaho to regulate and control the use or disposition of 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 shall 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, Idaho Code). ()

a. These rules shall not be construed as adversely affecting any valid existing rights. ()

b. The board or Director shall not grant an easement for any use, facility, or structure that would impair those uses of submerged and formerly submerged lands protected under the public trust doctrine. ()

02. Exercise of State Title. The state exercises its title over the beds of all lakes, rivers, and streams that are navigable in fact. The department will respond to requests or inquiries as to which lakes, rivers, and streams are deemed navigable in fact. Additional information about streams deemed navigable by the state of Idaho is available from the Department. ()

03. Stream Channel and Encroachment Permits. Issuance of an easement shall be contingent upon the applicant first obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources, pursuant to Title 42, Chapter 38, Idaho Code, or a lake encroachment permit if required by the Department, pursuant to the Lake Protection Act, Section 58-1301, Idaho Code. ()

04. Other Permits. Issuance of an easement shall not relieve an applicant of acquiring other permits and licenses that are required by law. ()

05. Existing Easements. These rules apply to existing easements on submerged or formerly submerged lands. However, it shall not be necessary for a person possessing a valid easement on the effective date of these rules to file a new application pursuant to these rules. ()

06. Existing Permits. Any person holding a permit, issued after May 23, 1984 during the pendency of the promulgation of these rules, for right-of-way on submerged or formerly submerged lands shall convert the permit to an easement upon payment of fees and compensation in the amount provided for by these rules. ()

07. Limitation on Easement Grant. An easement grants only such interest to the grantee as is specified within the document, including the legal right to occupy and use the submerged or formerly submerged lands for the specified purpose in the easement without interference by the grantor, except as otherwise provided by law. The legal right to use the submerged or formerly submerged lands for all other purposes not inconsistent with the grantee's interest remains with the grantor. ()

08. Minimum Width. The minimum width of any easement granted shall be eight (8) feet. ()

012. -- 019. (RESERVED)

020. FEES AND COMPENSATION.

01. Administrative Fee. There shall be a one-time nonrefundable administrative fee of three hundred dollars (\$300) for any use, facility, or structure requiring an easement under these rules. No supplemental compensation, in excess of the one-time administrative fee, shall be required for: ()

a. An easement for a use, facility, or structure for which the navigable lake, river, or stream poses an obstacle or barrier for construction or operation of the use, facility, or structure, or where the applicant demonstrates, and the Director or Board concurs, that the impact of the use, facility, or structure on the submerged lands is less than the impact on the other values associated with the adjacent upland such as conservation of resources, significant cost savings to the public, or accessibility. ()

b. An easement for a dam that does not produce hydroelectric power and is less than ten (10) feet in height (as measured from the natural stream bed at the downstream side). ()

02. Supplemental Compensation. In addition to the one-time nonrefundable administrative fee of three hundred dollars (\$300), supplemental compensation will be required for: ()

a. New and renewed easements for all dams of any size that produce hydroelectric power and all dams that are ten (10) feet and higher (as measured from the natural stream bed at the downstream side). Supplemental compensation for such easements shall be one thousand dollars (\$1,000), and for a dam including associated hydroelectric facilities, there shall be an additional one-time payment of five dollars (\$5) per megawatt of installed capacity per the nameplate rating of said facility. If the facility is situated on a Snake River segment that is a common border with the state of Oregon or the state of Washington, the installed capacity shall be prorated based on the location of the common border for the purpose of calculating the compensation. Total compensation for a new or renewed easement issued for a dam including associated hydroelectric facilities shall not exceed twenty thousand dollars (\$20,000). If an easement for a hydroelectric facility has been issued prior to relicensing, the fee will be prorated based on a fifty (50) year use period. The fee for annual extensions that are frequently issued by FERC because of permitting delays prior to issuance of the major FERC license will be prorated based on a fifty (50) year use period. ()

b. An easement over submerged and formerly submerged lands, for any use, facility, or structure, that is not a dam or hydroelectric facility, which would use submerged or formerly submerged lands as a substitute for or to reduce or eliminate the use of uplands. Supplemental compensation for such easements shall be a one-time payment based on the market value of the submerged or formerly submerged lands. The compensation shall be determined by appraisal. For purposes of this subsection, the per acre value of the submerged or formerly submerged lands shall be the same as the per acre value of the adjacent uplands for which the submerged or formerly submerged lands shall serve as a substitute or in the case of filled lands, the per acre value shall be based on its highest and best

use. Adjacent uplands are uplands bordered on one (1) side by the water body and extending landward at least one (1) lot in depth or three hundred (300) feet, whichever is greater. ()

03. Appraisal. The appraisal of the easement normally will be performed by qualified Department staff. If so desired by the applicant and agreed to by the Director, the applicant may provide the appraisal, which must be acceptable to and meet the specifications set by the Director. ()

04. Cost of Appraisal. Where the appraisal is performed by department staff, the appraisal costs shall be the actual cost and shall be charged to the applicant in addition to those costs outlined in Subsections 020.01 and 020.02. These costs shall include transportation, personnel costs (including per diem), and administrative overhead. An itemized statement of these costs shall be provided to the applicant. The appraisal fee shall be billed separately from the nonrefundable administrative fee established in Subsection 020.01. ()

021. -- 029. (RESERVED)

030. TERM OF EASEMENT.

01. Permanent Uses. A permanent easement will be issued for uses, facilities, and structures that are normally considered permanent in nature, such as bridges, utility crossings, highway fills, and dams. ()

02. Term Easements. A term easement will be issued for a specific time period of ten (10) to fifty-five (55) years and will be issued for those uses, facilities, and structures not normally considered permanent in nature. ()

03. Federally Licensed Facilities. The term of an easement for all federally licensed hydroelectric facilities on submerged or formerly submerged lands shall be run concurrently with the term of such license issued by the United States Federal Energy Regulatory Commission (FERC), or its successor, authorizing the facility. Easements for hydroelectric facilities for which FERC has issued a conduit exemption shall not exceed fifty-five (55) years. ()

031. -- 039. (RESERVED)

040. USE, FACILITY, OR STRUCTURE MODIFICATION.

Modification of an existing use, facility, or structure shall require an easement or an amendment to an existing easement and shall be processed in the same manner as a new application. Modification includes expanding the use or easement area, or changing the location of the use or easement area. Modification does not include ordinary maintenance, repair, or replacement of existing structures such as poles, wires, and cables. ()

041. -- 049. (RESERVED)

050. ASSIGNMENTS.

01. Assignment Fee. Easements may be assigned upon approval of the Director. The assignor and assignee must complete the department's standard assignment form and forward it and the nonrefundable assignment fee of fifty dollars (\$50) to any department office. ()

02. Prior Written Consent. An assignment is not valid without the written consent of the Director which shall not be unreasonably withheld. The Department shall work diligently to complete assignments within sixty (60) days after receipt of the standard assignment forms and all associated information. ()

03. Multiple Assignments. If all state easements held by a grantee are assigned at one time, only one (1) assignment fee shall be required. ()

051. -- 059. (RESERVED)

060. ABANDONMENT, RELINQUISHMENT, AND TERMINATION.

01. Section 58-603, Idaho Code. The provisions of Section 58-603, Idaho Code relating to rights-of-way apply to all easements over state-owned submerged and formerly submerged lands. ()

02. Non-Use. Upon termination of an easement for any cause, the Director shall provide the grantee with a specific, but reasonable, period of time (up to twelve (12) months) to remove all facilities or structures. Failure to remove all facilities or structures within such time period established by the Director shall be deemed a trespass on submerged or formerly submerged lands. ()

03. Voluntary Relinquishment. The grantee may voluntarily relinquish the easement at any time by submitting a letter or relinquishment form in recordable format to the state of Idaho. Voluntary relinquishment of an easement does not waive or forgive the obligation of the easement holder to remove facilities as required in Subsection 060.02. ()

061. -- 069. (RESERVED)

070. PROCEDURE.

01. Contents of Application. An easement application shall contain: ()

a. A letter of request stating the purpose of the easement; ()

b. A plat of right-of-way in triplicate; and ()

c. One (1) copy of an acceptable written description based on a survey of the centerline or a metes and bounds survey of the easement tract. The applicant may also describe the area occupied by existing uses, facilities or structures by platting the state-owned submerged or formerly submerged lands affected by the use and showing surveyed or scaled ties (to a legal corner) at the points where the use enters and/or leaves the parcel. ()

02. Engineer Certification. All maps, plans, and field notes attached to an application for rights-of-way for ditches and reservoirs governed by Section 58-601, Idaho Code, shall be certified by the engineer under whose direction such surveys or plans were made and four (4) copies filed with the Department and one (1) copy filed with the Idaho Department of Water Resources. ()

03. Decision on Application. Upon proper application and payment of the nonrefundable administrative fees, appraisal costs, and supplemental compensation required pursuant to these rules, the Director may, after appropriate review and consideration of the facts and the law, grant an easement on and over submerged or formerly submerged lands for any public or private purpose. The Director may deny an application for easement upon a finding that issuance would not be consistent with law or these rules. Such denial or approval shall be in writing within six (6) months of the receipt of the application. ()

04. Director's Decision. The Director may grant and renew easements in all cases except when the compensation will exceed ten thousand dollars (\$10,000), exclusive of the payment for any damage or impairment of rights to the remainder of the property. ()

05. Board Decision. Easement applications where compensation exceeds ten thousand dollars (\$10,000), or that are of a complex and unusual nature as determined by the Director, shall be presented to the Board for appropriate action. ()

06. Where to Submit. An easement application may be submitted to any office of the Department. ()

07. Notification of Approval. If the application is approved, the applicant shall be notified in writing of the amount due to the Department. ()

08. Denial of Application. If the application is denied, the applicant shall be notified in writing of the reasons for the denial. ()

071. -- 079. (RESERVED)

080. EASEMENT ACCESS AND EMERGENCY WORK.

01. Use of Land. The grantee has the right to use such portion of the lands adjacent to and along said easement as may be reasonably necessary in connection with the installation, repair, and replacement of the use, facility, or structure authorized by the easement. If such activities cause soil disturbance, the destruction of vegetation, and/or entering the navigable stream bed below the natural or ordinary high water mark, the grantee will obtain written authorization from the grantor. ()

02. Emergency Work. The grantee is authorized to enter upon lands lying outside the easement area, including submerged or formerly submerged lands and other lands managed by the Department, for the purpose of performing emergency repairs on an easement for damage due to floods, high winds, and other acts of God, provided that the grantee provides written notice to the Director within forty-eight (48) hours of the time work commences. The grantee shall be responsible for any damage to lands or other resources outside the easement area. ()

081. -- 999. (RESERVED)

20.03.13 – ADMINISTRATION OF COTTAGE SITE LEASES ON STATE LANDS

000. LEGAL AUTHORITY.

The State Board of Land Commissioners has adopted these rules in accordance with Article IX, Section 8 of the Idaho Constitution and Sections 58-104(1) and 58-304, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.13, “Administration of Cottage Site Leases on State Lands.” ()

02. Scope. It is the intent and express policy of the Board in administration of cottage site leases located on state-owned lands administered by the Board, to provide for a reasonable rental income from those lands in accordance with the requirements of the Constitution of the State of Idaho. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

For the purposes of these rules, unless otherwise indicated by express term or by context, the term: ()

01. Annual Rental. The rental paid on or before January 1, in advance, for the following year. ()

02. Board. The State Board of Land Commissioners. ()

03. Cottage Site. Any state-owned lot that is leased for recreational residential purposes. ()

04. Department. The Idaho Department of Lands. ()

05. Lessee. A tenant of a cottage site. ()

011. -- 019. (RESERVED)

020. SALE AND ASSIGNMENT - REQUIRED DOCUMENTATION.

01. Documentation of Sale. The lessee must provide the Department, at their expense, the following documents concerning a cottage site sale prior to assignment of the cottage site lease. ()

a. The original of the current lease; or ()

b. A signed and notarized Affidavit of Loss if the current lease has been lost. ()

02. Assignments. A lease may only be assigned to an individual or to a husband or wife. The Board will not recognize assignments to corporations, partnerships, or companies. Leases may be assigned to and held by an estate only if one (1) individual or husband or wife are designated as the sole contact for all billing and correspondence. A lessee may only hold one (1) cottage site lease at a time. ()

021. -- 024. (RESERVED)

025. LEASE RATE DETERMINATION -- ANNUAL RENTAL.

Annual rental is set by the Board from time to time as deemed necessary. It is the intent of the State Board of Land Commissioners that those rental rates be determined through market indicators of comparable land values. ()

026. -- 999. (RESERVED)

**20.03.14 – RULES GOVERNING GRAZING, FARMING, CONSERVATION, NONCOMMERCIAL
RECREATION, AND COMMUNICATION SITE LEASES**

000. LEGAL AUTHORITY.

These rules are promulgated by the Idaho State Board of Land Commissioners pursuant to Section 58-104, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.14, “Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases.” ()

02. Scope. These rules constitute the Department’s administrative procedures for leasing of state endowment trust land for grazing, farming, conservation, noncommercial recreation, communication sites and other uses that are treated similarly under the provisions of Section 58-307, Idaho Code, regarding a lease term for no longer than twenty (20) years, and under the provisions of Section 58-310, Idaho Code regarding lease auctions. These rules are to be construed in a manner consistent with the duties and responsibilities of the Idaho State Board of Land Commissioners as set forth in Title 58, Chapter 3, Idaho Code; Article 9, Sections 3, 7 and 8, of the Idaho Constitution; and Section 5 of the Idaho Admission Bill. ()

002. ADMINISTRATIVE APPEALS.

01. Board Appeal. All decisions of the Director are appealable to the Board. An aggrieved party desiring to make such an appeal must, within twenty (20) days after receiving notice of the final decision being appealed or in case of a conflict auction within twenty (20) days after the auction is held, file with the Director a written notice of appeal setting forth the basis for the appeal. The Board has the discretion to accept or reject any timely appeal. In the event that the Board rejects hearing the appeal, the decision of the Director will be deemed final. ()

02. Board Decision. In the event the Board hears an appeal, it will do so at the earliest practical time or, in its discretion, appoint a Board sub-committee or a hearing officer to hear the appeal. The Board sub-committee or hearing officer will make findings and conclusions which the Board accepts, rejects or modifies. The decision of the Board after a hearing, or upon a ruling concerning the Board sub-committee or hearing officer’s findings and conclusions, are final. ()

03. Judicial Review. Judicial review of the final decision of the Board is in accord with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Amortization. The purchase of Department authorized, lessee installed, lease improvements by the Department through allowance of credit to the lessee’s annual lease payments. ()

02. Animal Unit Month (AUM). The amount of forage necessary to feed one (1) cow or one (1) cow with one (1) calf under six (6) months of age or one (1) bull for one (1) month. One (1) yearling is considered seven tenths (.7) of an AUM. Five (5) head of sheep, or five (5) ewes with lambs are considered one (1) AUM. One (1) horse is considered one and one-half (1 1/2) AUM. ()

03. Assignment. The Department approved transfer of all, or a portion of, a lessee’s right to another person wherein the second person assumes the lease contract with the Department. ()

04. Board. The Idaho State Board of Land Commissioners or such representatives as may be designated. ()

05. Conflict Application. An application to lease state endowment trust land for grazing, farming, conservation, noncommercial recreation or communication site use when one (1) or more applications have been submitted for the same parcel of state endowment trust land and for the same or an incompatible use. ()

06. Department. The Idaho Department of Lands. ()

07. Director. The Director of the Department of Lands, or such representative as may be designated by ()

the Director. ()

08. Extension. An approved delay in the due date of the rental owed on a farming lease without risk of loss of the lease. ()

09. Improvement Valuation. The process or processes of estimating the value of Department authorized improvements associated with a lease, as defined in Section 102. ()

10. Lease. A written agreement between the Department and a person containing the terms and conditions upon which the person will be authorized to use state endowment trust land. ()

11. Herd Stock. Livestock leased or managed, but not owned, by the lessee. ()

12. Lease Application. An application to lease state endowment trust land for grazing, farming, conservation, noncommercial recreation, or communication site purposes. ()

13. Manageable Unit. A unit of state endowment trust land designated by the Department, geographically configured and sufficiently large to achieve the proposed use. ()

14. Management Plan. The signed state endowment trust land lease for grazing, farming and conservation, and any referenced attachments such as annual operating plans or federal allotment management plans, is considered the management plan. ()

15. Mortgage Agreement. Department authorization for the lessee to obtain a mortgage on a state endowment trust land lease. ()

16. Person. An individual, partnership, association, corporation or any other entity qualified to do business in the state of Idaho and any federal, state, county, or local unit of government. ()

17. Proposed Management Plan. A document written and submitted by the lease applicant detailing the management objectives and strategies associated with their proposed activity. ()

18. Sublease. An agreement in which the state endowment trust land lease holder conveys the right of use and occupancy of the property to another party on a temporary basis. ()

011. -- 018. (RESERVED)

019. LESSEE MAILING ADDRESS.

Unless otherwise notified by the lessee, all lease correspondence from the Department will be sent to the name and address as it appears on the lease application. It is the lessee's duty to notify the Department, in writing, of any change in mailing address. ()

020. APPLICATIONS AND PROCESSING.

01. Eligible Applicant. Any person legally competent to contract may submit an application to lease state endowment trust land provided such person is not then in default of any contract with the Department of Lands; provided further, that the Department may, in its discretion, exclude any person in breach of any contract with the state of Idaho or any department or agency thereof. ()

02. Application Process. All lease applications must be submitted to the Department on the appropriate Department form. The applications must be signed by the applicant, must be submitted in such manner as determined by the Department, and must meet the following criteria: ()

a. Non-refundable Fee. Each application for a lease must be accompanied by a non-refundable application fee in the amount specified by the Board. ()

b. Application Deadline. The deadline to apply to lease a parcel of state endowment trust land already

covered by a lease is as established by the Department for the year the existing lease expires. Applications to lease unleased state endowment trust land may be submitted at any time, or at such time as designated by the Department. ()

c. Proposed Management Plan. All applicants for state grazing, farming and conservation leases must submit a proposed management plan with their application. Where current lessee is an applicant, the Department will recognize the existing management plan, as described by the existing lease provisions, as the proposed management plan required to complete the lease application. The Department may require amendments to the proposed management plan in accordance with Subsections 020.02.e. and 020.02.f. ()

d. Legal Description on Application. All applications must include a legal description of the state endowment trust land applied on. The Department reserves the right to require an amendment of the legal description of state endowment trust lands identified in a lease application to ensure the parcel is a manageable unit or for any other reason deemed appropriate by the Department. If the applicant fails to provide an amended application, referencing a manageable unit as designated by the Department, the application is considered invalid. ()

e. Nonconflicted Applications. ()

i. If the current lessee is the only applicant and the Department does not have concerns with the lessee's current management of the leased state endowment trust land, a new lease will be issued. ()

ii. If the current lessee is the only applicant and the Department has concerns with the lessee's current management of the state endowment trust lands, the Department will request in writing a new proposed management plan and meet with the current lessee to develop terms and conditions of a proposed lease. ()

f. Conflicted Applications. ()

i. All applicants submitting conflict applications must meet with the Department to develop the terms and conditions of a proposed lease specific to each applicant's proposed management plan. ()

ii. The Department will provide all applicants for conflicted leases with the list of criteria that will be used to develop lease provisions. Among the factors to be addressed in the criteria are the following: ()

(1) The applicant's proposed use and the compatibility of that use of the state endowment trust land with preserving its long-term leasing viability for purposes of generating maximum return to trust beneficiaries; i.e., the impact of the proposed use and any anticipated improvements on the parcel's future utility and leasing income potential. ()

(2) The applicant's legal access to and/or control of land or other resources that will facilitate the proposed use and is relevant to generating maximum return to trust beneficiaries. ()

(3) The applicant's previous management of land leases, land management plans, or other experience relevant to the proposed use or ability/willingness to retain individuals with relevant experience. ()

(4) Potential environmental and land management constraints that may affect or be relevant to assessing the efficacy or viability of the proposed use. ()

(5) Mitigation measures designed to address trust management concerns such as: ()

(a) Construction of improvements at lessee's expense. ()

(b) Payment by lessee of additional or non-standard administrative costs where the nature of the proposed use and/or the applicant's experience raises a reasonable possibility that greater monitoring or oversight by the Department than historically provided will be necessary to ensure lease-term compliance. ()

(c) Bonding to ensure removal of any improvements installed for the lessee's benefit only and which would impair the future utility and leasing income potential of the state endowment trust land. ()

(d) Bonding to ensure future rental payments due under the lease in cases where the lessee is determined by the Department to pose a significant financial risk because of lack of experience or uncertain financial resources. ()

(6) Any other factors the Department deems relevant to the management of the state endowment trust land for the proposed use. ()

g. Proposed Lease. Within ten (10) days of the final meeting with the applicant to discuss lease provisions, the Department will provide the applicant with a proposed lease containing those terms and conditions upon which it will lease the state endowment trust land. If the applicant does not accept in writing the lease as proposed by the Department within seven (7) days of receipt, the application will be rejected in writing by the Department. Within twenty (20) days of the date of mailing of the rejection notice, the applicant may appeal the Department's determination as to the lease's terms and conditions to the Land Board. If the appeal is denied, the applicant may continue with the auction process by accepting the lease terms and conditions initially offered by the Department. No auction may be held until the Land Board resolves any such appeal. ()

03. Expiring Leases. Lease applications will be mailed by the Department to all holders of expiring leases no less than thirty (30) days prior to the application deadline. Signed applications and the application fee must be returned to the Department by the established deadline or postmarked no later than midnight of that date. It is the lessee's responsibility to ensure applications are delivered or postmarked by the deadline. ()

04. Rental Deposit. ()

a. Existing Lessee. If the existing lessee is the sole applicant, the lessee may submit the rental deposit at the normal due date. If a conflict application is also filed on the expiring lease and the existing lessee is awarded the lease by the Land Board, the lessee must deposit, with the Department, the estimated first year's rental for the lease at the time the lease is submitted to the Department with lessee's signature. ()

b. New Applicants. ()

i. Expiring Lease. New applicants for expiring leases must submit the estimated first year's rental to the Department at the time of the application's submission. ()

ii. Unleased State Endowment Trust Land. All applicants for unleased state endowment trust land are deemed new applicants. If an applicant for unleased state endowment trust land is the sole applicant, the applicant may submit the rental deposit at the normal billing cycle, unless the time of application and desired time of use do not coincide with the normal billing cycle, in which case payment must be rendered at the direction of the Department. ()

021. LENGTH OF LEASE.
The Department may issue a lease for any period of time up to the maximum term provided by law. ()

022. -- 029. (RESERVED)

030. CHANGE IN LAND USE.
The Director may change the use of any state endowment trust land, in whole or in part, for other uses that will better achieve the objectives of the Board. ()

031. -- 039. (RESERVED)

040. RENTAL.

01. Rental Rates. The methodology used to calculate rental rates is determined by the Board. ()

02. Special Uses. Fees for special uses requested by the lessee and approved by the Department are

determined by the Department. ()

03. Rental Due Date. Lease rentals are due in accordance with the terms of the lease. ()

041. CHANGE OF RENTAL.

The Department reserves the right to increase the annual lease rental. Notice of any increase will be provided in writing to the lessee at least one hundred eighty (180) days prior to the lease rental due date. ()

042. LATE PAYMENTS.

Rental not paid by the due date is considered late. Late payment charges from the due date forward are specified in the lease. ()

043. -- 048. (RESERVED)

049. BREACH.

01. Non-Compliance. A lessee is in breach if the lessee's use is not in compliance with the provisions of the lease. ()

02. Damages for Breach. A lessee is responsible for all damages resulting from breach and other damages as provided by law. ()

050. LEASE CANCELLATION.

Leases may be canceled by the Director for the following reasons: ()

01. Non-Compliance. If the lessee is not complying with the lease provisions or if resource damage attributable to the lessee's management is occurring to state endowment trust land within a lease, the lessee will be provided written notification of the violation by regular and certified mail. The letter will set forth the reasons for the Department's cancellation of the lease and provide the lessee thirty (30) days' notice of the cancellation. ()

02. Change in Land Use. A lease may be canceled in whole or in part upon one hundred eighty (180) days written notice by the Department if the state endowment trust lands are to be leased for any other use as designated by the Board or the Department and the new use is incompatible with the existing lease. In the event of early cancellation due to a change in land use, the lessee will be entitled to a prorated refund of the premium bid for a conflicted lease. ()

03. Land Sale. The Department reserves the right to sell state endowment trust lands covered under the lease. The lessee will be notified that the state endowment trust lands are being considered for sale prior to submitting the sales plan to the Board for approval. The lessee will also be notified of a scheduled sale at least thirty (30) days prior to sale. In the event of early cancellation due to land sale, the lessee will be entitled to a prorated refund of the premium bid for a conflicted lease. ()

04. Mutual Agreement. Leases may be canceled by mutual agreement between the Department and the lessee. ()

051. LEASE ADJUSTMENTS.

01. Department Required. The Department may make adjustments to the lease for resource protection or resource improvement. ()

02. Lessee Requested. Lessee requested changes in lease conditions must be submitted in writing and must receive written approval from the Department before implementation. ()

052. EXTENSIONS OF ANNUAL FARMING LEASE PAYMENT.

01. Farming Lease Extensions. An extension of the annual lease payment may be approved for farming leases only. Each lease is limited to no more than two (2) successive or five (5) total extensions during any

ten (10) year lease period. Requests for extensions must be submitted in writing and must include the extension fee determined by the Board. The lessee must provide a written statement from a financial institution verifying that money is not available for the current year's farming operations. ()

02. Liens. When an extension is approved, the Department will file a lien on the lessee's pertinent crop in a manner provided by Idaho Code. ()

03. Due Date. Rental plus interest at a rate established by the Board will be due not later than November 1 of the year the extension is granted. ()

053. -- 059. (RESERVED)

060. FEES.

Fees for lease administration will be periodically set by the Board and must be paid in full before a transaction can occur. All lease administration fees are non refundable. The Board has the authority to set fees related to administration of the leasing process including, but not limited to the following: lease applications; full lease assignment; partial lease assignment; mortgage agreement; subleases; late rental payment; minimum lease fee; and lease payment extension request. ()

061. -- 069. (RESERVED)

070. SUBLEASING.

A lessee may not authorize another person to use state endowment trust land without prior written approval from the Department. The lessee must provide the name and address of sublessee, purpose of sublease, and a copy of the proposed sublease agreement. Lessee controlled herd stock does not require sublease approval. ()

071. ASSIGNMENTS.

The lessee may not assign a lease, or any part thereof, without prior written approval of the Department. ()

072. MORTGAGE AGREEMENTS.

The lessee may not enter into a mortgage agreement that involves state endowment trust land lease without prior written approval of the Department. The lessee must submit the required filing fee. The term of a mortgage agreement may not exceed the lease term. ()

073. -- 079. (RESERVED)

080. MANAGEMENT PLANS.

01. Federal Plan. When state endowment trust land is managed in conjunction with federal land, the management plan prepared for the federal land may be deemed by the Department, at its discretion, the management plan. ()

02. Modification of Plan. The Department may review and modify any grazing management plan upon changes in conditions, laws, or regulations, provided that the Department will give the lessee thirty (30) days notice of any such modifications prior to the effective date thereof. Modifications mutually agreeable to both the Department and lessee may be made at any time and may be initiated by lessee's request. ()

081. -- 089. (RESERVED)

090. TRESPASS.

01. Loss or Waste. The lessee must use the property within the lease in such manner as will best protect the state of Idaho against loss or waste. Unauthorized activities occurring on state endowment trust land are considered trespass; these include dumping of garbage, constructing improvements without a permit, and other unauthorized actions. ()

02. Civil Action by Lessee. The lessee is encouraged to take civil action against owners of trespass

livestock on state endowment trust lands to recover damages to the lessee for lost forage or other values incurred by the lessee. ()

03. Continuing Trespass. When continued trespass causes resource damage, the Department will initiate proceedings to restrict further trespass and recover damages as necessary. ()

04. Trespass Claims. Trespass claims initiated by the Department will be assessed as triple the current State AUM rate for forage taken. ()

091. -- 099. (RESERVED)

100. CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS.

01. Prior Written Approval. The lessee must secure the written approval of the Department prior to constructing any improvements or buildings, or clearing any state endowment trust land. Failure to secure such approval eliminates any right to an improvement credit and may, at the Department's discretion, be deemed a material breach of the lease and cause for cancellation. Any arrangement for cost sharing or improvement crediting will be identified in the improvement permit. Routine farming practices identified in a farm plan will not require prior approval. ()

02. Maintenance. All authorized improvements must be maintained in functional condition by the lessee. The lessee may be required to remove or reconstruct improvements in poor or non-serviceable condition. Existing maintenance agreements on lands acquired from the federal government remain in effect until amended by the parties involved. If maintenance is not being accomplished, the Department will provide a certified letter to the lessee informing the lessee of the rule violation. If work is not begun within thirty (30) days, the Department may contract repairs and add the amount to the annual rental. ()

03. Bond. The Department may require the lessee to furnish a bond prior to constructing improvements as deemed necessary to protect endowment assets or to ensure performance under the lease. ()

101. IMPROVEMENT CREDIT.

01. Sale or Auction. In the event of sale of the state endowment trust land covered under the lease or if the existing lessee is not the successful bidder at the auction of the lease, the creditable value of the authorized improvements, as determined by the Department, will be paid to the former lessee by the Department or the purchaser where a sale occurs or by the successful bidder where a new lease is issued. ()

02. Exchange. In the event of exchange of the state endowment trust land covered under the lease, the creditable value of authorized improvements, as determined by the Department, will be paid to the former lessee by the acquiring party, if other than the existing lessee. ()

03. Crediting. Improvement credit may be allowed when the Department determines that such credit would further the objective of maximizing long-term financial return to trust beneficiaries if the improvements are: ()

a. Authorized in writing by the Department or lacking written authorization, but in existence prior to 1970; ()

b. Not expressly permitted "for lessee's benefit only"; and ()

c. Maintained during the lease term. ()

04. Value Only to Lessee. Where improvements are approved, but due to their nature, are not acceptable to receive improvement credit because no value exists for a future lessee, a notation will be made in the permit, "For lessee's benefit only." If the succeeding lessee or assignee chooses not to purchase the non-creditable improvements, the former lessee will be required to remove them. ()

05. Maintenance Costs. Maintenance of improvements will be considered a normal cost of doing business and no improvement credit will be allowed, except that, with prior written approval from the Department, improvement crediting may be allowed for materials used for the maintenance of Department-funded improvements. ()

06. Unauthorized Improvements. No credit will be allowed for unauthorized improvements. At the discretion of the Department, the lessee may be required to remove unauthorized improvements. ()

07. Cost Sharing. Federal or state cost-share amounts are not included in the allowable improvement credit. ()

102. VALUATION OF IMPROVEMENTS.

Credited improvements will be valued on the basis of replacement cost, including lessee provided labor, equipment and materials, less depreciation based on loss of utility. Improvements cannot be appraised higher than current market value, regardless of lessee's cost. Any improvement amortization or cost limitations identified by the Department will be considered in determining a final value. ()

01. Applicant Review of Department Improvement Credit Valuation. All applicants for a conflicted lease will be provided a copy of the Department's improvement credit valuation for review and a notice of objection form. Any applicant objecting to the appraisal will have twenty-one (21) days from the date of the valuation mailing to submit the notice of objection form to the Department. If no objections are received during the twenty-one (21) day review period, the lease auction will be scheduled and will proceed using the Department's improvement credit valuation. ()

02. Failure to File a Timely Notice of Objection. Failure to submit a notice of objection within the specified twenty-one (21) day period will preclude any applicant from further administrative remedies and the auction will proceed using the Department's improvement credit valuation. ()

03. Notice of Objection. Any applicant objecting to the Department improvement credit valuation must submit a complete and timely notice of objection form, and payment of two thousand five hundred dollars (\$2,500) or ten percent (10%) of the total Department improvement credit valuation whichever is greater, to pay for the services of an independent third party. Within five (5) days of receipt of the notice of objection, the Department will notify all applicants in writing that an objection has been received and provide them with a list of certified appraisers. ()

04. Selection of an Independent Third Party. The applicants will have twenty-one (21) days from the date of the Department's notification of an objection to select by mutual agreement, one individual from the list of certified appraisers to serve as an independent third party. If the applicants cannot agree on an independent third party within the twenty-one (21) day time period, the Department will randomly select one individual from the list to serve as the independent third party. ()

05. Duties of the Independent Third Party. The independent third party will review the Department improvement credit valuation and alternate valuations provided by the applicants. Following this review, the independent third party will select from among the Department valuation and alternate valuations, the one value that (s)he determines is the most accurate value of the improvements. The independent third party will notify the Department of this value in writing. ()

06. Notification of Final Improvement Value. Within five (5) days of receiving the independent third party's final determination of improvement credit value, the Department will mail to each applicant an auction notice that will reference the independent third party's determined value of improvements. The determination by the independent third party of the improvement value will be deemed final, and the appraised value of improvements will not be allowed as a basis for appeal of the auction. ()

103. -- 104. (RESERVED)

105. CONFLICT AUCTIONS.

01. Two or More Applicants. When two (2) or more eligible applicants apply to lease the same state endowment trust land for grazing, farming conservation, noncommercial recreation, or communication site purposes and the Department determines the proposed uses are not compatible, the Department will hold an auction. ()

02. Minimum Bid. Bidding begins at two hundred fifty dollars (\$250) or the cost of preparing any required improvement valuation in connection with the expiring lease, whichever is greater. ()

03. Auction Bidding. Each applicant who appears in person or by proxy at the time and place so designated in said notice and bids for the lease is deemed to have participated in the auction. A proxy must be authorized by the lease applicant in writing prior to the start of the auction. ()

04. Withdrawal Prior to or Failure to Participate in an Auction. Applicants who either withdraw their applications after accepting the Department offered lease per Subsection 020.02 of this rule and prior to the auction that results in no need to schedule an auction or cancellation of a scheduled auction; or applicants who fail to participate at the auction by not submitting a bid which results in only one (1) participant at the scheduled auction, forfeit an amount equal to the lesser of the following: ()

- a. The Department’s cost of making any required improvement credit valuation; ()
- b. For existing lessee applicants, any improvement credit payment that would otherwise be due if not awarded the lease; or ()
- c. For conflict applicants, the rental deposit made. ()

05. High Bid Deposit. The high bidder is required to submit payment in the amount of the high bid at the conclusion of the auction. ()

06. Auction Procedures. The Department will prescribe the procedures for conducting conflicted lease auctions. ()

07. Withdrawal After Auction. ()

- a. If the high bidder withdraws or refuses to accept the lease, the high bid payment will be retained by the Department. ()
 - i. If the auction involved only two (2) participants, the second high bidder will be awarded the lease. ()
 - ii. If the auction involved more than two (2) participants, the lease will be reaucted. ()
- b. If an auction bidder other than the high bidder withdraws a bid before Land Board review and action on the auction results, no adjustment will be made in the payment deposited by the high bidder. ()

106. BOARD REVIEW OF AUCTION.
The Board will review the proposed leases and auction results and make the determination required under Section 58-310, Idaho Code, consistent with its obligations under Article IX, Section 8 of the Idaho Constitution and all relevant statutory provisions. ()

107. -- 110. (RESERVED)

111. NOXIOUS WEED CONTROL.

01. Weed Control. The lessee must cooperate with the Department, or any other authorized agency, to undertake programs for control or eradication of noxious weeds on state endowment trust land. The lessee will take measures to control noxious weeds on the leased state endowment trust land in accordance with Title 22, Chapter 24, Idaho Code. ()

02. Responsibility. The lessee will not be held responsible for the control of noxious weeds resulting from other land management activities such as temporary permits, easements, special leases and timber sales. Control of noxious weeds on state grazing lands will be shared by the lessee and Department, with the Department's share subject to funds appropriated for that purpose. ()

112. LIVESTOCK QUARANTINE.

01. Cooperation. The lessee must cooperate with the state/ federal agency responsible for the control of livestock diseases. ()

02. Non-Compliance. Non-compliance with state/federal regulations will be considered a lease violation and may result in cancellation of the lease. ()

113. ANIMAL DAMAGE CONTROL.

The lessee may request the services of USDA Animal and Plant and Health Inspection Service-Wildlife Services to remove animals causing crop damage or harassing/killing the lessee's livestock. The Department is liable for any consequence from any animal control actions. ()

114. LIABILITY (INDEMNITY).

The lessee must indemnify and hold harmless the state of Idaho, its departments, agencies and employees for any and all claims, actions, damages, costs and expenses which may arise by reason of lessee's occupation of the leased state endowment trust land, or the occupation of the leased parcel by any of the lessee's agents or by any person occupying the same with the lessee's permission. ()

115. RULES AND LAWS OF THE STATE.

The lessee must comply with all applicable rules, regulations and laws of the state of Idaho and the United States insofar as they affect the use of the state endowment trust lands described in the lease. ()

116. -- 999. (RESERVED)

20.03.15 – RULES GOVERNING GEOTHERMAL LEASING ON IDAHO STATE LANDS

000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authorities of Sections 58-104(1), 58-104(6), 58-104(9), 58-105, and 58-127, Idaho Code; Section 58-307, Idaho Code; Title 47, Chapter 7, Idaho Code; Title 47, Chapter 16, Idaho Code; and Title 67, Chapter 52, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.15, “Rules Governing Geothermal Leasing on Idaho State Lands.” ()

02. Scope. These rules apply to the exploration and extraction of any and all geothermal resources situated in state-owned mineral lands. ()

03. Other Laws. In addition to these rules, the Lessee must comply with all applicable federal, state and local laws, rules and regulations. The violation of any applicable law, rule or regulation constitutes a breach of any lease issued in accordance with these rules. ()

002. ADMINISTRATIVE APPEALS.

Any person aggrieved by any final agency action will be entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, IDAPA 20.01.01, and Title 47, Chapter 16, Idaho Code. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Associated By-Products or By-Product: ()

a. Any mineral or minerals (exclusive of oil, hydrocarbon gas, and helium) that are found in solution or developed in association with geothermal resources; or ()

b. Demineralized or mineralized water. ()

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

03. Casual Exploration. Casual exploration means entry and/or exploration that 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. ()

04. Completion. A well is considered to be completed thirty (30) days after drilling operations have ceased and the drill rig is removed from the premises or thirty (30) days after the initial production or injection test has been completed, whichever occurs last. ()

05. Department. The Idaho Department of Lands or its designee. ()

06. Director. The director of the Idaho Department of Lands or his designee. ()

07. Direct Use. The use of geothermal resources for direct applications, including, but not limited to, road surface heating, resorts, hot spring bathing and spas, space heating of buildings, recreation, greenhouse warming, aquaculture, or industrial applications where geothermal heat is used in place of other energy inputs. ()

08. Electrical Generation. The use of geothermal resources to either directly generate electricity or to heat a secondary fluid and use it to generate electricity. ()

09. Field. A geographic area overlying a geothermal system with one (1) or more geothermal reservoirs or pool, including any porous, permeable geologic layer, that may be formed along one (1) fault or fracture, or a series of connected faults or fractures. ()

10. Geothermal Resources. The natural heat energy of the earth, the energy, in whatever form, that may be found in any position and at any depth below the surface of the earth present in, resulting from, or created by,

or that may be extracted from such natural heat, and all minerals in solution or other products obtained from the material medium of any geothermal resource. When used without restriction, it includes associated by-products. ()

- 11. **Lease.** A lease covering the geothermal resources and associated by-products in state lands. ()
- 12. **Lessee.** The person to whom a geothermal lease has been issued and his successor in interest or assignee. It also means any agent of the Lessee or an operator holding authority by or through the Lessee. ()
- 13. **Market Value.** The most probable price at a specified date, in cash, or on terms reasonably equivalent to cash, for which the property or commodity should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. ()
- 14. **Motorized Earth-Moving Equipment.** Backhoes, bulldozers, front-loaders, trenchers, core drills, drill rigs, power augers, and other similar equipment. ()
- 15. **Navigable Water Courses.** The state owned beds of active lakes, rivers and streams that do not include formerly submerged lands where the state retains ownership. ()
- 16. **Operator.** The person having control or management of operations on the leased lands or a portion thereof. The operator may be the Lessee, designated operator, or agent of the Lessee, or holder of rights under an approved operating agreement. ()
- 17. **Overriding Royalty.** An interest in the geothermal resource produced at the surface free of any cost of production. It is a royalty in addition to the royalty reserved to the state. ()
- 18. **Person.** Any natural person, corporation, association, partnership, or other entity recognized and authorized to do business in Idaho, receiver, trustee, executor, administrator, guardian, fiduciary, or other representatives of any kind, and includes any government or any political subdivision of any agency thereof. The masculine gender, in referring to a person, includes the feminine and the neuter genders. ()
- 19. **Record Title.** The publicly recorded lease that is the evidence of right that a person has to the possession of the leased property. ()
- 20. **Reservoir or Pool.** A porous, permeable geologic layer containing geothermal resources. ()
- 21. **Shut In.** To close the valves at the wellhead so that the well stops flowing or producing. Also describes a well on which the valves have been closed. ()
- 22. **State Lands.** Without limitation, lands in which the title to the mineral rights are owned by the state of Idaho and are under the jurisdiction and control of the Board or under the jurisdiction and control of any other state body or agency, having been obtained from any source and by any means whatsoever, including the beds of navigable waters of the state of Idaho. ()
- 23. **Waste.** Any physical loss of geothermal resources including, but not limited to: ()
 - a. Underground loss of geothermal resources resulting from inefficient, excessive, or improper use, or dissipation of geothermal energy, or of any geothermal resource pool, reservoir, or other source; or the locating, spacing, constructing, equipping, operating, or producing of any well in a manner that results, or tends to result in, reducing the quantity of geothermal energy to be recovered from any geothermal area in the state; ()
 - b. The inefficient above-ground transporting and storage of geothermal energy; and the locating, spacing, equipping, operating, or producing of any well or injection well in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of geothermal energy; the escape into the open air from a well of steam or hot water in excess of what is reasonably necessary in the efficient development or production of a well.

()

011. ABBREVIATIONS.

01. IDWR. Idaho Department of Water Resources. ()

012. -- 019. (RESERVED)

020. QUALIFIED APPLICANTS AND LESSEES.

Any person legally competent to contract may submit an application to lease state land provided such person is not then in default of any contract with the state of Idaho or any department or agency thereof. ()

021. LEASE AWARD THROUGH AUCTION.

If more than one (1) application is received for geothermal development on the same parcel of land, a lease auction will be held. ()

022. -- 029. (RESERVED)

030. TERM.

01. Lease Term. All leases may be for a term of up to forty-nine (49) years from the effective date of the lease. ()

02. Diligence in Utilization. Lessee will use due diligence to market or utilize geothermal resources in paying quantities. If leased land is capable of producing geothermal resources in paying quantities, but production is shut-in, the lease will continue in force upon payment of rentals for the duration of the lease term or two (2) years after shut-in, whichever is shorter. If the Department determines that the Lessee is proceeding diligently to acquire a contract to sell or to utilize the production or is progressing with installations needed for production, the lease may continue in force for one (1) additional year if rental payments are kept current. The Department will continue to review a shut-in lease every year until production and payment of royalties takes place, or the lease is terminated for Lessee's lack of due diligence or surrendered by the Lessee. ()

03. Yearly Reporting. A report of all exploration, development, and production activities must be submitted to the Department at the close of each lease year. ()

031. -- 034. (RESERVED)

035. RENTALS.

01. Advance Annual Rental. Lessee will pay to the Department in advance each year an annual rental. The annual rental for the first year of the term will be due and payable and will be received by the Department, together with a lease agreement executed by Lessee within thirty (30) days of the date of notice of approval or award. Second year and subsequent rental payments must be received by the Department on or before the anniversary date of the lease. ()

02. Amount. Annual rentals will be set by the Board through competitive bidding, negotiation, fixed amounts, formulas, or some other method of valuation that a prudent investor might reasonably apply to establish such rental amounts. ()

036. ROYALTIES.

01. Royalty Payments. The Lessee will cause to be paid to the Department royalties on the value of geothermal production from the leased premises. The royalty rate will be established by the Board based on the market value of the geothermal resources produced from the lands under lease. The royalties specified in geothermal leases will be fixed in any manner by the Board, including but not limited to competitive bidding, negotiation, fixed amounts, or formulas. Royalty rates may be adjusted through the term of the lease in order to keep pace with market values. When leases are issued, the following guidelines will be used for royalty rates not subject to competitive

bidding: ()

a. A royalty of between five percent (5%) and twenty percent (20%) of the amount or value of geothermal resources, or any other form of heat or energy excluding electrical power generation, derived from production under the lease and sold or utilized by the Lessee or reasonably susceptible to sale or utilization by the Lessee; ()

b. A royalty of between two percent (2%) and fifteen percent (15%) of the amount or value of any associated by-product derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the Lessee, including commercially demineralized water. ()

c. A royalty of between two percent (2%) and five percent (5%) of gross receipts for sale of electrical power. ()

02. Calculation of Value. The value of geothermal production from the leased premises for the purpose of computing royalties is based on a total of the following: ()

a. The total consideration accruing to the Lessee from the sale of geothermal resources to another party in an arms-length transaction; and ()

b. The value of the end product attributable to the geothermal resource produced from a particular lease where geothermal resources are not sold by the Lessee before being utilized, but are instead directly used in manufacturing power production, or other industrial activity; and ()

c. The value of all renewable energy credits or similar incentives based on a proportionate share of the leased lands in the entire project area qualifying for the credits. ()

03. Due Date. Royalties will be due and payable monthly to the Department on or before the last day of the calendar month following the month in which the geothermal resources and/or their associated by-products are produced and utilized or sold. ()

04. Utilization of Geothermal Resources. The Lessee must file with the Department within thirty (30) days after execution a copy of any contract for the utilization of geothermal resources from the lease. Reports of sales or utilization by Lessee and royalty for each productive lease must be filed each month once production begins, even though production may be intermittent, unless otherwise authorized by the Department. Total volumes of geothermal resources produced and utilized or sold, including associated by-products, the value of production, and the royalty due the state of Idaho must be shown. This report is due on or before the last day of the month following the month in which production was obtained and sold or utilized, together with the royalties due the state of Idaho. ()

05. Measurement. The Lessee will measure or gauge all production in accordance with methods approved by the Department. The quantity and quality of all production will be determined in accordance with the standard practices, procedures and specifications generally used in industry. All measuring equipment must be tested consistent with industry practice and, if found defective, the Department will determine the quantity and quality of production from the best evidence available. ()

06. By-Product Testing. The Lessee will periodically furnish the Department the results of periodic tests showing the content of by-products in the produced geothermal resources. Such tests will be taken as specified by the Department and by the method of testing approved by him, except that tests not consistent with industry practices will be conducted at the expense of the Department. ()

07. Commingling. The Department may authorize a Lessee to commingle production from wells on his State lease(s) with production from non-state lands. Department approval of commingling will not be unreasonably withheld, and will consider the following: ()

a. The operator's economic necessity of commingling; ()

b. The type of geothermal use proposed for the commingled waters; and ()

c. Sufficient measurement and accounting of all the commingled waters to ensure that the Department is appropriately compensated by royalties. ()

037. -- 039. (RESERVED)

040. SIZE OF A LEASABLE TRACT.

01. Surface Area. Geothermal leases are not limited in surface area. The Board will determine the surface area of a lease after consultation with other state agencies and prospective Lessees. The probable extent of a geothermal reservoir, the surface area needed for a viable project, and other relevant factors will be used to help determine lease surface area. ()

02. Navigable Water Courses. Geothermal resources leases may be issued for state lands underlying navigable water courses in Idaho. Such lands are considered “state lands” and will be leased in accordance with these rules. Operations in the beds of navigable water courses will not be authorized except in necessary circumstances and then only with express written approval of the Board upon such conditions and security as the Department deems appropriate. ()

041. -- 049. (RESERVED)

050. LAND SURFACE USE RIGHTS AND OBLIGATIONS.

01. Use and Occupancy. ()

a. Lessee will be entitled to use and occupy only so much of the surface of the leased lands as may be required for all purposes reasonably incident to exploration for, drilling for, production and marketing or geothermal resources and associated by-products produced from the leased lands, including the right to construct and maintain thereon all works, buildings, plants, waterway, roads, communication lines, pipelines, reservoirs, tanks, pumping stations or other structures necessary to the full enjoyment and development thereof, consistent with a plan of operations and amendments thereto, as approved by the Department. ()

b. Uses occurring on the leased area related to exploration, development, production, or marketing of geothermal resources and associated by-products produced from off-lease lands may require the Lessee to pay additional rent. ()

02. Supervision. Uses of state lands within the jurisdiction and control of the Board are subject to the supervision of the Department. Other state lands are subject to the supervision of the appropriate state agency consistent with these rules. ()

03. Distance from Residence. No well may be drilled within two hundred (200) feet of any house or barn on the premises, without the written consent of the Department and its surface Lessees, grantees or contract purchasers. ()

04. Disposal of Leased Land. The Board reserves the right to sell or otherwise dispose of the surface of the lands embraced with a lease, insofar as said surface is not necessary for the use of the Lessee in the exploration, development and production of the geothermal resources and associated by-products, but any sale of surface rights made subsequent to execution of a lease will be subject to all the terms and provisions of that lease during the life thereof. ()

05. Damage. Lessee must pay to the Board, its surface Lessees or grantees or contract purchasers, for any damage done to the surface of said lands and improvements thereon, including without limitation growing crops, by reason of Lessee’s operations. ()

051. -- 053. (RESERVED)

054. EXPLORATION UNDER THE LEASE.

01. Diligent Exploration. Lessees must perform diligent exploration and development activities in the first five (5) years of the initial lease term or as otherwise extended by lease provision. Diligent exploration includes seismic, gravity, and other geophysical surveys, geothermometry studies, drilling temperature gradient wells, or similar activities that seek to determine the presence or extent of geothermal resources. This exploration may occur off-lease if it is being done on the same geothermal field. Failure to perform diligent exploration as described may result in lease cancellation. ()

02. Casual Exploration. At any time after formal approval by the Board of a lease application, Lessee may enter upon the leased lands for casual exploration or inspection without notice to the department. As an express condition of an application to lease and of the right of casual inspection without notice, Lessee agrees to the indemnity conditions provided in Section 102 of these rules without a formally executed lease. ()

03. Plan Required. Lessee must submit a Research and Analysis Plan to the Department before any exploration using motorized equipment or before otherwise engaging in operations that may lead to an appreciable disturbance or damage to lands, timber, other resources, or improvements on or adjacent to the leased lands. The proposed activities may not start until the Department approves the plan and the applicable preconditions in Sections 100 and 101 of these rules have been satisfied. The plan of operations may be amended as needed with Department approval. The plan includes all items that the Department deems necessary or useful in managing the geothermal resources including, but not limited to, the following: ()

a. A narrative statement describing the proposed measures to be taken for protection of the environment, including, but not limited to the prevention or control of: ()

i. Fires; ()

ii. Soil loss and erosion; ()

iii. Pollution of surface and ground waters; ()

iv. Damage to fish and wildlife or other natural resources; ()

v. Air and noise pollution; and ()

vi. Hazards to public health and safety during lease activities. ()

b. All pertinent information or data that the department may require to support the plan of operations for the utilization of geothermal resources and the protection of the environment; ()

055. DEVELOPMENT AND PRODUCTION UNDER THE LEASE.

01. Diligent Development of Lease and Production. Lessee must develop the geothermal resources on their lease area and start production within the first ten (10) years of the initial lease term or as otherwise extended by lease provision. Development of the lease area requires wells to be drilled and other necessary infrastructure to be built. Production on the lease area means that geothermal fluids are being used and royalties are being paid to the state. Failure to develop the lease and start production as described may result in lease cancellation unless the Lessee applies to the Department for an extension and the extension is granted. ()

02. Best Practices. All operations will conform to the best practice and engineering principles in use in the industry. Operations must be conducted in such a manner as to protect the natural resources on the leased lands, including without limitation geothermal resources, and to result in the maximum ultimate recovery of geothermal resources with a minimum of waste, and be consistent with the principles of the use of the land for other purposes and of the protection of the environment. Lessee must promptly remove from the leased lands or store, in an orderly manner, all scraps or other materials not in use and not reasonably incident to the operation. ()

03. Plans Required. Prior to development, Lessee must submit a Development Plan, Operating Plan, and Decommissioning and Reclamation Plan for the leased lands. All plans must be approved by the Department, in

writing, prior to Lessee beginning a phase of the lease in which those plans are performed or as otherwise required by the lease. All required plans must include all items that the Department deems necessary or useful in managing the geothermal resources, including, but not limited to, those items referred to in Paragraphs 054.03.a. and 054.03.b. of these rules. ()

04. Waste and Damage. ()

a. Lessee must take all reasonable precautions to prevent the following: ()

i. Waste; ()

ii. Damage to other natural resources; ()

iii. Injury or damage to persons, real or personal property; and ()

iv. Any environmental pollution or damages that may constitute a violation of state or federal laws. ()

b. The Department may inspect Lessee's operations and issue such orders as are necessary to accomplish the purposes in Paragraph 055.04.a. Any significant effect on the environment created by the Lessee's operations or failure to comply with environmental standards must be reported to the Department by Lessee within twenty-four (24) hours and confirmed in writing within thirty (30) days. ()

05. Notice of Production. Lessee must notify the department within sixty (60) days before any geothermal resources are used or removed for commercial purposes. ()

06. Amendments. The plan of operations must be amended by the Lessee for the Department's approval to reflect changes in operations on the leased lands, including the installation of works, buildings, plants or structures for the production, marketing or utilization of geothermal resources. ()

056. WASTE PREVENTION, DRILLING AND PRODUCTION OBLIGATIONS.

01. Waste. All leases are subject to the condition that the Lessee will, in conducting his exploration, development and producing operations, use all reasonable precautions to prevent waste of geothermal resources and other natural resources found or developed in the leased lands. ()

02. Diligence. The Lessee must, subject to the right to surrender the lease, diligently drill and produce, or unitize such wells as are necessary to protect the Board from loss by reason of production on other properties. ()

03. Prevention of Waste Through Rejection. Geothermal Lessees must return geothermal waters to the geothermal aquifer in a manner that supports geothermal development. ()

04. Additional Requirements. The selection of the types and weights of drilling fluids and provisions for controlling fluid temperatures, blowout preventers and other surface control equipment and materials, casing and cementing programs, etc., to be used must be based on sound engineering principles and must take into account apparent geothermal gradients, depths and pressures of the various formations to be penetrated and other pertinent geologic and engineering data and information about the area. In addition, the Lessee must do the following: ()

a. Take all necessary precautions to keep all wells under control at all times; ()

b. Utilize trained and competent personnel; ()

c. Utilize properly maintained equipment and materials; and ()

d. Use operating practices that ensure the safety of life and property. ()

05. Unused Wells. Except as provided in Subsection 070.02 of these rules, the Lessee must promptly plug and abandon any well on the leased land that is not used or useful in conformity with regulations promulgated by the IDWR or its successor agency. No production well will be abandoned until its lack of capacity for further profitable production of geothermal resources has been demonstrated to the satisfaction of the Department and the Department has been given an opportunity to either acquire the well permit or assign it to another party. A producible well may be abandoned only after receipt of written approval by the Department. Equipment will be removed, and premises at the well site will be restored as near as reasonably possible to its original condition immediately after plugging operations are completed on any well except as otherwise authorized by the Department. Drilling equipment must not be removed from any suspended drilling well without taking adequate measures to close the well and protect subsurface resources. Upon failure of Lessee to comply with any requirements under this rule, the Department is authorized to cause the work to be performed at the expense of the Lessee and the surety. ()

057. -- 059. (RESERVED)

060. EXPLORATION AND OPERATION RECORDS, CONFIDENTIALITY.

01. Drilling Records. Lessee must keep or cause to be kept and filed with the IDWR such careful and accurate well drilling records as are now or may hereafter be required by that Department. Lessee must file with the Department such production records and exploration evidence as required by Sections 030, 036, and 055 of these rules, which records will be subject to inspection by the public at the offices of the Department during regular business hours under such conditions as the Department deems appropriate, subject, however, to exemptions from disclosure as set forth in Section 74107, Idaho Code. As an express condition of the lease, the Department may inspect and copy well drilling records filed with the IDWR at any time after the records are filed. ()

02. Continuing Obligations. Unless Lessee is specifically released in writing by the Department of all or any portion of its obligations under the lease upon the assignment, surrender, termination or expiration of the lease, Lessee's obligations under this rule will continue beyond assignment, surrender, termination or expiration of the lease. Lessee must, within thirty (30) days after assignment, surrender, termination or expiration or such additional time as the Department may grant, file all outstanding data and records required by this rule with the Department. ()

03. Well Logs. The confidentiality of well logs is limited to one year from well completion as stated in Section 42-4010(b), Idaho Code. ()

061. -- 064. (RESERVED)

065. LESSEE'S RECORDS, RIGHT OF INSPECTION BY DEPARTMENT.

Lessee will permit the Department to examine during reasonable business hours all books, records and other documents and matters pertaining to operations under a lease, in Lessee's custody or control, and to make copies of and extracts therefrom. ()

066. -- 069. (RESERVED)

070. WATER RIGHTS.

01. Water Rights. Lessee must comply with all applicable federal and state laws, rules and regulations regarding the appropriation of public waters of Idaho to beneficial uses. The establishment of any new water rights on state lands must be by and for the Lessor and no claim thereto may be made by the Lessee. Such water rights will attach to and become appurtenant to the state lands, and the Lessor will be the owner thereof. ()

02. Potable Water Discovery. All leases issued under these rules will be subject to the condition that, where the Lessee finds only potable water of no commercial value as a geothermal resource in any well drilled for exploration or production of geothermal resources, and when the water is of such quality and quantity as to be valuable and usable for agricultural, domestic, or other purpose, the Board, or where appropriate, the surface Lessee, grantee or contract purchaser, will have the right to acquire the well with whatever casing is installed in the well at the fair market value of the casing, and upon the assumption of all future liabilities and responsibilities for the well, with the approval of the director of the IDWR. ()

071. -- 074. (RESERVED)

075. ASSIGNMENTS.

01. Prior Written Approval. In order for Lessee to effect an assignment, Lessee must, prior to the consummation of an effective sale, transfer or assignment of the lease between Lessee and its proposed assignee, provide to the Department certain information about the proposed assignment, including identification of the proposed assignee and general terms of the proposed assignment on assignment application forms provided by the Department. Any proposed total or partial assignment of a lease must be preapproved in writing by the Department prior to any proposed sale, transfer or assignment of the lease is consummated between Lessee and the proposed assignee. Approval will not be unreasonably withheld. Following the Department's written preapproval of the proposed assignee and general terms of the proposed assignment, Lessee and assignee may consummate any such sale, transfer or assignment of Lessee's leasehold interest in the lease. The consummation of any assignment agreement by the Lessee without the Department's prior written preapproval constitutes a default of the lease, and such sale, transfer or assignment may be rejected in the Department's sole discretion; and, such assignment will only be effective if the default is expressly waived in writing by the Department. In order for an assignment of Lessee's interest in the lease to be acceptable for approval by the Department, the consummated sale, transfer or assignment must include provisions wherein Lessee has sold, transferred or assigned to the assignee any and all interest that Lessee has in the lease together with any and all interest Lessee has in any and all improvements located upon the leased premises, and assignee must assume all liabilities of Lessee under the lease together with ownership of all improvements owned by Lessee. An assignment between Lessee and its assignee will only take effect following the Department's final written approval of the assignment following receipt of copies of the final, consummated sale, transfer or assignment agreement between Lessee and assignee. ()

02. Full or Partial. A lease may be assigned as to all or part of the acreage included therein to any person qualified to hold a state lease, provided that neither the assigned nor the retained part created by the assignment contains less than forty (40) acres. No undivided interest in a lease of less than ten percent (10%) may be created by assignment. ()

03. Overriding Royalty Disclosure. Overriding royalty interests created by an assignment are subject to the requirements in Section 080 of these rules. ()

04. Responsibility. In an assignment of a partial or complete interest in all of the lands in a lease, the assignor and its surety continue to be responsible for performance of any and all obligations under the lease until such time as the Department, in writing, releases Lessee and its surety from obligations arising under the lease after the Department accepts any such assignment and provides a release of any or all obligations in writing. After the effective date of any assignment, the assignee and its surety will be bound by the terms of the lease to the same extent as if the assignee were the original Lessee, any conditions in the assignment to the contrary notwithstanding. ()

05. Segregation of Assignment. An assignment of all or any portion of Lessee's record title of the complete interest in a portion of the lands in a lease must clearly identify and segregate the assigned and retained portions. After the effective date, the assignor will be released and discharged from any obligations thereafter accruing with respect to the assigned portion of the leased lands. Such segregated leases continue in full force and effect for the primary term of the original lease or as further extended pursuant to the terms of these rules. ()

06. Joint Principal. Where an assignment does not segregate the record title to the lease, the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. The application must also be accompanied by a consent of assignor's surety to remain bound under the bond of record, if the bond, by its terms, does not contain such consent. If a party to the assignment has previously furnished a statewide bond, no additional showing by such party is necessary as to the bond requirement. ()

07. Application. The application for approval of an assignment must be on forms approved by the Department. ()

08. Denial. If the Lessee is in default of the lease at the time of a request for assignment approval, the

Department may, at its sole discretion, reject any proposed assignment until the lease is brought into full compliance. The approval of an assignment of lease in good standing will not be unreasonably withheld provided such consent of the Department is requested and obtained prior to any assignment. ()

076. -- 079. (RESERVED)

080. OVERRIDING ROYALTY INTERESTS.

01. Statements. An overriding royalty interest, or any similar interest whereby an agreement is made to pay a percentage based on production, must be disclosed at the time of assignment or transfer by filing a statement of such interest with the Department. Assignees must meet the requirements of Section 021 of these rules. All assignments of overriding royalty interests without a working interest and otherwise not contemplated by Section 075 of these rules, must be filed with the Department within ninety (90) days from the date of execution. ()

02. Maximum Amount. No overriding royalty on the production of geothermal resources created by an assignment contemplated by Section 075 of these rules or otherwise will exceed five percent (5%) nor will an overriding royalty, when added to overriding royalties previously created, exceed five percent (5%). ()

03. Conformance with Rules. The creation of an overriding royalty interest that does not conform to the requirements of this rule is be deemed a violation of the lease terms, unless the agreement creating overriding royalties provides for a prorated reduction of all overriding royalties so that the aggregate rate of overriding royalties does not exceed five percent (5%). ()

04. Director's Authority. In addition to the foregoing limitations, any agreement to create or any assignment creating royalties or payments out of production from the leased lands is subject to the authority of the Director, after notice and hearing, to require the proper parties thereto to suspend or modify such royalties or payments out of production in such manner as may be reasonable when and during such periods of time as they may constitute an undue economic burden upon the reasonable operations of such lease. ()

081. -- 084. (RESERVED)

085. UNIT OR COOPERATIVE PLANS OF DEVELOPMENT OR OPERATION.

01. IDWR Approval. Nothing in this rule will excuse the parties to a unit agreement from procuring the approval of the IDWR pursuant to Section 42-4013, Idaho Code, if approval is required. ()

02. Unit Plan. For the purpose of conserving the natural resources of any geothermal pool, field or like area, Lessees under lease issued by the Board are authorized, with the written consent of the Department, to commit the state lands to unit, cooperative or other plans of development or operation with other state lands, federal lands, privately-owned lands or Indian lands. Departmental consent will not be unreasonably withheld. Applications to unitize, or a copy of the application filed with IDWR, will be filed with the Department who will certify whether such plan is necessary or advisable in the public interest. The Department may require whatever documents or data that the Department deems necessary in its reasonable discretion. To implement such unitization, the Board may with the consent of its Lessees modify and change any and all terms of leases issued by it that are committed to such unit, cooperative or other plans of development or operations. ()

03. Contents. The agreement must describe the separate tracts comprising the unit, disclose the apportionment of the production of royalties and costs to the several parties, and the name of the operator, and must contain adequate provisions for the protection of the interests of all parties, including the state of Idaho. The agreement should be signed by or in behalf of all interested necessary parties before being submitted to the Department. It will be effective only after approval by the Department. The unit operator must be a person as defined by these rules and must be approved by the Department. ()

04. Lease Modification. Any modification of an approved agreement will require approval of the Department under procedures similar to those cited in Subsection 085.02 of these rules. ()

05. Term. At the sole discretion of the Department, the term of any leases included in any cooperative

or unit plan of development or operation may be extended for the term of such unit or cooperative agreement, but in no event beyond that time provided in Subsection 030.01 of these rules. Rentals or royalties on leases so extended may be reassessed for such extended term of the lease. ()

06. Continuation of Lease. Any lease that will be eliminated from any such cooperative or unit plan of development or operation, or any lease that will be in effect at the termination of any such cooperative or unit plan of development or operation, unless relinquished, will continue in effect for the term of the lease. ()

07. Evidence of Agreement. Before issuance of a lease for lands within an approved unit agreement, the lease applicant or successful bidder will be required to file evidence that they have entered into an agreement with the unit operator for the development and operation of the lands in a lease if issued to him under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, the lease applicant or successful bidder will be permitted to operate independently, but will be required to perform his operations in a manner that the Department deems to be consistent with the unit operations. ()

086. -- 094. (RESERVED)

095. SURRENDER, TERMINATION, EXPIRATION OF LEASE.

01. Procedure. A lease, or any surveyed subdivision of the area covered by such lease, may be surrendered by the record title holder by filing a written relinquishment in the office of the Department, on a form furnished by the Department, provided that a partial relinquishment does not reduce the remaining acreage in the lease to less than forty (40) acres. The minimum acreage provision of this section may be waived by the Department where the Department finds such exception is justified on the basis of exploratory and development data derived from activity on the leasehold. The relinquishment must: ()

- a. Describe the lands to be relinquished; ()
- b. Include a statement as to whether the relinquished lands had been disturbed and, if so, whether they were restored as prescribed by the terms of the lease; and ()
- c. State whether wells had been drilled on the lands and, if so, whether they have been plugged and abandoned pursuant to the rules of the IDWR. ()

02. Continuing Obligations. A relinquishment takes effect on the date it is filed, subject to the continued obligation of the Lessee and his surety: ()

- a. To make payments of all accrued rentals and royalties; ()
- b. To place all wells on the land to be relinquished in condition for suspension of operations or abandonment; ()
- c. To restore the surface resources in accordance with these rules and the terms of the lease; and ()
- d. To comply with all other environmental stipulations provided for by these rules or lease. ()

03. Failure to Pay Rental or Royalty. The Director may terminate a lease for failure to pay rentals or royalties thirty (30) days after mailing a notice of delinquent payment. However, if the time for payment falls upon any day in which the office of the Department is not open, payment received on the next official working day will be deemed to be timely. The termination of the lease for failure to pay the rental will be noted on the official records of the Department. Upon termination the lands included in such lease may become subject to leasing as provided by these rules. ()

04. Termination for Cause. A lease may be terminated by the Department for any violation of these rules, or the lease terms, sixty (60) days after notice of the violation has been given to Lessee by personal service or

certified mail, return receipt requested, to the address of record last appearing in the files of the Department, unless:
()

- a. The violation has been corrected; or ()
- b. The violation is one that cannot be corrected within the notice period and the Lessee has in good faith commenced within the notice period to correct the violation and thereafter proceeds diligently to complete the correction. ()

05. Equipment Removal. Prior to the expiration of the lease, or the earlier termination or surrender thereof pursuant to this rule, and provided the Lessee is not in default, the Lessee will have the privilege at any time during the term of the lease to remove from the leased premises any materials, tools, appliances, machinery, structures, and equipment other than improvements needed for producing wells. Any materials, tools, appliances, machinery, structures and equipment subject to removal, but not removed prior to any termination of the lease or any extension thereof that may be granted because of adverse climatic conditions during that period, will, at the option of the Department, become property of the state of Idaho, but the Lessee must remove any or all such property where so directed by the Department. ()

06. Surrender After Termination. Upon the expiration or termination of a lease, the Lessee will quietly and peaceably surrender possession of the premises to the state, and if the Lessee is surrendering the leased premises or any portion thereof, the Lessee must deliver to the state a good and sufficient release on a form furnished by the Department. ()

096. -- 099. (RESERVED)

100. BOND REQUIREMENTS.

01. Minimum Bond. Prior to initiation of operations using motorized earth-moving equipment Lessee must furnish a bond. This bond will be in favor of the state of Idaho, conditioned on the payment of all damages to the land surface and all improvements thereon, including without limitation crops on the lands, whether or not the lands under this lease have been sold or leased by the Board for any other purpose; conditioned also upon compliance by Lessee of his obligations under this lease and these rules. The Department may require a new bond in a greater amount at any time after operations have begun, upon a finding that such action is reasonably necessary to protect state resources. ()

02. Statewide Bond. In lieu of the aforementioned bonds, Lessee may furnish a good and sufficient "statewide" bond conditioned as in Subsection 100.01. This bond will cover all Lessee's leases and operations carried on under all geothermal resource leases issued and outstanding to Lessee by the Board at any given time during the period when the "statewide" bond is in effect. The amount of such bond will be equal to the total of the requirements of the separate bonds being combined into a single bond. ()

03. Period of Liability. The period of liability of any bond will not be terminated until all lease terms and conditions have been fulfilled and the bond is released in writing by the Department. ()

04. Operator Bond. In the event suit is filed to enforce the terms of any bond furnished by an operator in which the Lessee (if a different person) is not a named party, the Department may, in its sole discretion, join the Lessee as a party to such suit. ()

101. LIABILITY INSURANCE.

01. Liability Insurance Required. The Department will require the Lessee to purchase and maintain suitable insurance for the duration of the lease prior to entry upon the leased lands for other than casual exploration or inspection as contemplated by Subsection 054.02 of these rules. ()

02. Insurance Certificate Required. No work under this lease will commence prior to the Department's receipt of a certificate, signed by a licensed insurance agent, evidencing existence of insurance as required above. Further, such certificate must reflect that no change or cancellation in such coverage will become

effective until after the Department receives written notice of such change or cancellation. ()

102. -- 104. (RESERVED)

105. TITLE.

The state of Idaho does not warrant title to the leased lands or the geothermal resources and associated by-products that may be discovered thereon; the lease is issued only under such title as the state of Idaho may have as of the effective date of the lease or thereafter acquire. If the interest owned by the state in the leased lands includes less than the entire interest in the geothermal resources and associated by-products for which royalty is payable, then the royalties provided for in the lease will be paid to the state only in the proportion that its interest bears to said whole and undivided interest in said geothermal resources and associated by-products for which royalty is payable; provided, however, that the state is not liable for any damages sustained by the Lessee, nor is the Lessee entitled to or may claim any refund of rentals or royalties therefore paid to the state in the event that the state does not own title to said geothermal resources and associated by-products, or if its title thereto is less than whole and entire. ()

106. -- 110. (RESERVED)

111. TAXES.

Lessee must pay, when due, all taxes and assessments of any kind lawfully assessed and levied against Lessee's interests or operations under the laws of the state of Idaho. ()

112. RENTAL NOTICES.

Advance notice of rental due is usually sent to the Lessee by the Department, but failure to receive such notices does not act to relieve the Lessee from the payment of the rental and the lease will be in default if such payment is not made as provided in these rules. ()

113. OUTSTANDING LEASES.

No right to seek, obtain or use geothermal resources has passed or will pass with any existing or future license, permit or lease of state lands, including without limitation, mineral leases and oil and gas development leases, except upon the issuance of a geothermal resources lease. ()

114. -- 119. (RESERVED)

120. FEES.

The following fees apply: ()

01. Non-Refundable Application Fee for Lease. Two hundred fifty dollars (\$250) per application. ()

02. Application Fee for Approval of Assignment. One hundred fifty dollars (\$150) per lease involved in the assignment. ()

03. Late Payment Fee. The greater of the following: ()

a. Twenty-five dollars (\$25); or ()

b. One percent (1%) per month (or portion thereof) on the unpaid balance. ()

121. -- 999. (RESERVED)

20.03.16 – RULES GOVERNING OIL AND GAS LEASING ON IDAHO STATE LANDS

000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authorities of Sections 58-104(1), 58-104(6), 58-104(9), 58-105, and 58-127, Idaho Code; Section 58-307, Idaho Code; Title 47, Chapter 7, Idaho Code; Title 47, Chapter 8, Idaho Code; and Title 67, Chapter 52, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.16, “Rules Governing Oil and Gas Leasing on Idaho State Lands.” ()

02. Scope. These rules apply to the exploration and extraction of oil and gas resources situated in state-owned mineral lands. ()

03. Other Laws. In addition to these rules, the lessee must comply with all applicable federal, state and local laws, rules and regulations. The violation of any applicable law, rule or regulation constitutes a breach of any lease issued in accordance with these rules. ()

002. ADMINISTRATIVE APPEALS.

01. Appeal to Board. All decisions of the Director are appealable to the Board. An aggrieved party desiring to take such an appeal must, within thirty (30) days after notice of the Director’s decision, file with the Director a written notice of appeal setting forth the basis for the appeal. ()

02. Hearing. The Board will hear the appeal at the earliest practical time or in its discretion appoint a hearing officer to hear the appeal, within sixty (60) days after filing of the notice of appeal. The hearing officer will make findings and conclusions that the Board may accept, reject or modify. The decision of the Board after hearing or upon a ruling concerning the hearing officer’s findings and conclusions is final. ()

03. Judicial Review. Judicial review of the final decision of the Board will be in accord with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, by filing a petition in the district court in Ada County, or the county where the Board heard the appeal and made its final decision, within thirty (30) days after notice of the Board’s decision. Service of the Board’s decision may be by personal service or by certified mail to the lessee. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho State Board of Land Commissioners or its authorized representative, or where appropriate, the state of Idaho. ()

02. Commission. The Idaho Oil and Gas Conservation Commission. ()

03. Collateral Surety Bond and Corporate Surety Bond. See Subsections 080.04.a. and 080.04.b. ()

04. Department. The Idaho Department of Lands. ()

05. Director. The Director of the Idaho Department of Lands or his authorized representative. ()

06. Discretion. Exercising authority to make a decision, choice or judgment without being arbitrary, capricious or illegal. ()

07. Exploration. Activities related to the various geological and geophysical methods used to detect and determine the existence and extent of hydrocarbon deposits. ()

08. Final Board Approval. Approval of a lease occurs after the lease is signed by the Governor, the Secretary of State and the Director on behalf of the Board after approval of the lease by a majority of the Board. All approved leases must first be signed by the Lessee and then by the above-entitled state officials. ()

- 09. Lease.** A written agreement between the Department and a person containing the terms and conditions upon which the Person will be authorized to use state lands. ()
- 10. Legal Subdivision.** See Subsection 071.04. ()
- 11. Lessee.** The person to whom a lease has been issued and his successor in interest or assignee(s). More than one (1) person may be entered as an applicant on the application form but only one (1) person shall be designated in the application for lease or assignment as the lessee of record with sole responsibility for the lease under these rules. ()
- 12. Lessor.** The Board on behalf of the state of Idaho. ()
- 13. Motorized Exploration Equipment.** The equipment used in exploration that may appreciably disturb or damage the land or resources thereon as defined in Section 47-703(a), Idaho Code. ()
- 14. Natural Gas Plant Liquids.** Hydrocarbon compounds in raw gas that are separated as liquids at gas processing plants, fractionating plants, and cycling plants. Includes ethane, liquefied petroleum gases (propane and the butanes), and pentanes plus any heavier hydrocarbon compounds. Component products may be fractionated or mixed. ()
- 15. Oil and Gas.** Oil and gas means oil or gas, or both. ()
- 16. Person.** ()
- a.** An individual of legal age; ()
- b.** Any firm, association or corporation that is qualified to do business in the state of Idaho; ()
- c.** Or any public agency or governmental unit, including without limitation, municipalities. ()
- 17. Production in Paying Quantities.** That gross income from oil and/or gas produced and saved (after deduction of taxes and royalty) that exceeds the cost of operation. ()
- 18. State Lands.** Lands, including the beds of navigable waters within Idaho in which the title to mineral rights is owned by the state of Idaho, that are under the jurisdiction and control of the Board or any other state agency. ()
- 19. Tract.** An expanse of land representing the surface expression of the underlying mineral estate, which includes oil and gas rights owned by the State, that: ()
- a.** May be identified by its public land survey system of rectangular surveys that subdivides and describes land in the United States in the public domain and is regulated by the U.S. Department of the Interior, Bureau of Land Management; ()
- b.** Is of no particular size; ()
- c.** Is a maximum size of six hundred forty (640) acres or one section, unless otherwise determined by the Director; ()
- d.** May be irregular in form; ()
- e.** Is contiguous; ()
- f.** May lie in more than one township or one section; ()
- g.** May have a boundary defined entirely or in part by natural monuments such as streams, divides, or straight lines connecting prominent features of topography; ()

- h.** May include the mineral estate beneath navigable waters of the State; and ()
- i.** May be combined with other tracts to form a lease. ()

011. -- 014. (RESERVED)

015. CONTROL OF STATE LANDS.

The Director will regulate and supervise pursuant to law and these rules all state lands within the custody and control of the Board. State lands subject to the custody and control of other state agencies will be regulated and supervised by the respective agency in accord with state laws and rules; provided that any lease for oil and gas thereon complies with these rules. ()

016. WITHDRAWAL OF LANDS.

At any time prior to final Board approval of a lease, the Board reserves the right to withdraw state lands entirely from oil and gas leasing if consistent with its constitutional and statutory duties and in the state's best interests. ()

017. -- 019. (RESERVED)

020. QUALIFIED APPLICANTS AND LESSEES.

Any person who is not then in default of any contract with the state of Idaho or any department or agency thereof is a qualified applicant and lessee. No member of the Board or employee of the Department may take or hold such lease. ()

021. EXPLORATION.

01. Written Permit Required. Any appreciable surface disturbing activity, including, but not limited to, motorized exploration on state lands is prohibited except by written permit for exploration for a period of time as determined by the Director. This permit is in addition to any permit required by the Commission. ()

02. Permit Conditions. The permit will contain such conditions as the Director determines will protect the existing surface uses and resources of the state. The permit applicant must pay in advance the fee required by Section 120. ()

022. LEASE ACQUISITION PROCESS.

01. Acquiring a Lease. A lease may be acquired for the exclusive right and privilege to explore for and produce oil and gas by oral auction, online auction, or such other method of competitive bidding authorized by the Board, in its discretion, determined to be in the best interest of the state, and will be awarded to the winning bidder at close of auction. The winning bidder at auction will be issued the lease by the Department on the first day of the month following Final Board Approval. The Board and Department reserve the right to reject any or all nominations or bids, and expressly disclaim any liability for inconvenience or loss caused by errors that may occur concerning lease offerings. ()

02. Lease Provisions. ()

a. Advance Annual Rental. The Lessee must pay to the state of Idaho an advance annual rental for each lease of three dollars (\$3) per acre with a minimum of two hundred fifty dollars (\$250) per lease. ()

b. Diligent Drilling. Diligent and continuous drilling operations means no delay or cessation of drilling for a period greater than one hundred twenty (120) days, unless extended in writing by the Director. The Director must receive a written request for an extension at least ten (10) days prior to the expiration of the one hundred twenty (120) day period. ()

c. Notification at End of Lease Period. The Lessee must notify the Director in writing prior to the expiration of the final year of his lease that drilling or reworking operations has commenced and will extend beyond the expiration date of the lease. Advance Annual Rental, in the amount required by Section 022 for any additional and

each succeeding year, must be received by the Department prior to the expiration date and entitles the Lessee to hold the lease only as long as drilling or rework operations are pursued in accord with these rules. There will be no refund of unused rental. ()

d. Abandonment. During any additional or succeeding year of any lease, cessation of production for a period of six (6) months is considered as abandonment. The lease will then automatically terminate at its next anniversary date unless the Director determines that such cessation of production is justified or the well meets the requirements of a shut in well under Subsection 022.02.e. ()

e. Suspension of Production. The Director may grant a suspension of production not to exceed one (1) year upon a written application showing that the lessee is unable to market oil or gas from a well located on the leased premises capable of oil and gas production in paying quantities due to a lack of suitable production facilities or a suitable market for the oil or gas and such conditions are outside the reasonable control of lessee and the lease is not being otherwise maintained in force and effect. If such well is shut in and the Director approves the application for suspension of production requirements prior to the expiration or termination of the lease, then the lease will be extended in accordance with the terms of Section 47-801, Idaho Code, for a period of one (1) year if the lessee timely submits an application in a form approved by the Director and, upon approval of said application, pays a shut-in royalty in the amount equal to double the annual rental provided for by these rules for each well capable of producing oil or gas in paying quantities. The lessee must remit the shut-in royalty payment while the lease is otherwise maintained in force and effect. Payment of shut-in royalty after the expiration or other termination of the lease will not revive or extend the lease. The Lessee may request continuation of this suspension of production, provided such request is received in writing by the Director at least thirty (30) days prior to the expiration date of the period of suspension. ()

03. Nominating a Tract for Auction. A tract may be nominated for auction either by application to the Department at least ninety (90) days prior to a Department-defined close of auction date, or by Department nomination at least ninety (90) days prior to a Department- defined close of auction date. Any qualified person may nominate a tract for lease auction by submitting a nomination to the Department, and paying the nomination fee in an amount determined by the Board, during regular business hours on the Department nomination form. Each nominated tract must be a maximum size of six hundred forty (640) acres or one section. The nominating person may propose that multiple tracts be included in a single lease. Each nomination for a tract for auction is deemed an offer by the nominating person to lease the tract for the advance annual rental amount as defined in Subsection 022.02 above. ()

04. Withdrawing a Tract for Auction. Any person nominating a tract for auction may withdraw their nomination if a request for such withdrawal is received by the Department at least ten (10) business days prior to the opening date of auction. The nomination fee will not be refunded. ()

05. Auction Conditions. The Department will determine the conditions associated with the auction including, but not limited to, the following: when or if a tract will be offered for auction; whether the tract is to be removed from the auction; whether multiple tracts will be combined in a single lease at the discretion of the Department; and any disclaimers, additional information, and any other such terms and conditions associated with the auction of the tracts. Any such terms and conditions, disclaimers, and additional information will be posted on the Department's website. ()

06. Lease Information for Auction. For each lease to be auctioned, the Department will provide on the website the following: a lease number designated by the Department; the legal description; the lease length; the number of acres; a minimum bid per acre; a lease template; any lease stipulations; any other lease information; a specific date designated for the beginning and ending dates that a bidder may conduct due diligence; a specific date designated for the opening of auction; and a close of auction date. A notice of lease auction will be published at least once per week for the four (4) consecutive weeks prior to the date of auction in a newspaper in general circulation in the county in which the nominated lease is located and in a newspaper in general circulation in Ada County. ()

07. Auction Procedure. The Department will determine the procedures associated with the auction, including, but not limited to place of auction, time of auction, and bidder registration procedure. Additional auction procedures are as follows. ()

- a.** Bid Increments. The minimum bid increment is one dollar (\$1). ()
- b.** Winning Bid. At close of auction, the winning bid for a Lessee is the number of dollars bid multiplied by the number of acres in the lease, with fractions of an acre rounded up to the next whole acre. If, at close of auction, a bid for a lease has not been submitted by a bidder, then the lease will be awarded to the nominating applicant. The entry of a bid constitutes an enforceable contractual obligation. ()
- c.** Amount Due. The amount due for a lease is the winning bid, plus the first year's annual rental amount as per Subsection 022.02, plus the nomination fee. If the winning bid was submitted by the nominator of the tract(s), then the nomination fee will already have been submitted to the Department and will not be included in the amount due. The nominator will be refunded the nomination fee if they are not the winning bidder. ()
- d.** Transfer of Funds. Unless otherwise required in the notice of auction, the winning bidder for each lease has five (5) full business days after close of auction to complete the transfer of funds to the Department. Failure of the winning bidder to transfer funds within the period specified constitutes a breach of contract, and the state may pursue any action or remedy at law or in equity against the winning bidder. ()
- 08. Execution of Lease.** The completed lease will be executed by the winning bidder within thirty (30) days from the date of mailing after close of auction, or if personally delivered to the applicant or his agent by the Department, within thirty (30) days from the date of receipt. An individual who executes a lease on behalf of another Person must submit a power of attorney outlining such delegated authority. ()

023. -- 044. (RESERVED)

045. ROYALTIES.

- 01. Royalty Payments.** Unless otherwise specified by the Board, the lessee will pay to the state of Idaho in money or in kind to the state at its option a royalty of no less than twelve and one-half percent (12.5%) of the oil and/or gas or natural gas plant liquids produced and saved. The lessee will make payments in cash unless written instructions for payment in kind are received from the state. Royalty is due on all production from the leased premises except that consumed for the direct operation of the producing wells and that lost through no fault of the lessee. ()
- 02. Royalty Not Reduced.** Where royalties are paid in cash, costs of marketing, transporting and processing oil and/or gas or natural gas plant liquids or all of them produced are borne entirely by the lessee, and such cost will not reduce the lessor's royalty directly or indirectly. If the Director elects to take royalty in kind, the state will reimburse the lessee for reasonable additional storage and transportation costs. ()
- 03. Oil, Gas, and Natural Gas Plant Liquids Royalty Calculation and Reporting.** All royalty owed to the lessor hereunder and not paid in kind at the election of the lessor will be paid to the lessor in the following manner: ()
- a.** Payment of royalty on production of oil is due and must be received by the lessor on or before the 65th day after the month of production; ()
- b.** Payment of royalty on production of gas and natural gas plant liquids is due and must be received by the lessor on or before the 95th day after the month of production; ()
- c.** All royalty payments must be completed in the form and manner approved by the Department including, but not limited to, the gross amount and disposition of all oil, gas, and natural gas plant liquids produced and the market value of the oil, gas, and natural gas plant liquids; ()
- d.** Lessee must maintain, and make available to the lessor upon request, copies of all documents, records or reports confirming the gross production, disposition and market value, including gas meter readings, pipeline receipts, gas line receipts and other checks or memoranda of the amount produced and put into pipelines, tanks, or pools and gas lines or gas storage, and any other reports or records that the lessor may require to verify the

gross production, disposition and market value; and ()

e. Each royalty payment must be accompanied by a check stub, schedule, summary or other remittance advice showing, by the assigned lessor lease number, the amount of royalty being paid on each lease. ()

04. Overriding Royalty. All assignments of overriding royalty without a working interest made directly by the lessee and not included with an assignment of lease must be filed with the Department with the processing fee within ninety (90) days from the date of execution; provided that it is the lessee's responsibility, and not the Department's, to process such assignments by third parties. Any assignment that creates an overriding royalty exceeds the royalty previously payable to the state by greater than five percent (5%), is deemed a violation of the terms of the lease unless such an assignment expressly provides that the obligation to pay such excess overriding royalty is suspended when the average production of oil per well per day, averaged on a monthly basis, is fifteen (15) barrels or less. ()

046. -- 049. (RESERVED)

050. LAND USE, SURFACE RIGHTS AND OBLIGATIONS.

01. Use and Occupancy. Notwithstanding other leases for other uses of state lands, the lessee is entitled to use and occupy as much of the surface of the leased lands as may be required for all purposes reasonably incident to exploration, drilling and production and marketing of oil and gas produced from the leased land, including the right to construct and maintain all works, buildings, plants, waterways, roads, communication lines, pipelines, reservoirs, tanks pumping stations or other structures necessary to full enjoyment and development; provided that lessee's operation does not unreasonably interfere with or endanger operations under any lease, license, claim, permit or other authorized, lawful use. ()

02. Prevention of Injury or Damage. The lessee, its assignees, agents, and/or contractors must take all reasonable precautions to prevent injury or damage to persons, real and personal property and to prevent waste or damage to the oil, gas and other surface and subsurface natural resources and the surrounding environment including but not limited to, vegetation, livestock, fish and wildlife and their natural habitat, streams, rivers, lakes, timber, forest and agricultural resources. The Lessee, his assignees, agents and/or contractors will compensate the Board, his surface lessees, grantees or contract purchasers for any damage resulting by reason of their operations or any damage resulting from their failure to take all reasonable precautions to prevent injury or damage to persons, real and personal property and to prevent waste or damage to the oil, gas and other surface and subsurface natural resources and surrounding environment as set forth above. The lessee, its assignees, agents and/or contractors must comply with all environmental laws, rules and regulations as they pertain to its operation. ()

03. Blowout or Spill. The lessee must report to the Director any blowout, fire, uncontrolled venting, or oil spill on the leased land within twenty-four (24) hours and confirm this report in writing within ten (10) days. ()

04. Fences. The lessee may not at any time fence any watering place upon leased lands where it is the only accessible and feasible watering place upon the lands within a radius of one (1) mile, without first having secured the written consent of the Director. ()

05. Timber Removal. The lessee may not unreasonably interfere with the removal of timber purchased prior or subsequent to the issuance of an oil and gas lease. The lessee may remove any timber required for ingress or egress or necessary for operations. The lessee must pay for any timber cut or removed on a current stumpage price basis as determined by the Director, and proceeds therefrom accrue to the state agency that has custody and control over the leased lands. ()

06. Potable Water Discovery. If the lessee finds only potable water in any well drilled for exploration or production of oil and gas, and the water is of such quality and quantity as to be valuable and usable for agricultural, domestic, or other purposes, the Board may acquire the well with whatever casing is installed in the well at the fair market value of the casing upon the assumption by its surface lessee, grantee, or contract purchaser of all future liabilities and responsibilities for the well, with the approval of the commission and in compliance with Section 058;

provided that the surface lessee, grantee, or contract purchaser also complies with applicable laws and rules of the Department of Water Resources. ()

07. Reclamation. The lessee must reclaim all state lands disturbed by its exploration and operations at least consistent with previous use by the surface owner, including segregating and protecting topsoil and regrading to approximate previous contour. If substantial removal of topsoil has occurred as determined by the Director, the lessee will replace the topsoil and revegetate to the extent necessary to minimize erosion. ()

08. Entry by Director. The Director is permitted at all reasonable times to go in and upon the leased lands and premises to inspect the operations and the products obtained and to post any lawful notice. The Director may at any time require that reasonable tests, surveys, samples, etc., be taken in accord with his instruction, without cost to the state of Idaho, to assure compliance with these rules. The Director may at any reasonable time inspect and copy at his own expense all of lessee's books and records pertaining to a lease under these rules. Upon failure of lessee to take timely, corrective measures ordered by the Director or the Board or the commission, the Director may shut down lessee's operations if he determines they are unsafe or are causing or may cause waste or pollution to oil, gas or other resources; or the Director may terminate the lease and cause damage or unsafe conditions to be repaired or corrected at the expense of the lessee and forfeiture of bond in accordance with these rules. ()

09. Other Uses. Subject to Subsection 050.01, the Director may issue leases for other uses of state lands leased under these rules. All lessees have the right of reasonable ingress and egress at all times during the term of the lease. ()

10. Disposal of Leased Lands. The Board reserves the right to sell or otherwise dispose of the surface of the leased lands; provided that any sale of surface rights made subsequent to execution of the lease is subject to all terms and provisions of the oil and gas lease during its life including extensions and continuations under Section 040. ()

051. DILIGENT EXPLORATION REQUIRED.

The lessee must perform diligent exploration during the entire term of a lease. Diligent exploration means that the lessee provides continuing efforts as a reasonably prudent operator toward achieving production, including, without limitation, performing geological and geophysical surveys and/or the drilling of a test well. ()

052. -- 054. (RESERVED)

055. OPERATIONS UNDER THE LEASE.

01. Best Practices. The lessee will at all times conduct exploration, development, drilling and all operations as a reasonably prudent operator and conform to the best practice and engineering principles in use in the oil and gas industry. ()

02. Compliance with Rules. The lessee will comply with all rules of the oil and gas commission, including amendments promulgated pursuant to Title 67, Chapter 52, Idaho Code, and any violations of the commission's rules or other applicable state laws and rules may constitute a violation of the lease under these rules. ()

03. Designation of Operator. In all cases where operations are not conducted by the lessee but are to be conducted under authority of an approved operating agreement, assignment or other arrangement, a designation of operator must be submitted to the Director prior to commencement of operations. Such a designation authorizes the operator or his local representative to act for the lessee and to sign any papers or reports required under these rules. The lessee must immediately report to the Director all changes of address and termination of the authority of the operator. ()

04. Legal Representative. When required by the Director, the lessee must designate a local representative empowered to receive service of civil or criminal process and notices and orders of the Director issued pursuant to these rules. ()

05. Diligence. The lessee will, subject to the right to surrender the lease, diligently drill and produce

such wells as are necessary to protect the Board from loss by reason of production on other properties, or with the consent of the Director, compensate the Board for failure to drill and produce any such well. All wells under lease must be drilled, maintained and operated to produce the maximum amount of oil and/or gas that can be secured without injury to the well. ()

06. Loss Through Waste or Failure to Produce. The Director will determine the value of production accruing to the Board where there is loss through waste or failure to drill and produce protection wells on the leased lands and the compensation due to the Board as reimbursement for such loss. Payment for such losses must be made within sixty (60) days after the date of billing. The value of production resulting from a loss through waste or failure to take corrective measures to protect a well is calculated at ninety percent (90%) of the last year's actual production royalty or a minimum royalty of five dollars (\$5) per acre or fraction thereof, whichever is greater. ()

07. By-Products. Where production, use or conversion of oil and gas under a lease, is susceptible of producing a valuable by-product or by-products, including, without limitation, commercially demineralized water, carbon dioxide or helium, the lessee must submit to the Director all available information concerning the potential by-product. The Department may conduct tests or studies at its expense and may issue reasonable orders to produce and preserve such by-product. ()

08. Geothermal Information. Prior to abandoning any well, the lessee must submit to the Director all available information concerning geothermal resource potential. The Department may conduct tests or studies at its expense prior to the abandoning of any well to determine geothermal resource potential. Except as provided in Subsection 040.05, the lessee must promptly plug and abandon any well on the leased land that is not used or useful, in accord with these rules and the rules of the commission, and any applicable rules and regulations of the Department of Water Resources. When drilling in a known geothermal resources area, the applicant may need a geothermal resource well permit from the Department of Water Resources. ()

056. WATER RIGHTS.

The lessee will comply with all state laws and rules regulating the appropriation of water rights. No water rights developed or obtained by the lessee in conjunction with operations under a lease may be sold, assigned or otherwise transferred without written approval of the Director. Upon surrender, termination or expiration of the lease, the lessee must take all actions required by the Director to assign to the Board all water rights, including applications and permits, subject to applicable laws regarding the transfer or assignment of permits to appropriate water. ()

057. -- 059. (RESERVED)

060. ASSIGNMENTS.

01. Prior Written Approval. No lease assignment is valid until approved in writing by the Director, and no assignment takes effect until the first day of the month following its approval. ()

02. Qualified Assignee. A lease may be assigned to any person qualified to hold a state lease, provided that in the event an assignment partitions leased lands between two (2) or more persons, neither the assigned nor the retained part created by the assignment may contain less than forty (40) acres or a government lot, whichever is less. ()

03. Responsibilities. In an assignment of the complete interest of the leasehold, the assignor and his surety continue to comply with the lease and these rules until the effective date of the assignment. After the effective date of any assignment, the assignee and his surety are bound by the lease and these rules to the same extent as if the assignee were the original lessee, notwithstanding any conditions in the assignment to the contrary; however, the assignor-lessee remains liable for rentals and royalties due and damages accruing prior to the effective date of the assignment. ()

04. Segregation of Assignment. 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 ten-year term of the original lease or as further extended pursuant to these rules. ()

05. Joint Principal. Where an assignment does not segregate the record title to the lease, the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. The application must be accompanied by a consent of assignor's surety to remain bound under the bond of record, if the bond by its terms does not contain such consent. If a party to the assignment has previously furnished a statewide bond, no additional showing by such party is necessary as to the bond requirement. ()

06. Form of Assignment. An assignment is a valid legal instrument, properly executed and acknowledged, setting forth the number of the lease, a legal description of the land involved, the name and address of the assignee, the interest transferred and the consideration. A fully executed copy of the instrument of assignment must be filed with the application for approval pursuant to Subsection 060.07. An assignment may affect or concern more than one (1) lease. ()

07. Application. The application for approval of an assignment must be submitted in duplicate on forms of the Department or exact copies of such forms. The "lessee/assignee of record" must be designated in accordance with Subsection 010.11. If payments out of production are reserved, a statement must be submitted stating the amount, method of payment, and other pertinent items. The statement must be filed with the Department no later than fifteen (15) days after the filing of the application for approval. ()

08. Denial. The Director may deny an application for assignment if the lessee or the assignee is delinquent in payment of rentals or royalties or otherwise has violated these rules. ()

09. Fee. All applications for approval of assignment must be accompanied by the fee required by Section 120. ()

061. -- 069. (RESERVED)

070. SURRENDER - RELINQUISHMENT.

01. Procedure. The lessee may surrender its lease or any surveyed subdivision of the area covered by such lease, by filing a written relinquishment with the Department, provided that a partial relinquishment does not reduce the remaining acreage in the lease to less than forty (40) acres or a government lot, whichever is less. The Director may waive the minimum acreage provision of this rule if he finds it is justified on the basis of exploratory and development data derived from activity on the leasehold. ()

02. Effective Date. A relinquishment takes effect thirty (30) days after it is received by the Department. Thereafter the lessee is relieved of liability under these rules except for the continued obligation of the lessee and his surety to: ()

- a.** Make payments of all accrued rentals and royalties; ()
- b.** Place all wells on the land to be relinquished in condition for suspension of operations or abandonment; ()
- c.** Comply with all rules of the commission for plugging of abandoned wells; ()
- d.** Comply with applicable laws and rules of the Department of Water Resources; and ()
- e.** Reclaim the surface and natural resources in accord with these rules. ()

03. Partial Surrender. In the event of a partial surrender of the land covered by such lease, the annual rental thereafter payable will be reduced proportionately. ()

071. TERMINATION - CANCELLATION OF LEASE.

01. Cause. Except as otherwise provided in these rules, the Director may terminate the lease for any substantial violation of these rules, the lease, or the rules of the commission, ninety (90) days after notice of the violation has been given to lessee by personal service or by certified mail to the lessee, unless: ()

a. The violation has been corrected; or ()

b. The violation is one that cannot be corrected within the notice period and the lessee has in good faith commenced within the notice period to correct the violation and proceeds diligently to complete corrective action within a time period set by the Director. If sent by certified mail, such notice will be deemed served upon mailing. ()

02. Surrender After Termination. Upon the expiration or termination of the lease, the lessee will quietly and peaceably surrender possession of the premises to the state. Thereafter, lessee's obligations under these rules that have accrued prior to the date of expiration or termination continue in full force and effect. ()

03. Other Wells. Default by the lessee in the performance of any of the conditions or provisions of the lease concerning a well or wells on any legal subdivision of the leasehold do not affect the right of the lessee to continue the possession or operation of any other well or wells, situated upon any other legal subdivision of the leasehold. The term "legal subdivision" as herein used means a subdivision as established by the United States land survey that most nearly approximates in size the area allocated to one well under any approved well spacing program; provided that if no special program has been approved, "legal subdivision" means the parcel upon which such well is located, but in any event not less than forty (40) acres surrounding such well. Where such a default involving one (1) or more wells results in cancellation, and the lessee has other wells on the lease not in default, such cancellation will result in the division of the defaulting acreage from the lease and resultant reduction in the size of the lease held by the lessee. ()

04. Equipment Removal. Upon the expiration of the lease, or its earlier termination or surrender pursuant to these rules, the lessee must, within a period of ninety (90) days, remove from the premises all materials, tools, appliances, machinery, structures. Equipment subject to removal but not removed within the ninety (90) day period or any extension that may be granted because of adverse climatic conditions during that period, may, at the option of the Director, become property of the state of Idaho, or the Director may cause the property to be removed at the lessee's expense. ()

072. -- 079. (RESERVED)

080. BOND REQUIREMENTS.

01. Minimum Bond. Prior to entry with motorized exploration equipment upon leased lands, the surface of which has been sold or leased, the lessee must submit to the Director a corporate surety bond or collateral bond in the amount of one thousand dollars (\$1,000) in favor of the state of Idaho conditioned upon the payment of all damages to the surface that result from the lessee's operation. Prior to entry upon the leased land with drilling equipment or prior to commencing any construction in preparation for drilling upon leased lands, the lessee must submit to the Director a corporate security bond or collateral bond in the amount of six thousand dollars (\$6,000) in favor of the state of Idaho bond will be conditioned upon compliance with the lease, these rules, the removal of all materials, etc. per Subsection 071.04, and the payment of all damages to the land surface and all improvements thereon, including crops, which result from the lessee's operation, regardless of whether the lands under this lease have been sold or leased by the Board for any other purpose. This bond is in addition to the drilling bond pursuant to commission rules. This rule notwithstanding, the oil and gas lessee may be required on a case-by-case basis to post a bond in excess of six thousand dollars (\$6,000) to protect a surface lessee's or surface owner's interests pursuant to Section 47-708, Idaho Code. ()

02. Statewide Bond. In lieu of the aforementioned bonds, 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 these rules. ()

03. Period of Liability. The period of liability of any bond is not be terminated until all obligations under the lease and these rules have been fulfilled and the bond is released in writing by the Director. ()

04. Form of Performance Bond. ()

a. Corporate surety bond means an indemnity agreement executed by or for the lessee and a corporate surety licensed to do business in the state of Idaho on an oil and gas lease bond form supplied by the Department conditioned in accord with Subsection 080.01, and payable to the state of Idaho. ()

b. Collateral bond means an indemnity agreement executed by or for the lessee and payable to the state of Idaho, pledging cash deposits, negotiable bonds of the United States, state or municipalities, or negotiable certificates of deposit of any bank doing business in the United States. Collateral bonds are subject to the following conditions: The Department obtains possession and deposits such with the state treasurer. The Department will value collateral at its current market value, not face value. Certificates of deposit are made payable to the "State of Idaho or the lessee." Amount of an individual certificate may not exceed the maximum amount insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or their successors. Banks issuing such certificates waive all rights of set-off or liens that they have of may have against such certificates. Any such certificates are automatically renewable. The certificate of deposit must be of sufficient amount to ensure that the Department 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. ()

05. Bond Cancellation. Any surety company or indemnitor canceling a bond must give the Department at least sixty-days' (60) notice prior to cancellation. The Department will not release a surety or indemnitor from liability under existing bonds until the lessee has submitted to the Department an acceptable replacement bond. Such replacement bond must cover any liability accrued against the bonded principal on the lease covered by the previous bond. ()

06. Surety License. If the license to do business in Idaho of any surety is suspended or revoked, the lessee must find a substitute for such surety within thirty (30) days after notice by the Department. If the lessee fails to secure a substitute surety, he must cease operation upon the lease. The substitute surety must be licensed to do business in Idaho. ()

07. Form. All bonds furnished must be on the Department bond form or exact copy of it. ()

081. -- 089. (RESERVED)

090. UNIT OR COOPERATIVE PLANS OF DEVELOPMENT OR OPERATION.

01. Unit Plan. For the purpose of properly conserving the natural resources of any oil and gas pool, field or like area, the lessee may, with the written consent of the Director, commit the leased lands to a unit, cooperative or other plan of development or operation with other state, federal, Indian, or privately-owned lands. ()

02. Contents. An agreement to unitize must: describe the separate tracts comprising the unit; disclose the apportionment of the production of royalties and costs to the several parties; the name of the operation; and contain adequate provisions for the protection of the interests of all parties, including the state. The agreement must: be signed by or in behalf of those persons or entities having effective control of the geologic structure; submitted to the Director with the application to unitize; and effective only after approval by the Director. ()

03. Interested Parties. The owners of any right, title or interest in the oil and gas resources to be developed or operated under an agreement may be regarded as interested parties to a proposed unitization agreement. Signature of a party with only an overriding royalty interest in unnecessary. ()

04. Collective Bond. In lieu of separate bonds for each lease committed to a unit agreement, the unit operator may furnish and maintain a collective corporate surety bond or a collateral bond conditioned upon faithful performance of the duties and obligations of the agreement, the lease subject to the agreement and these rules. The liability under the bond will be for such amount the Director determines to be adequate to protect the interests of the state. If the unit operator is changed, a new bond or consent of surety to the change in principal under the existing bond must be filed within thirty (30) days of assignment. ()

05. Lease Modification. The terms of any lease included in any cooperative or unit plan of development or operation may be modified by the Director with approval of the lessee, except that a unit agreement

must have final approval by the Director for a state cooperative plan or the final approval by the secretary of interior for a federal cooperative plan prior to extending any lease into its eleventh year and each year thereafter. A lease so extended expires two (2) years after the unit plan expires provided the lessee continues to pay the annual rental as outlined in Subsection 041.03. ()

06. Rentals. Rentals and royalties on leases so extended are at the rates specified in these rules. Advanced rental must be paid on or before the extended lease's anniversary date. Any unused portion of annual rental will not be refunded. ()

07. Evidence of Agreement. Before issuance of a lease for lands within an approved unit agreement, the lease applicant must file with the Department evidence that he has entered into an agreement with the unit operator for the development and operation of the lands in a lease, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, the applicant will be permitted to operate independently but be required to perform its operations in a manner that the Director deems to be consistent with the unit operations. ()

08. Segregation Prohibited. A lease may not be segregated if any part thereof is included in a cooperative plan until the pool or field has been defined. Once defined, those areas outside the unit area or pool boundary can be surrendered as provided in Section 070. ()

091. -- 094. (RESERVED)

095. LIABILITY INSURANCE; SPECIAL ENDORSEMENTS.

01. Liability Insurance Required. Prior to entry upon the leased lands for any reason other than casual exploration or inspection pursuant to Section 021, the lessee must secure and maintain during the term of this lease, public liability, property damage, and products liability insurance in the sum of four hundred thousand dollars (\$400,000) for injury or death for each occurrence; in the aggregate sum of two million dollars (\$2,000,000) for injury or death; and in the sum of four hundred thousand dollars (\$400,000) for damages to property and products damages caused by any occupancy, use, operations of any other activity on leased lands carried on by the lessee, its assigns, agents, operators or contractors. The lessee must insure against explosion, blow out, collapse, fire, oil spill and underground hazards and submit evidence of such insurance to the Director. If the land surface and improvements thereon covered by the lease have been sold or leased by the state of Idaho, the owner or lessee of the surface rights and improvements will be an additional named insured. The state of Idaho is a named insured in all instances. This policy or policies of liability insurance must contain the following special endorsement:

“The state of Idaho, the Idaho State Board of Land Commissioners, the Director of the Department of Lands, the Department of Lands, (or other state agency exercising custody and control over the lands), and (herein insert name of owner or lessee of surface rights, if applicable) and the officers, employees and agents of each and every of the foregoing are additional insureds under the terms of this policy: Provided, however, these additional insureds shall not be insured hereunder for any primary negligence or misconduct on their part, but such additional insureds shall be insured hereunder for secondary negligence or misconduct, which shall be limited to failure to discover and cause to be corrected the negligence or misconduct of the lessee, its agents, operators or contractors. This insurance policy shall not be canceled without thirty (30) days prior written notice to the Idaho Department of Lands. None of the foregoing additional insureds is liable for the payment of premiums or assessments of this policy.”

No cancellation provision in any insurance policy is in derogation of the continuous duty of the lessee to furnish insurance during the term of this lease. Such policy or policies must be underwritten to the satisfaction of the Director. A signed complete certificate of insurance, with the endorsement required by this paragraph, must be submitted to the Director prior to entry upon the leased land with motorized exploration equipment after award of a lease and may be required prior to such entry under Rule 021. ()

02. Certificate of Insurance. At least thirty (30) days prior to the expiration of any such policy, a signed complete certificate of insurance, with the endorsement required by Subsection 095.01, showing that such insurance coverage has been renewed or extended, must be filed with the Director. ()

096. HOLD HARMLESS.

The state of Idaho, the Board, the Director, the Department, and any other state agency that may have custody or control of the leased lands, and the owner of the surface rights and improvements, if not the state of Idaho, or state lessee of surface rights, if there be one, the officers, agents and employees of each of the foregoing, are free from any and all liabilities and claims for damages and/or suits for or by reason of death or injury to any person or damage of property of any kind whatsoever, caused by a negligent or otherwise wrongful act or omission of the lessee, its assigns, agents, operators, employees or contractors; and lessee covenants and agrees to indemnify and to save harmless the state of Idaho, the Board, the Director, the Department, or other state agency, or the lessee of surface rights if there be one, and their officers, agents, and employees from all liabilities, charges, expense, including attorney fees, claims, suits or losses caused by a negligent or otherwise wrongful act or omission of the lessee, its assigns, agents, operators, employees or contractors. The lessee's signature to a lease under these rules constitutes express agreement to this rule. ()

097. -- 099. (RESERVED)

100. TITLE.

The state of Idaho does not warrant title to the leased lands or the oil and gas resources that may be discovered thereon; the lease is issued only under such title as the state of Idaho may have as of the effective date of the lease or thereafter acquires. ()

101. IMPOSSIBILITY OF PERFORMANCE.

Whenever, as a result of any act of God, or law, order or regulation of any governmental agency, it becomes impossible for the lessee to perform or to comply with any obligation under the lease or these rules, other than payment of rentals or royalties, the Director in his discretion, may by written order excuse lessee from damages or forfeiture of the lease, and the lessee's obligations may be suspended and the term of the lease may be extended provided that the Director finds that good cause exists. ()

102. TAXES.

The lessee pays, when due, all taxes and assessments of any kind lawfully assessed and levied against the lessee's interest or operations under the laws of the state of Idaho. ()

103. -- 119. (RESERVED)

120. FEES.

01. Exploration Permit. One hundred dollars (\$100) per linear mile or a minimum of one hundred dollars (\$100) per section. ()

02. Nonrefundable Nomination Fee. The nomination fee is set by the Board at a minimum of two hundred fifty dollars (\$250) per tract. ()

03. Processing Fee. The processing fee is set by the Board at a minimum of one hundred dollars (\$100) per each document. ()

04. Fee Adjustment. The Board may annually adjust these fees without formal rulemaking procedures. ()

121. -- 999. (RESERVED)

**20.03.17 – RULES GOVERNING LEASES ON STATE-OWNED SUBMERGED
LANDS AND FORMERLY SUBMERGED LANDS**

000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authorities of Title 58, Chapter 1, Idaho Code, Sections 58-104(6), 58-104(9), and 58-105; Title 58, Chapter 3, Idaho Code, Sections 58-304 through 58-312; Title 58, Chapter 6, Idaho Code; Title 58, Chapter 12; and Title 67, Chapter 52, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.17, “Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands.” ()

02. Scope. These rules govern the issuance of leases on state-owned submerged lands. ()

a. These rules also apply to state-owned islands raised from submerged lands, or filled submerged lands, or other formerly submerged lands that are no longer covered by water at any time during an ordinary year. ()

b. While the State asserts the right to issue leases for all encroachments, navigational or non-navigational, upon, in or above the beds or waters of navigable lakes and rivers, nothing in these rules may be construed to vest in the state of Idaho any property, right or claim of such right to any private lands lying above the natural or ordinary high water mark of any navigable lake or river. ()

002. ADMINISTRATIVE APPEALS.

Any person aggrieved by any final decision or order of the Board is entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, and IDAPA 20.01.01, “Rules of Practice and Procedure Before the State Board of Land Commissioners.” ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Artificial High Water Mark. The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line. ()

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

03. Commercial Marina. A commercial navigational encroachment whose primary purpose is to provide moorage for rental or for free to the general public. ()

04. Commercial Navigational Encroachment. A navigational encroachment used for commercial purposes. ()

05. Community Dock. A structure that provides private moorage for more than two (2) adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to, homeowners’ associations. No public access is required for a community dock. ()

06. Department. The Idaho Department of Lands or its designee. ()

07. Director. The director of the Idaho Department of Lands or his designee. ()

08. Dock Surface Area. Includes docks, slips, piers, and ramps and is calculated in square feet. Dock surface area does not include pilings, submerged anchors, or undecked breakwaters. ()

09. Encroachments in Aid of Navigation. Includes docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake, river or stream. The term “encroachments in aid of navigation” may be used interchangeably herein with the term “navigational encroachments.” ()

10. Encroachments Not in Aid of Navigation. Includes all other encroachments on, in, or above the beds or waters of a navigable lake, river or stream, including landfills, bridges, utility and power lines, or other

structures not constructed primarily for use in aid of navigation. It also includes float homes and floating toys. The term “encroachments not in aid of navigation” may be used interchangeably herein with the term “non-navigational encroachments.” ()

11. Formerly Submerged Lands. The beds of navigable lakes, rivers, and streams that have either been filled or subsequently became uplands because of human activities including construction of dikes, berms, and seawalls. Also included are islands that have been created on submerged lands through natural processes or human activities since statehood, July 3, 1890. ()

12. Market Value. The most probable price at a specified date, in cash, or on terms reasonably equivalent to cash, for which the property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. ()

13. Natural or Ordinary High Water Mark. The line that the water impresses upon the soil by covering it for a sufficient period of time to deprive the soil of its vegetation and destroy its value for agricultural purposes. If, however, the soil, configuration of the surface, or vegetation has been altered by man’s activity, the ordinary high water mark is located where it would have been if the alteration had not occurred. ()

14. Person. A partnership, association, corporation, natural person, or entity qualified to do business in the state of Idaho and any federal, state, tribal, or municipal unit of government. ()

15. Riparian or Littoral Rights. The rights of owners or lessees of land adjacent to navigable lakes, rivers or streams to maintain their adjacency to the lake, river, or stream and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters. ()

16. Single-Family Dock. A structure providing noncommercial moorage that serves one (1) waterfront owner whose waterfront footage is no less than twenty-five (25) feet. ()

17. Submerged Lands. The state-owned beds of navigable lakes, rivers, and streams below the natural or ordinary high water marks. ()

18. Two-Family Dock. A structure providing noncommercial moorage that serves two (2) adjacent waterfront owners having a combined waterfront footage of no less than fifty (50) feet. Usually the structure is located on the common littoral property line. ()

19. Upland. The land bordering on navigable lakes, rivers, and streams. ()

011. -- 019. (RESERVED)

020. APPLICABILITY.

Leases are required for all encroachments on, in, or over state-owned submerged land except: ()

01. Single -Family or Two-Family Docks. Single-family or two-family docks that were constructed on or before July 1, 1993, that occupy less than eleven hundred (1,100) square feet of dock surface area lakeward of the ordinary high water mark, and for which all required permits and approvals have been obtained. ()

02. Single-Family Docks. Single-family docks that were constructed after July 1, 1993, that occupy less than seven hundred (700) square feet of dock surface area lakeward of the ordinary high water mark, and for which all required permits and approvals have been obtained. ()

03. Two-Family Docks. Two-family docks that were constructed after July 1, 1993, that occupy less than eleven hundred (1,100) square feet of dock surface area lakeward of the ordinary high water mark, and for which all required permits and approvals have been obtained. ()

04. Encroachments Free to the Public. Encroachments in aid of navigation for which the complete

use is offered free to the public. ()

05. Temporary Permits or Easements. Uses or encroachments that are customarily authorized by temporary permits or easements, such as roads, railroads, overhead utility lines, submerged cables, and pipelines. Information on easements can be found in IDAPA 20.03.09, “Easements on State-Owned Submerged Lands and Formerly Submerged Lands.” ()

021. -- 024. (RESERVED)

025. POLICY.

01. Policy of the State of Idaho. It is the policy of the state of Idaho to regulate and control the use and 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. ()

02. Director May Grant Leases. The Director may grant leases for uses that are in the public interest and consistent with these rules. ()

03. Requests or Inquiries Regarding Navigability. The State owns the beds of all lakes, rivers, and streams that were navigable in fact at statehood. The Department will respond to requests or inquiries as to which lakes, rivers, and streams are deemed navigable in fact. Additional information about streams deemed navigable by the State of Idaho is available from the Department. ()

04. Stream Channel Alteration Permit or Encroachment Permit. Issuance of a lease is contingent upon the applicant obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources, pursuant to Title 42, Chapter 38, Idaho Code, or an encroachment permit if required by the Department pursuant to the Lake Protection Act, Title 58, Chapter 13, Idaho Code, and compliance with local planning and zoning regulations if applicable. ()

05. Other Permits and Licenses. Issuance of a lease does not relieve an applicant from acquiring other permits and licenses that are required by law. ()

06. Submerged Lands Lease Required Upon Notification. All persons using submerged lands in a manner that requires a submerged land lease must obtain such a lease from the Director when notified to do so. ()

07. Term of Lease, Renewal of Lease. Leases are issued for a term of ten (10) years or as determined by the Board. Leases may be renewed for additional periods to be determined by the Department based upon satisfactory performance during the present term. Renewals will be processed with a minimum of procedural requirements and will not be denied except in the most unusual circumstances or noncompliance with the terms and conditions of the previous lease. Lease renewals are initiated by the Department. ()

08. Director’s Authorization to Issue and Renew Leases. The Director is authorized to issue and renew leases for the use of submerged lands in accordance with these rules. ()

09. Rights Granted. The lease grants only such rights as are specified in the lease. The right to use the submerged or formerly submerged lands for all other purposes that do not interfere with the rights authorized in the lease remains with the state. ()

10. Rules Applicable to All Existing and Proposed Uses and Encroachments. These rules apply to all existing and proposed uses and encroachments, whether or not authorized by permit under the Lake Protection Act, Title 58, Chapter 13, Idaho Code, or the Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code. These rules provide that a lease may be required in addition to existing permits. See Section 020 of these rules for information about exceptions to lease requirements. ()

11. Waiver of Lease Requirements. The Director may, in his discretion, waive lease requirements for single-family or two-family dock encroachments whose dock surface areas exceed square footages described in Subsections 020.01 through 020.03 of these rules when the additional dock surface area square footage is necessary to gain or maintain access to water of sufficient depth to sustain dock use for water craft customarily in use on that particular lake. ()

12. Private Moorage at Commercial Marinas. ()

a. This Subsection (025.12) does not apply to community docks. ()

b. Private moorage at commercial marinas is allowed as long as the requirements of IDAPA 20.03.04, “Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho,” Subsection 015.03 are met. ()

c. The sale, lease, or rental of private moorage is in no way an encumbrance on any underlying public trust land. All transactions related to private moorage are subject to the limitations of the associated submerged lands lease. ()

d. Acquisition of private moorage must be documented with a disclosure that the transaction does not convey public trust lands and only conveys the right to use the designated portion of the marina. ()

e. The Department will make no policy regarding the cost of private moorage and the resolution of disputes between the involved parties. ()

026. -- 029. (RESERVED)

030. LEASE APPLICATION, FEE, AND PROCEDURE.

01. Fee. The lease application fee is one hundred fifty dollars (\$150). ()

02. Fee Is Required. A lease application and nonrefundable fee is required for new and existing encroachments. A lease application fee is required for leases that are renewed upon expiration. ()

03. Application to Lease and Fee. The lease application and fee must be submitted with the information from Subsections 030.03.a. through 030.03.c., in sufficient detail for the Department to determine an appropriate lease rate based on numbers of slips, square footage, or other permit information: ()

a. A letter of request stating the purpose of the lease. ()

b. A scale drawing of the proposed lease area with plans detailing all intended improvements, including reference to the nearest known property corner(s). An encroachment permit may satisfy this requirement. ()

c. The permit number of each existing applicable encroachment permit. ()

04. Submittal of Application to Lease and Fee. The lease application and fee must be filed in the local office of the Department or the Director’s office. ()

05. Notification of Approval or Denial. The applicant will be notified in writing if the lease application is approved or denied. The applicant will also be notified of any additional requirements. ()

06. Request for Reconsideration. Any applicant aggrieved with the Director’s determination of rent or denial of a lease application may request reconsideration by the Director. ()

031. -- 034. (RESERVED)

035. RENTAL.

The rental rate policy for submerged land leases is set by the Board. This policy is available on the Department website at <http://www.idl.idaho.gov/>. ()

01. Standardized Rental Rates. The Board sets standard submerged land lease rental rates for common uses such as commercial marinas, community docks, floathomes, restaurants, and retail stores. Rental rates for commercial marinas and other uses that produce revenue for the lessee will commonly be calculated as a percentage of gross receipts, however, other methods may be used as determined appropriate by the Board. ()

02. Nonstandard Rental Rates. The Board directs the Department to use a percentage of market value or gross receipts, or other methods determined appropriate by the Board, as the submerged lands lease rental rate for uses that are uncommon, especially for non-navigational encroachments. ()

036. YEARLY REPORTING.

01. Annual Report. Lessees must provide an annual report to the Department that includes: ()

- a.** A schedule of moorage rental rates, including moorage sizes and types. ()
- b.** The number and size of all public boat and float home moorages. ()
- c.** The number and size of all private boat and float home moorages. ()
- d.** Current proof of insurance that is required by the lease. ()

02. Failure to Report. Failure to provide the annual report information is a violation of these rules. ()

037. -- 039. (RESERVED)

040. LATE PAYMENT, EXTENSIONS OF PAYMENT.

01. Penalty for Late Payment of Rent. Rent not paid by the due date is considered late. A penalty, calculated from the day after which payment was due, will be added to the rent. The penalty will be determined by the Board for the first month or any portion thereof and one percent (1%) of the rent due, including penalty, per month thereafter. ()

02. Extension in Time for Payment of Rent. An extension in time in which to submit payment of rent may be granted for commercial submerged lands leases only. Such extensions may not exceed two (2) successive years, as required by Title 58, Chapter 3, Idaho Code, Section 58-305. ()

03. Request for Extension in Time for Payment of Rent. Lessees must request extensions on forms supplied by the lessor and pay an extension fee to be determined by the Board. The lessee must also provide a statement from his banker or accountant verifying that money is not available for the payment of rent. ()

04. Interest Rate for Extension in Time for Payment of Rent. If an extension is granted, rent plus interest at a rate established by the Board will be due no later than October 1 of the rent year. Specifically, interest will be the average monthly rate for conventional mortgages as quoted in the Federal Reserve Statistical Report; the rate to be rounded downward to the nearest one quarter percent (1/4%) on the tenth of each month following the release of data. ()

041. -- 044. (RESERVED)

045. APPRAISAL PROCEDURES.

Appraisals may be used to determine the market value of adjacent uplands for calculating submerged lease rental rates. ()

01. Appraisal. An appraisal will either be performed by qualified Department staff or an independent

contract appraisal. Any appraisal must be under the control of the Department. ()

02. Cost of Appraisal. The appraisal costs are the actual cost for Department personnel plus transportation, including per diem and administrative overhead, or the bid amount for the contract appraiser. An itemized statement of these costs will be provided to the applicant. The cost of the appraisal is in addition to those costs outlined in Section 035 of these rules and is billed separately from the application fee and rent. ()

046. -- 049. (RESERVED)

050. LEASE MODIFICATION OR AMENDMENT.

01. Encroachment Amendment. A lease modification or amendment must first be permitted through an amendment to the lake encroachment permit or stream alteration permit, if needed. ()

02. Modification of Existing Lease. Modification or amendment of an existing lease will be processed in the same manner as a new lease application, but no fee will be required. Modification or amendment includes change of use, location, size or scope of the lease site, but does not include ordinary maintenance, repair or replacement of existing structures or facilities. ()

03. Modification of Interior Facilities. If the proposed changes to a facility do not require a new encroachment permit, a lease modification may still be needed as described in Subsection 050.02 of these rules. The lessee must give written notice to the Department at least ten (10) days in advance of making such changes. The Department will determine if a lease modification is needed due to the proposed changes. When requested, the lessee must also furnish one (1) set of as-built plans to the Department within thirty (30) days following completion of changes. ()

051. -- 054. (RESERVED)

055. ASSIGNMENTS, ASSIGNMENT FEE.

01. Assignment of Lease. Leases may be assigned upon approval of the Director provided that the lease conforms with Subsection 025.02 and all other provisions of these rules. The assignor and assignee must complete the Department's standard assignment form and forward it to any Department office. ()

02. Assignment Fee. The assignment fee is one hundred fifty dollars (\$150). ()

03. Permit Assignment. The encroachment permit/stream alteration permit pertinent to a lease must be assigned to a purchaser simultaneously with a lease assignment. A lease assignment will not be approved unless the permit is assigned. ()

04. Approval Required for Assignment. An assignment is not valid until it has been approved by the Director. ()

056. -- 059. (RESERVED)

060. CANCELLATION AND ADDITIONAL REMEDIES.

01. Cancellation of Lease for Violation of Terms. Any violation of the terms of the lease by the lessee, including non-payment of rent or any violation by lessee of any rule now in force or hereafter adopted by the Board may subject the lease to cancellation. The lessee will be provided written notification of any violation. The letter will specify the violation, corrective action necessary, and specify a reasonable time to make the correction. If the corrective action is not taken within the specified reasonable period of time, the Department will notify the lessee of cancellation of the lease; provided, however, that the notice is provided to lessee no later than thirty (30) days prior to the effective date of such cancellation. ()

02. Reinstatement of Lease. A lease may be reinstated within ninety (90) days after cancellation for non-payment by paying the rental, plus interest, and a reinstatement fee to be determined by the Board. ()

03. Cancellation of Lease for Use Other Than Intended Purpose. A lease not used for the purpose for which it was granted may be canceled. The Department will notify the lessee in writing of any proposed cancellation. The lessee has thirty (30) days to reply in writing to the Department to show cause why the lease should not be canceled. Within sixty (60) days, the Department will notify the lessee in writing as to the Department's decision concerning cancellation. The lessee has thirty (30) days to appeal an adverse decision to the Director. ()

04. Removal of Improvements Upon Cancellation. Upon cancellation, the Director will provide the lessee with a specific amount of time, not to exceed six (6) months from the date of final notice, to remove any facilities and improvements. Failure to remove any facilities or structures within such time period established by the Director will be deemed a trespass on submerged or formerly submerged lands. ()

05. Additional Remedies Available. In addition to termination of the lease for the material default of the lessee, the lease may provide for other remedies to non-monetary breach of the lease including, but not limited to: ()

- a. Civil penalties as determined by the Board and to be collected as additional rent; ()
- b. The reasonable costs of remedial action undertaken by the Department as a result of the lessee's failure to perform a requirement of the lease. These costs will be collected as additional rent; and ()
- c. Such other remedies as the Board deems appropriate. ()

061. -- 064. (RESERVED)

065. BOND.

01. Bond Requirement Determined by Director. Bonds may be required for commercial navigational, community dock, and nonnavigational leases. The need for bond will be at the discretion of the Director who will consider the potential for abandonment of the facility, harm to state-owned submerged land and water resources, the personal and real property of adjacent upland owners and the personal and real property owned by the encroachment owner that is appurtenant to and supportive of the encroachment. ()

02. Performance Bond. In the event a bond is necessary, the lessee must submit a performance bond in favor of the state of Idaho and in a format acceptable to the Director before a lease is issued. Acceptable bonds include surety, collateral, and letters of credit. The amount of bond is the estimated cost of restoration as established by the Director in consultation with the lease applicant on a case by case basis. To determine restoration costs, the Director may consider the potential for damage to land, to improvements, and the cost of structure removal. ()

066. -- 069. (RESERVED)

070. LIABILITY AND INDEMNITY.

A lessee will indemnify and hold harmless the lessors, its departments, agencies and employees for any and all claims, actions, damages, costs, and expenses that may arise by reason of lessee's occupation of the leased premises, or the occupation of the leased premises by any of the lessee's agents, or by any person occupying the same with the lessee's permission. ()

071. -- 074. (RESERVED)

075. OTHER RULES AND LAWS.

The lessee will comply with all applicable state, federal, and local rules and laws insofar as they affect the use of the lands described in the lease. ()

076. -- 079. (RESERVED)

080. BINDING ON HEIRS.

All of the terms, covenants, and conditions in a state lease are binding upon the heirs, executors, and assigns of the lessee. ()

081. -- 084. (RESERVED)

085. CIVIL RIGHTS.

The lessee may not discriminate against any person on the basis of such person's race, creed, color, sex, national origin or handicap. ()

086. -- 999. (RESERVED)

**20.04.02 – RULES PERTAINING TO THE IDAHO FORESTRY ACT
AND FIRE HAZARD REDUCTION LAWS**

000. LEGAL AUTHORITY.

These rules are adopted pursuant to the rulemaking authority granted in Sections 38-132 and 38-402, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.04.02, “Rules Pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws.” ()

02. Scope. These rules implement the provisions of the Idaho Forestry Act and Fire Hazard Reduction Laws. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

Unless otherwise required by context, as used in these rules: ()

01. Agreement. The Certificate of Compliance-Fire Hazard Management Agreement (Department of Lands Form 715) required by Section 38-122, Idaho Code. ()

02. Contract Area. The legal description of the land given on the agreement. ()

03. Contractor. The person who enters into the Certificate of Compliance-Fire Hazard Management Agreement. ()

04. Department. The Idaho Department of Lands. ()

05. Director. The Director of the Idaho Department of Lands or his authorized representative. ()

06. District. A designated forest protective district. ()

07. Fire Line. A line dug to mineral soil which is intended to control a fire. ()

08. Fire Warden. A duly appointed fire warden or deputy. ()

09. Fuel. Any slash or woody debris that will contribute to the spread or intensity of a wildfire. ()

10. Fuel Break. An area in which all slash and dead woody debris have been removed or piled and burned. ()

11. Hazard Reduction. The burning or physical reduction of fire hazards by treatment in a manner that will reduce the intensity and/or spread of a wildfire after treatment is completed. ()

12. Initial Purchaser or Purchaser. The first person, company, partnership, corporation or association of whatever nature who purchases a forest product after it is harvested. ()

13. Operational Period. A standard twelve (12) hour fire control shift. ()

14. Slash or Slashing. Brush, severed limbs, poles, tops and/or other waste material incident to such cutting or to the clearing of land, which are four (4) inches and under in diameter. However, for the purpose of these rules and to correspond with standard fire classifications, slash will only include material less than or equal to three (3) inches in diameter. ()

15. Slash Load. Slash resulting from timber harvesting that has occurred under a current agreement, exclusive of natural mortality. ()

16. State. The state of Idaho. ()

011. -- 029. (RESERVED)

030. CERTIFICATE OF COMPLIANCE-FIRE HAZARD MANAGEMENT AGREEMENT.

01. Contents. A Certificate of Compliance-Fire Hazard Management Agreement must be obtained by anyone who conducts an operation involving the harvesting of forest products or potential forest products. Such Agreement provides the option of entering into a contract as provided in Section 38-404, Idaho Code or posting of a cash or surety bond to the State. The Certificate of Compliance required by Section 38-122, Idaho Code, must be in substantially the same form as Department of Lands Form No. 715 -- "Certificate of Compliance-Fire Hazard Management Agreement." ()

02. Period of Time. The period set forth within the Agreement is based upon such considerations as the size of the contract area, the volume of the timber to be harvested or the silvicultural objectives of the landowner. However, in no case may a single Agreement exceed a period of twenty four (24) months unless the contractor and the fire warden mutually agree upon a plan for the timely abatement of the hazard during a period that may exceed twenty four (24) months. ()

03. Extensions. If the contractor cannot meet the standard required to obtain a clearance within the period specified above, the contractor may apply to the fire warden for an extension. The application must be in writing, received at the district office thirty (30) working days before the Agreement expires, and show good reason other than financial hardship, why an extension should be given. The fire warden will acknowledge receipt of the request prior to the expiration of the Agreement. ()

04. Responsibility. The contractor named in the Agreement will be responsible for managing the fire hazard created by the harvesting and will receive the clearance if the slash treatment meets standards, or will carry the liability for suppressing wildfire for five (5) full years following the expiration of the Agreement. ()

031. -- 039. (RESERVED)

040. ADDENDUM TO CERTIFICATE OF COMPLIANCE-FIRE HAZARD MANAGEMENT AGREEMENT.

In those instances where a contractor indicates an intent to accomplish only the piling portion of the total slash hazard reduction job, an addendum to the Agreement must be executed specifying precisely the portion of slash withholding money that will be refunded. The addendum must be in substantially the same form as Department of Lands Form No. 715.1 -- "Addendum to Certificate of Compliance-Fire Hazard Management Agreement." ()

041. -- 049. (RESERVED)

050. BOND.

01. Amount of Bond. The bond specified in Section 38-122 and Section 38-404, Idaho Code, must be in the amount of four dollars (\$4) per thousand board feet (MBF), or equivalent measure as shown in Table I below, of forest products harvested, and may take the form of cash, surety bond or irrevocable letter of credit. Surety bonds must be in substantially the same form as Department of Lands Form No. 707 - "Bond." ()

02. Rates. Rates and amounts listed in Table I will be used as a minimum in calculating hazard reduction bonds for products cut from all state and private lands in Idaho.

TABLE I	
PRODUCT	BOND RATE
(1) MBF Measurement	
All Products	\$4.00 MBF
OR	
(2) Other Measurement	

TABLE I	
PRODUCT	BOND RATE
Green pulp, stud timber, etc.	\$2.00 Cord
Lineal Foot Measure	
Utility poles and pilings, all species	\$.014 LF
Stulls, corral poles, cellar timbers, fence rails, round posts	\$.01 LF
Piece Measure	
100 inch bolt material	\$.08 ea.
Split posts	\$.02 ea.
Tree stakes	\$.02 ea.
Shake boards	\$.02 ea.
Ton Measurement	
Green or Dead Pulp, Chips, etc.	\$.70 Ton

()

03. Exceeding Minimum Bond. The minimum bond rate will only be exceeded when the landowner or operator requests that higher rate to accomplish additional hazard reduction. ()

051. -- 059. (RESERVED)

060. CONTRACTS WITH FOREST LANDOWNERS OR OPERATORS.

Forest landowners and operators who engage in timber harvesting operations may enter into an optional Agreement with the Director as provided in Section 38-404, Idaho Code. Under the terms of such an optional Agreement, the Director may assume all responsibility for the management and reduction of fire hazards to be created in return for a stipulated amount to be paid to the Director by the landowner or operator. Such optional Agreement must be in substantially the same form as Department of Lands Form No. 720 -- "Contract for Management, Reduction and/or Removal of Fire Hazards Created by the Harvesting of Timber Within the State of Idaho," or Department of Lands Form No 725 - "Contract for Management of Fire Hazards Created By the Harvesting of Timber Within the State of Idaho." ()

061. -- 069. (RESERVED)

070. CASH BOND RELEASE.

Contractors who elect under Section 38-122, Idaho Code, to have hazard reduction money withheld, but who do not intend to dispose of the hazard themselves, must release the withheld monies to the Director of the Department of Lands. Such release must be in substantially the same form as Department of Lands Form No. 761 -- "Release of Cash Bond Withheld to Assure Slash Disposal." ()

071. -- 079. (RESERVED)

080. ADDED PROTECTION IN LIEU OF HAZARD REDUCTION.

As provided in Section 38-401, Idaho Code, fire hazard management methods may include or be limited to the taking of additional protective measures in lieu of actual disposal of the slash hazard. Any funds coming into district hazard management accounts through contract, cash bond release or forfeiture, may be used for added protection provided that the expenditure meets specifications outlined in Section 38-401, Idaho Code. ()

081. -- 089. (RESERVED)

090. PURCHASER REQUIREMENTS.

01. Initial Purchaser. Initial purchasers of forest products, in accordance with Section 38-122, Idaho Code, must withhold and remit to the State slash management monies as appropriate for the slash management option chosen by the contractor. Such option must be clearly identified on the purchaser's copy of the Agreement. Slash monies withheld in any one (1) calendar month must be remitted to the Director on or before the end of the next calendar month. Such remittance must be in substantially the same form as Department of Lands Form No. 740 -- "Hazard Reduction Payment Record." ()

02. Duty of Initial Purchaser. Initial purchasers of forest products must make certain that all contractors from whom they purchase forest products have obtained a proper Agreement. ()

091. -- 099. (RESERVED)

100. INJUNCTION AGAINST FURTHER CUTTING.

Any person who cuts timber or other forest products of any kind, without having first secured an Agreement in accordance with Section 38-122, Idaho Code, may be enjoined from continuing such cutting and will be required to immediately dispose of all slash created. If the person responsible fails to properly dispose of the slash within thirty (30) days after being notified to do so, the State may dispose of the slash and such costs of disposal, plus twenty percent (20%) as a penalty, may be collected as a prior lien against the products harvested. ()

101. -- 109. (RESERVED)

110. BURNING OF SLASH.

01. Permits. Any burning operation conducted for the purpose of hazard reduction must be in accordance with the law requiring burning permits during the closed fire season. Persons conducting burning operations must have sufficient men, tools and equipment on hand to immediately stop the uncontrolled spread of any fire. Burning operations must be planned, prepared and executed in such a manner that forest resources are not damaged and air quality standards are met. ()

02. Burn Plan. Burning of specifically designated blocks or areas of forest land for any purpose must be conducted in accordance with a prescribed burn plan approved by the fire warden in whose area of responsibility the burn occurs. ()

111. -- 119. (RESERVED)

120. STANDARDS -- TREATMENT OF HAZARDS.

01. Purpose. To provide standards for hazard reduction and the release of liability for the contractor who is working under a valid Agreement with the State. ()

02. Reduction of Total Hazard Points. The contractor must reduce the total hazard points charged against the contract area to five (5) points or less (see Table II) on or before the expiration date on the Agreement in order to receive a refund of slash monies withheld (less three (3) percent for the fire suppression fund, ref. Rule150) or, to clear any demands that might be made against the surety bond and to receive a release of liability against any fires that start on or pass through the contract area.

TABLE II - HAZARD CHARACTERISTICS AND OFFSET SLASH LOAD MAXIMUM 20 POINTS	
RATING (POINTS)	ADJECTIVE DESCRIPTION
LOW (0-5)	Associated with low harvest volumes per acre such as; selection cutting, light commercial thinning, sanitation/salvage operations, tree length skidding with tops and limbs and little or no breakage. Slash is broken up; slash is in many islands over the operating area.

TABLE II - HAZARD CHARACTERISTICS AND OFFSET SLASH LOAD MAXIMUM 20 POINTS	
RATING (POINTS)	ADJECTIVE DESCRIPTION
MODERATE (6-10)	Operation types similar to those listed above except that harvest volume per acre is higher or utilization standards are lower, or timber has higher proportion of unusable top and crown (commonly associated with partial cutting in second growth stands of mixed timber). Most diameter limit cutting falls in this category. Slash is distributed with some clear or very light areas intermingled with heavy islands of slash over the operating area, slash is not continuous.
HIGH (11-15)	Usually associated with regeneration harvest methods such as shelterwood, seed tree and most clearcuts, or any partial cut with a high harvest volume per acre. Slash is nearly continuous through the operating area frequently with heavier islands intermingled with light continuous slash.
EXTREME (16-20)	Any operation with very high cut volume, and/or low utilization standards, and/or many slashed or broken stems. Slash is continuous over the operating area with few light areas.
TECHNICAL SPECIFICATIONS	
LOW (0-5)	Slash load less than or equal to 3 inch diameter materials not to exceed 3.0 tons/acre.
MODERATE (6-10)	Slash load less than or equal to 3 inch diameter materials greater than 3.0 tons/acre but less than 6.0 tons/acre.
HIGH (11-15)	Slash load less than or equal to 3 inch diameter materials greater than 6.0 tons/acre but less than 12.0 tons/acre.
EXTREME (16-20)	Slash load less than or equal to 3 inch diameter materials exceeds 12.0 tons/acre.

Slash loads can be determined by using any standard photo series appropriate for the habitat type represented by the contract area, or by using USDA Forest Service General Technical Report INT-16, 1974 (HANDBOOK FOR INVENTORYING DOWNED WOODY MATERIAL). If the contractor insists upon the latter, sampling intensity will be one (1) point per two (2) acres through the area in question. The inventory cost is paid by the contractor. All slash made available as a result of the current harvest will be included in the inventory except that slash that has been piled and will be burned by the contractor before the expiration date on the Agreement or such extensions granted by the fire warden.

SITE FACTORS - MAXIMUM 10 POINTS						
ASPECT	PERCENT SLOPE					
	0-10	11-20	21-30	31-40	41-50	>50
N-NE	0	0	1	2	4	5
E,NW	0	0	1	3	6	7
W,SE	0	1	2	5	8	9
S-SW	1	2	4	7	9	10

UNIT SIZE - MAXIMUM 5 POINTS						
ACRES	<40	40-160	161-320	321-480	481-640	>640
PT VALUE	0	1	2	3	4	5

OTHER FACTORS - MAXIMUM 7 POINTS	
Pre-existing slash from operations in the past five years	0-2
Proximity to structures, highways and recreational areas (e.g., parks, established campgrounds, etc).	Add Points
330 feet	5
660 feet	4
990 feet	3
1320 feet	2
2640 feet	1

In applying offset points to large, complex contract areas, or contract areas with highly variable hazard characteristics, hazard offset techniques must first be applied toward that portion of the contract area which will do the most to reduce the hazard by optimizing fire control effects.

HAZARD OFFSETS		
ALL POINTS ARE DEDUCTIONS		
DISPOSAL	Piling and Burning, Broadcast Burning, etc.	0-42
<p>If disposal reduces slash load in the contract area to <3 tons, deduct hazard points to five (5) or less. If disposal does not reduce slash load to that level, points should be assigned as a proportion of the area treated. For example, if twenty-five percent (25%) of the area is dozer piled and the piles burned, but the slash load in the contract area still exceeds three (3) tons, twenty-five percent (25%) of the total points charged against the job should be deducted. However, if the disposal effectively isolates the untreated portion of the slash, or is otherwise placed to optimize fire control effects the proportion of points deducted may be increased to an amount to be determined by the district fire warden.</p>		
MODIFICATION:	Chipping	0-42
	Crushing	0-20
	Lopping	0-10
<p>Lopping standards: All material less than three (3) inches in diameter will be cut so that it does not extend more than twenty (20) inches of the mean height above the ground. In addition, all boles greater than three (3) inches in diameter intersecting another bole will be completely severed.</p> <p>Assign points as a proportion of the contract area treated.</p>		
ISOLATION	Fuel Breaks	0-20

HAZARD OFFSETS	
ALL POINTS ARE DEDUCTIONS	
<p>To qualify as a fuel break, all slash and available fuels (Ref. Subsection 010.10) must be removed, or piled and burned, or treated sufficiently to prevent a fire from carrying through the area, for a minimum width of one chain (66 feet). In addition, the breaks must be placed to take advantage of terrain, manmade or natural barriers and to provide for optimum fire control effect.</p>	
Fire Lines	0-5
<p>All vegetative material must be removed to expose mineral soil. Minimum width of dozer line must be the width of the dozer blade with all dirt pushed in one direction and all vegetative debris to the other. Handlines must be eighteen (18) inches wide; additionally all fuels must be cleared for eight (8) feet. Lines must be tied to an anchor point except that they are not required to be built through a riparian management zone. In addition, the lines must be placed to take advantage of terrain, manmade or natural barriers, and to provide for optimum fire control effect. Maximum points allowed only if combined with an approved fuel break.</p>	

ASSIGNING POINTS FOR ISOLATION			
Isolation techniques will usually be used to break the area into subunits or isolate the area from adjacent stands. Hazard offsets can be deducted for both if, in the opinion of the fire warden, both objectives are met and the total isolation points do not exceed 25 offset points.			
ACTIVITY	FUEL BREAK ONLY	FIRE LINE ONLY	BOTH
Isolates contract area into subunits:			
A. Partial isolation or incomplete units	1-5	1	1-6
B. Complete isolation of area into 1 to 2 subunits	6-10	2	6-12
C. Complete isolation of area into 3 to 5 subunits	11-15	3	11-18
D. Complete isolation of area into 6 or more subunits	16-20	4	16-25
OR			
Isolates contract area from adjacent stands:			
A. One third of the contract area boundary isolated	1-5	1	1-6
B. Two thirds of the contract area boundary isolated	6-10	2	6-12
C. Entire contract area boundary isolated	11-15	3	11-18
ACCESS CONTROL	0-2		
Locked gate system controls access on all secondary roads with slash treated on main road			1
Locked gate system controls all road access into unit			2
AVAILABILITY OF WATER			0-3
The water supply must provide water availability for engines within one road mile of operating area or within three air miles for helicopter bucket use. The water supply must be sufficient to supply 10,000 gallons in an operational period during the fire season.			
Water supply for engine only or helicopter only (capacity 10,000 gallons during fire season).			1

ASSIGNING POINTS FOR ISOLATION			
Isolation techniques will usually be used to break the area into subunits or isolate the area from adjacent stands. Hazard offsets can be deducted for both if, in the opinion of the fire warden, both objectives are met and the total isolation points do not exceed 25 offset points.			
ACTIVITY	FUEL BREAK ONLY	FIRE LINE ONLY	BOTH
Water supply for engine and helicopter (capacity 10,000 gallons) or; for engine or helicopter and which replenishes itself every operational period.			2
Water supply for engine and helicopter which replenishes itself every operational period.			3

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121. -- 129. (RESERVED)

130. LIABILITY.

01. **State Liability.** With the exception of cases of negligence on the part of the landowner, operator or their agents, liability for the cost of suppressing fires that originate on or pass through a slashing area remains with the State if one of the following alternatives is executed by the contractor: ()

a. The contract area is covered by a Certificate of Compliance-Fire Hazard Management Agreement and all hazard money payments are current or a proper bond is in place. ()

b. The contractor treats the slash in accordance with the standards outlined in the Section 120, Table II within the time period specified on the Agreement or approved extensions. ()

c. The landowner or operator elects to enter into a contract with the State for management of the slash and liability of fire suppression costs in accordance with Section 38-404, Idaho Code. ()

02. **Contractor Liability.** Should the contractor choose not to treat the slash or not enter into a contract with the State in accordance with Subsection 130.01, the contractor, in addition to forfeiting any applicable bond, is liable for fire suppression costs for all fires that originate on or pass through the contractor's slashing area. The contractor retains the full liability for five (5) years from the time the Agreement or any extension thereof expires, unless a clearance has been issued. ()

03. **Failure to Treat.** Any contractor who fails to treat the fire hazard as outlined in Subsection 130.02, is liable for the actual costs of suppressing any wildfire that may occur on or pass through the area covered by the Agreement for an amount up to two hundred fifty thousand dollars (\$250,000). If the same wildfire occurs on or passes through several areas covered by separate agreements or if several Agreements cover the same area, the contractor is liable for the actual cost of suppression up to one million dollars (\$1,000,000). If a wildfire occurs on or passes through an area covered by separate Agreements with different contractors, the actual cost of suppression up to one million dollars (\$1,000,000) will be shared by the contractors prorated on acreage included in their Agreements. ()

04. **Fees.** Upon payment of the fees set forth in Table III, the State will assume liability for the cost of suppressing fires that originate on or pass through the contract area.

TABLE III - ADDITIONAL FEE TO TRANSFER LIABILITY BY HAZARD POINTS	
POINTS	RATE
6-10	\$1.00/MBF
11-20	\$2.00/MBF
21-30	\$3.00/MBF
>30	\$4.00/MBF

Additional fee rates for measurement other than board foot measurement are available upon request from any Department of Lands office. ()

05. Additional Fee. If the contractor is unable to reduce the hazard points on a contract area to the standards required for a clearance, but has completed some hazard reduction work, that contractor can discharge the remainder of his hazard obligation by returning a portion of his bond to the district and paying an additional fee to transfer liability. Use the following formula: [One minus (the acceptable hazard point or five, divided by the residual, or untreated hazard points)] multiply that ratio times the slash rate. This dollar amount should be multiplied by the total volume removed from the contract area. Add to that the additional fee to transfer liability (for the untreated hazard points, from Table III) times the total volume. When this amount is paid to the State the contract area can be cleared. Which can also be expressed as:

$$(1-(5/U)) * B * V + (A*V) = \text{Formula to transfer liability for a partially completed job.}$$

Where:

- U = Untreated or residual hazard points
- B = Bond rate (usually \$4.00 MBF) Ref. Section 050, Table I
- A = Additional fee to transfer liability, Table III
- V = Total volume removed from the contract areas

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131. -- 139. (RESERVED)

140. CERTIFICATE OF CLEARANCE.

The Certificate of Clearance is the instrument used to certify that hazard reduction has been accomplished, a contract entered into with the Director to ensure hazard management, or an additional fee has been paid. Anyone who has been issued an Agreement for the cutting of any forest product or potential forest product and who has met standards outlined in Section 120, or has made payment for hazard reduction under a contract with the Director, as provided in Section 38-404, Idaho Code, or has paid an additional fee in accordance with Section 38-122, Idaho Code, must apply in writing to the Director for a Certificate of Clearance. Within thirty (30) days after receipt of such written request for a Certificate of Clearance, the Director will cause the area covered by the request to be inspected. If it is found that the fire hazard has been properly disposed of, the Director will issue a Certificate of Clearance. The Certificate of Clearance must be substantially the same form as Department of Lands Form No. 760 - "Certificate of Clearance."

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141. -- 149. (RESERVED)

150. FIRE SUPPRESSION AND FOREST PRACTICES ASSESSMENT.

01. Withholding. An amount of three percent (3%) of the slash management rate (twelve cents (\$.12)/MBF) will be withheld from all slash management monies received and dedicated to suppression of wildfires on forest lands. For harvest from private land, an additional amount not to exceed three percent (3%) of the slash

management rate (twelve cents (\$.12)/MBF) can be withheld from slash management monies received and will be dedicated to Forest Practices support on forest lands. ()

02. Assessment Costs. Fire suppression assessment costs on operations covered by surety bond or irrevocable letter of credit or other form of bond is paid at the rate specified in Subsection 150.01. ()

151. -- 159. (RESERVED)

160. PRELOGGING CONFERENCE AND AGREEMENT.

Prelogging conferences and hazard reduction agreements are encouraged, however, the hazard reduction agreement will be canceled or modified if significant operational changes occur during the harvesting of forest products or potential forest products. ()

161. -- 999. (RESERVED)

20.06.01 – RULES OF THE IDAHO BOARD OF SCALING PRACTICES

000. LEGAL AUTHORITY.

In accordance with Section 38-1208, Idaho Code, the Board has the power to adopt and amend rules. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.06.01, “Rules of the Idaho Board of Scaling Practices.” ()

02. Scope. These rules constitute the levy of assessment, payment for logging and hauling, licensing standards and renewals, method of scaling forest products for commercial purposes, check scaling operations, and informal hearings. ()

002. INCORPORATION BY REFERENCE.

01. Incorporated Document. The “Idaho Log Scaling Manual,” 2008 Edition, published by the Idaho Board of Scaling Practices is herein incorporated by reference. ()

02. Availability of Referenced Documents. The “Idaho Log Scaling Manual,” 2008 Edition, is available on the Board’s website at <http://www.ibsp.idaho.gov/>. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho Board of Scaling Practices. ()

02. Check Scaling. The comparison of scaling practices between a Board-appointed check scaler and any other scaler. ()

03. Combination Log. Any multiple-segment log involving more than one (1) product classification. ()

04. Complaint. A written statement alleging a violation of the Idaho Scaling Law, Title 38, Chapter 12, Idaho Code. ()

05. Complainant. A person or entity who submits a complaint to the Board. ()

06. Cubic Volume. A log rule that uses cubic feet as its basic unit of measure, determined on the basis of a mathematical formula. ()

07. Decimal “C.” A log rule that uses tens of board feet as its basic unit of measure; one (1) decimal “C” equals ten (10) board feet. The Idaho Scribner decimal “C” volumes as listed in the Appendix of the “Idaho Log Scaling Manual.” ()

08. Gross Scale. The log rule volume of timber products before deductions are made for defects. ()

09. Informal Hearing. Any hearing before the Board of Scaling Practices, as opposed to a formal hearing before a hearing officer designated by the Board. ()

10. Log Brands. A unique symbol or mark placed on or in forest products for the purpose of identifying ownership. ()

11. Net Scale. The remaining log rule volume of timber products after deductions are made for defects, based on the product classification that is used. ()

12. Official Seal. An official seal of the Idaho Board of Scaling Practices is hereby adopted. The seal must be round, of a diameter of at least one and one-half inches (1-1/2”), and so constructed that it may readily be imprinted on paper. ()

13. Prize Logs. As described in Section 38-809, Idaho Code. ()

14. Product Classification. Classification as sawlog, pulp log, or cedar products log for purposes of net scale determination or check scaling. ()

15. Purchaser. The principal individual, partnership, or corporation entitled to ownership at the first determination of scale for forest products harvested in Idaho. Purchaser also includes the owner of the timber as provided in Section 38-1209(b), Idaho Code. ()

16. Requested Check Scale. A check scale performed pursuant to Section 820 of these rules. ()

17. Relicense Check Scale. A check scale requested and scheduled in advance, by a licensed scaler, for purposes of license renewal. ()

18. Routine Check Scale. A check scale that is not a relicense, temporary permit, or requested check scale. ()

19. Respondent. The person or entity accused of violating the Idaho Scaling Law, Title 38, Chapter 12, Idaho Code. ()

20. Temporary Permit Check Scale. A check scale performed pursuant to provisions of Section 240 of these rules. ()

21. Written Scaling Specifications. A written document provided to the scaler that states the information necessary to scale logs in accordance with a contractual scaling agreement. ()

011. -- 049. (RESERVED)

050. ASSESSMENT.

In accordance with provisions of Section 38-1209, Idaho Code, the Board is authorized and directed to levy an assessment. ()

01. Purchaser. The purchaser, as defined in Subsection 010.15, pays the assessment levied by the Board. ()

02. Assessment. The assessment must be transmitted to the Board on or before the twentieth (20th) day of each month for all timber harvested during the previous month. Forms provided by the Board must be completed and submitted with the assessment. ()

03. Weight. On forest products harvested and purchased solely on the basis of weight, no levy of assessment is applicable. ()

051. -- 059. (RESERVED)

060. LOG BRANDS.

In accordance with the provisions of Section 38-808, Idaho Code, the Board is responsible for approval and registration of all log brands. ()

01. Applications. All applications for log brands or renewals must be submitted and approved prior to use. ()

02. Fees. Log brand registration, renewal, and transfer of ownership fees are twenty-five dollars (\$25) for each log brand. ()

061. -- 069. (RESERVED)

070. PRIZE LOGS.

In accordance with provisions of Section 38-809, Idaho Code, the Board is responsible for the disposition of prize

logs. ()

071. -- 099. (RESERVED)

100. PAYMENT FOR LOGGING OR HAULING.

Provisions of Section 38-1220(b), Idaho Code, govern payment for logging or hauling. ()

01. Gross Scale Determination. Gross scale is determined by the methodology stated in Chapter Two (2) of the "Idaho Log Scaling Manual." ()

02. Compliance with Gross Scale Determination. Notwithstanding the methodology criteria contained in the "Idaho Log Scaling Manual," compliance will be determined to have been met when check scale results on gross scale comparisons are within allowable standards of variation as provided in these rules. ()

101. -- 199. (RESERVED)

200. LICENSES.

01. Application Form. Application for a scaling license is made on a form prescribed and furnished by the Board. ()

02. Revocation or Suspension for Incompetency. If check scale results on three (3) occasions in any twelve (12) month period are found unacceptable based on standards of variation established under Section 810, the scaler's license may be revoked or suspended as provided in Section 38-1218, Idaho Code. ()

201. -- 219. (RESERVED)

220. APPRENTICESHIP CERTIFICATE.

01. General. Is issued at no charge to those individuals with no previous scaling experience who wish to practice scaling techniques in view of becoming a licensed scaler. ()

02. Procedure to Obtain Certificate. After submitting the application form, a candidate will be required to take the written examination. Upon passing the written examination, the Apprenticeship Certificate will then be issued. ()

03. Regulations Governing Use of Certificate. The apprentice is authorized to scale only under the direct supervision of a licensed scaler. The scale determined by the apprentice will, under no circumstances, be used as the sole basis for payment. ()

221. -- 239. (RESERVED)

240. TEMPORARY PERMIT.

01. General. Is issued for a period of time, not to exceed three (3) months, to individuals with previous scaling experience who need to scale for commercial purposes. ()

02. Procedure to Obtain. Submit the application form; remit the required twenty-five dollar (\$25) fee; submit a letter from the employer requesting the temporary permit and identifying where the permittee would be scaling; take and pass the written portion of the scaler's examination, and demonstrate practical scaling abilities in the form of an acceptable check scale. ()

03. Regulations Governing Use of Temporary Permit. ()

a. Permits expire the date of the next practical examination in the area or three (3) months from the date of issuance, whichever comes first. The scale determined by the holder of a temporary permit may be used as a basis for payment. ()

b. Should the holder of a temporary permit fail to appear to take the practical portion of the scaler's examination after being notified in writing of the time and place of said examination, the temporary permit will be canceled. ()

c. Temporary permits will not be issued to applicants or relicensees who have failed the practical examination two (2) or more times until thirty (30) days following the individual's last exam failure. ()

241. -- 259. (RESERVED)

260. SPECIALTY LICENSE.

01. General. Is issued to handle situations where the applicant would not be required to possess the exacting skills needed to scale sawlogs. ()

02. Procedure to Obtain. Submit the application form, remit the required twenty-five dollar (\$25) fee, submit a letter from the employer describing scaling that would justify the issuance of a specialty license. and successfully complete the examination as may be devised by the Board. ()

03. Regulations Governing Use of Specialty License. The holder is only allowed to scale the products specified on the individual's license. ()

261. -- 279. (RESERVED)

280. STANDARD LICENSE.

01. General. Is issued to individuals who demonstrate competency in scaling principles and techniques. ()

02. Procedure to Obtain. Submit the application form, remit the required twenty-five dollar (\$25) fee, and take and pass the examination as described under Section 300. ()

03. Regulations Governing Use of Standard License. The holder is qualified to scale all species and products. ()

281. -- 299. (RESERVED)

300. STANDARD LICENSE EXAMINATION.

To be taken by all persons applying for the standard license. ()

01. Written Examination. ()

a. Will be based upon Chapters 1, 2, and 3 of the "Idaho Log Scaling Manual." ()

b. Any score of seventy percent (70%) or better is a passing grade. ()

c. The written test must be taken and passed before the practical examination can be attempted. ()

02. Practical Examination. ()

a. The practical examination for a scaler's license will consist of scaling a minimum of not less than two hundred (200) logs with a net decimal "C" scale determination for sawlogs of not less than twenty thousand (20,000) board feet, or not less than fifteen thousand (15,000) board feet in the southeast Idaho area. ()

b. The logs will first be scaled by three (3) qualified check scalers, except the southeast Idaho area will be two (2) or more qualified check scalers, and the agreed-upon results will be the basis for grading the

examination. ()

c. To obtain a passing grade, a scaler must be within allowable limits of variation in the following categories:

CATEGORY		ALLOWABLE VARIATION
Gross Volume	For logs in round form	+/- 2.0%
	For logs in fractional or slab form	+/- 5.0%
Net Volume	Check scale percent of defect on logs checked	
	Up to 10	+/- 2.0%
	10.1 to 15	+/- 3.0%
	15.1 to 20	+/- 0.2% for each percent of defect
	Over 20	+/- 5.0%
	Species identification errors	3.0%

()

301. -- 399. (RESERVED)

400. RENEWAL OF STANDARD AND SPECIALTY LICENSES.

For scalers who hold "Standard" and "Specialty" licenses, the process for renewal will consist of the following. ()

01. To Renew a License by the Expiration Date. Receive an acceptable check scale performed by a Board check scaler and pay renewal fee of twenty-five dollars (\$25). ()

02. To Renew a License Within Two Years After The Expiration Date: ()

a. Request and receive an acceptable check scale performed by a Board check scaler. When the check scale is unacceptable, the individual is required to reapply for the standard license. ()

b. Pay renewal fee of twenty-five dollars (\$25). ()

03. To Renew a License More Than Two Years After The Expiration Date. An individual is required to reapply for the standard license. ()

04. Option to a Check Scale for Standard License Renewal. A practical examination successfully completed may be used in-lieu-of a check scale for renewal. ()

05. Option to a Check Scale for Specialty License Renewal. An examination as may be devised by the Board may be used in-lieu-of a check scale for renewal of specialty licenses. ()

401. -- 499. (RESERVED)

500. METHOD OF SCALING FOREST PRODUCTS FOR COMMERCIAL PURPOSES.

01. Scribner Decimal "C". Log scaling by the Scribner decimal "C" method must be made according to scaling practices and procedures described in the "Idaho Log Scaling Manual" and Sections 501 through 504 of these rules. ()

02. Cubic Volume. Log scaling by a cubic volume method must be made according to scaling practices and procedures agreed upon in writing between parties to a scaling agreement. ()

03. Other Scaling Methods. Log scaling by any method other than Scribner decimal “C” or cubic volume will be considered and determined by the Board upon written request. ()

501. GROSS VOLUME CONVERSIONS.

01. Conversion to Gross Decimal “C” or Gross Cubic Volume. Gross volume measurement determined in a manner other than decimal “C” or cubic volume will be converted to an equivalent decimal “C” or cubic volume gross scale. ()

02. Conversion Factors. Measurement procedures and converting factors described in the Special Situations Measurement section, Chapter Two (2) of the “Idaho Log Scaling Manual,” may be used to express decimal “C” board foot equivalents. ()

03. Other Conversion Factors. Measurement procedures and converting factors not listed in the “Idaho Log Scaling Manual” will be considered and determined by the Board upon written request. ()

502. GENERAL SCALING REQUIREMENTS.

01. Written Scaling Specifications. At any scaling site, licensed scalers will be provided with a written document that states the information necessary to scale logs in accordance with a contractual scaling agreement. ()

02. Recording Measurements on Scale Tickets. For each log scaled, scalers must record a combination of data from which both gross and net volume can be derived. This data includes scaling length and scaling diameter(s). ()

03. Load Identification. Scalers must ensure that all loads are readily identifiable upon completion of scaling. ()

503. GROSS DECIMAL “C” SCALE DETERMINATION.

Contractual scaling agreements relating to determination of Scribner decimal “C” gross scale may not establish any scaling requirement that differs from those stated in the “Idaho Log Scaling Manual” except for a minimum top diameter that may be smaller than five and fifty-one hundredths inches (5.51”) actual measure. Licensed scalers will be provided with written scaling specifications that denote any minimum top diameter that is smaller than five and fifty-one hundredths inches (5.51”) actual measure. ()

504. NET DECIMAL “C” SCALE DETERMINATION.

Contractual scaling agreements relating to determination of Scribner decimal “C” net scale may establish scaling requirements that differ from those stated in the “Idaho Log Scaling Manual.” Licensed scalers will be provided with written scaling specifications that clearly describe any changes in net scale scaling practices. ()

505. -- 799. (RESERVED)

800. CHECK SCALING PROCEDURES.

01. Valid Check Scale. ()

a. Check scaling requires a minimum of fifty (50) logs containing a decimal “C” gross scale of at least ten thousand (10,000) board feet. When other methods of measurement are used, the check scaler will investigate the situation and determine the most logical method of check scaling. ()

b. Check scaling will be performed without scaler’s knowledge, when possible. ()

c. Check scales are performed only on logs that are in the same position as presented to the scaler. ()

d. Check scales will not be performed if the logs are not spread adequately enough, in the check ()

scaler’s discretion, to allow for accurate scaling. If these conditions arise, the check scaler makes a written report describing the conditions and surrounding circumstances. The Board will make a decision as to the disposition of these conditions and direct the check scaler accordingly. ()

e. The check scaler must use the written scaling specifications that have been provided to the scaler. In the absence or omission of written scaling specifications, logs will be check scaled according to scaling methodology stated within the “Idaho Log Scaling Manual.” ()

02. Cooperative Scaling. Cooperative scaling involves two (2) scalers, using different scaling specifications, working together to determine the log scale volume. In these instances, each scaler is individually responsible for the scale recorded. ()

03. Team Scaling. Team scaling is two (2) scalers, using the same scaling specifications, working together to determine the log scale volume. In these instances, both scalers are responsible for the scale recorded, except that if one (1) of the individuals is an apprentice scaler, the licensed scaler is responsible for the scale recorded. ()

04. Holding Check Scale Log Loads. All log loads involved in an unacceptable check scale will be held at the point of the check scale until such time as the logs have been reviewed with the scaler, or for a period up to forty-eight (48) hours. ()

a. During this period the load(s) may not be moved or tampered with in any way. ()

b. The Board’s check scaler will mark all loads that must be held, and notify the scaler and landing supervisors respectively. ()

801. -- 809. (RESERVED)

810. CHECK SCALING STANDARDS OF VARIATION.

01. Allowable Limits of Variation. To determine a check scale as acceptable or unacceptable for Board consideration, and when the method of measurement is the Coconino Scribner decimal C log rule, a scaler must be within allowable limits of variation in the following categories:

CATEGORY		ALLOWABLE VARIATION	
Gross Volume	For logs in round form	+/- 2.0 percent	
	For logs in fractional or slab form	+/- 5.0 percent	
Net Volume	Check scale percent of defect on logs checked		
	Sawlogs	Up to 10	+/- 2.0 percent
		10.1 to 15	+/- 3.0 percent
		15.1 to 20	+/- 0.2 percent for each percent of defect
		Over 20	+/- 5.0 percent
Pulp Logs	+/- 5.0 percent		
Cedar Product Logs	+/- 8.0 percent		
Species Identification Errors		3.0 percent	
Product Classification Errors		3.0 percent	

()

02. Combination Logs. For purposes of determining product classification errors, combination logs

are counted as one-half (1/2), one-third (1/3), one-fourth (1/4) -- depending on the number of scaling segments -- to arrive at a piece or log count variation. Combination logs will be considered only when provided for in a contractual scaling agreement or written scaling specifications. ()

03. Check Scales Involving Multiple Variations. Some check scales will involve more than one (1) parameter of variation. The overall allowable limit of variation to determine acceptability or unacceptability of the total gross or net scales is determined by the following formula:

$OAV = \frac{(a \times E) + (b \times E) + (c \times F)}{(D + E + F)}$
OAV = overall allowable percentage variation
A = allowable percentage variation for gross/net sawlog scale
B = allowable percentage variation for gross/net pulp log scale
C = allowable percentage variation for gross/net cedar products scale
D = check scaler's gross/net sawlog scale
E = check scaler's gross/net pulp log scale
F = check scaler's gross/net cedar products log scale

()

811. -- 819. (RESERVED)

820. REQUESTED CHECK SCALE.

A check scale may be performed upon request of any individual, company, or corporation. ()

01. Submission of Request. ()

a. The request must be in writing and approved by the Board's executive director. ()

b. The request must be made by a party directly affected and involve disputes on scaling. ()

02. Cost of a Requested Check Scale. The fee is two hundred dollars (\$200) for each day, or part of a day, that the check scaler is scaling the logs. ()

821. -- 829. (RESERVED)

830. CHECK SCALE REPORT.

01. Check Scale Results. The check scaler will make a report of his findings to the Board. ()

02. Persons Entitled to a Copy of the Check Scale Report. ()

a. Persons directly affected and entitled to a copy of the check scale report on temporary permits and relicensure check scales are the scaler and the scaler's employer(s). ()

b. Persons directly affected and entitled to a copy of the check scale report on routine and requested check scales include the scaler, the scaler's employer(s), the scaler's supervisor(s), the logging contractor(s), or other persons directly affected by the check scale report as determined by the Board's executive director. ()

831. -- 909. (RESERVED)

910. INFORMAL HEARINGS -- SCOPE AND AUTHORITY.

Sections 910 through 980 apply to all informal hearings before the Board. These rules are adopted pursuant to

Sections 38-1208 and 67-5201, et seq., Idaho Code, and are intended to facilitate the Board in executing its duties and responsibilities under Title 38, Chapter 12, Idaho Code. These rules are construed to effectuate the intent of the legislature in adopting the Idaho Scaling Law in a reasonable, fair and expeditious manner. ()

911. -- 919. (RESERVED)

920. COMPLAINTS.

- 01. Submittal of Complaint.** Is submitted in writing in the name of the primary complainant. ()
- 02. Contents of Complaint.** Must state: ()
 - a.** The name and address of the person or entity actually aggrieved; ()
 - b.** A short and plain statement of the nature of the complaint, including the location and date of the alleged violation; ()
 - c.** The complainant's notarized signature; ()
 - d.** The complainant must submit written or documentary evidence in support of the alleged violation; and ()
 - e.** In the case of a gross scale complaint, which alleges violations of Section 38-1220(b), Idaho Code, the complainant must also provide a readable copy of the contract, payment slips, and scale tickets for each transaction involved in the alleged complaint. ()

921. -- 929. (RESERVED).

930. RESPONSE TO COMPLAINT.

- 01. Response.** The respondent must submit to the Board a written response to the allegations of the complaint, with supporting evidence, within thirty (30) days after receiving a copy of the same from the Board. The Board will presume that the respondent received such complaint and evidence within three (3) days after mailing by the Board, unless the respondent submits evidence to the contrary to the Board. ()
- 02. Consideration of Complaint.** The Board will consider a complaint in its next meeting following the timely response of the respondent or the respondent's failure to respond within the time limit of Subsection 930.01. ()

931. ACCESS TO RECORDS.

The Board will provide to the respondent or his counsel a copy of the complaint and any supporting evidence to which the respondent does not have access, at the earliest date after the Board has received the same. The Board will provide the complainant or his counsel a copy of any answer or response and supporting evidence thereof to which the complainant does not have access, at the earliest date after the Board has received the same. ()

932. -- 939. (RESERVED).

940. CONDUCT OF INFORMAL HEARINGS.

- 01. Hearing Procedure.** The chairman of the Board will minimize, where possible, the use or application of formal court rules of procedure and evidence in the spirit of an informal hearing consistent with the intent of these rules, fairness to the parties, and the interests of justice. ()
- 02. Statements.** The complainant and the respondent may make a brief statement concerning the allegation(s) and may introduce new evidence in support of or in opposition to the allegation(s). Statements must be concise, specific, relevant to the allegation(s), and limited to ten (10) minutes per party, unless the specific

allegation(s) as determined by the chairman clearly requires greater time to address the same. ()

03. Questions Directed to the Board. All questions at the hearing are directed to the Board. The Board will consider written or oral questions from the complainant or respondent at the hearing or take such questions under advisement. ()

04. Questions Asked by the Board. Only the Board may ask questions of the complainant or respondent and may call witnesses. ()

05. Representation by Counsel. The complainant and the respondent may be represented by counsel. ()

941. -- 949. (RESERVED)

950. TIME FOR BOARD DETERMINATION.

After submission of the complaint and supporting documentation for evidence in accord with Section 930, and after an informal hearing on a complaint wherein the parties have had opportunity to respond to these allegations and to present testimony, documentation, or other evidence thereon in accord with Section 940, the Board may thereafter make its determination or take the matter under advisement and reach its determination within thirty (30) days. ()

951. -- 959. (RESERVED).

960. FINAL DETERMINATION.

The Board's determination is final, subject to appeal pursuant to Title 67, Chapter 52, Idaho Code. ()

961. -- 969. (RESERVED).

970. BOARD ACTION UPON DETERMINATION OF PROBABLE VIOLATION.

In the event that the Board determines that the complaint and supporting evidence indicate a probable violation of the Idaho Scaling Law, the Board will, within thirty (30) days after that determination, transmit the complaint and supporting documentation to the prosecutor of the county where the violation occurred. ()

971. -- 999. (RESERVED).

**20.07.02 – RULES GOVERNING CONSERVATION OF OIL AND NATURAL GAS
IN THE STATE OF IDAHO**

SUBCHAPTER A – GENERAL PROVISIONS

000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authorities of Title 47, Chapter 3, Idaho Code; and Title 67, Chapter 52, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.07.02, “Rules Governing Conservation of Oil and Natural Gas in the State of Idaho.” ()

02. Scope. These rules apply to the exploration and extraction of any and all crude oil and natural gas resources in the state of Idaho, not including biogas, manufactured gas, or landfill gas, regardless of ownership. ()

03. Other Laws. Owners or operators engaged in the exploration and extraction of crude oil and natural gas resources will comply with all applicable laws and rules of the state of Idaho including, but not limited to the following: ()

a. Idaho water quality standards and waste water treatment requirements established in Title 39, Chapter 1, Idaho Code; IDAPA 58.01.02, “Water Quality Standards”; IDAPA 58.01.16, “Wastewater Rules”; and IDAPA 58.01.11, “Ground Water Quality Rule,” administered by the IDEQ. ()

b. Idaho air quality standards established in Title 39, Chapter 1, Idaho Code and IDAPA 58.01.01 “Rules for the Control of Air Pollution in Idaho,” administered by the IDEQ. ()

c. Requirements and procedures for hazardous and solid waste management, as established in Title 39, Chapter 44, Idaho Code, and rules promulgated thereunder including IDAPA 58.01.05, “Rules and Standards for Hazardous Waste”; IDAPA 58.01.06, “Solid Waste Management Rules”; and IDAPA 58.01.10, “Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, As Amended,” administered by the IDEQ. ()

d. Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and rules promulgated thereunder including IDAPA 37.03.07, “Stream Channel Alteration Rules,” administered by the IDWR. ()

e. Injection Well Act, Title 42, Chapter 39, Idaho Code and rules promulgated thereunder including IDAPA 37.03.03, “Rules and Minimum Standards for the Construction and Use of Injection Wells,” administered by the IDWR. ()

f. Department of Water Resources – Water Resource Board Act, Title 42, Chapter 17, Idaho Code and rules promulgated thereunder including IDAPA 37.03.06, “Safety of Dams Rules,” administered by the IDWR. ()

002. ADMINISTRATIVE APPEALS.

Any person aggrieved by any final decision or order of the Commission shall be entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, Title 47, Chapter 3, Idaho Code, and IDAPA 20.07.01, “Rules of Practice and Procedure before the Idaho Oil and Gas Conservation Commission.” ()

003. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: ()

01. API Bulletin E3, Well Abandonment and Inactive Well Practices for U.S. Exploration and Production Operations, Environmental Guidance Document. 1st Edition, January 1993 and Reaffirmed June 2000 available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. ()

02. API SPEC 5CT, Specifications for Casing and Tubing. The 8th edition dated July, 1, 2005 and the amendments dated March, 31, 2006 and April, 7, 2006 are available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. ()

03. API SPEC 10a, Specification for Cements and Materials for Well Cementing. The 24th Edition

dated December, 2010 is available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. ()

04. ASTM D698-07e1, Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/ft³ (600 kN-m/m³)). 2007 revision. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. ()

05. ASTM D1250-08, Standard Guide for Use of the Petroleum Measurement Tables. 2008 revision. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. ()

06. ASTM D1557-09, Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lbf/ft³ (2,700 kN-m/m³)). 2009 revision. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. ()

07. EPA SW-846 Method 9090A, Compatibility Test for Wastes and Membrane Liners. Revision 1, July 1992. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103 and this website: <http://www.epa.gov/osw/hazard/testmethods/sw846/pdfs/9090a.pdf>. ()

08. OSHA Standard 1910.1200 (Hazard Communication). Last revised 1996. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103 and this website: http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=standards&p_id=10099. ()

004. -- 009. (RESERVED)

010. DEFINITIONS.

01. Act. The Idaho Oil and Gas Conservation Act, Title 47, Chapter 3, Idaho Code. ()

02. Active Well. A permitted well used for production, disposal, or injection that is not idled for more than twenty-four (24) continuous months. ()

03. Barrel. Forty-two (42) U. S. gallons at sixty (60) Degrees F at atmospheric pressure. ()

04. Blowout. An unplanned sudden or violent escape of fluids from a well. ()

05. Blowout Preventer. A casinghead control equipped with special gates or rams that can be closed and sealed around the drill pipe, or that otherwise completely closes the top of the casing. ()

06. Bonus Payment. Monetary consideration that is paid by the lessee to the lessor for the execution of an oil and gas lease. ()

07. Casing Pressure. The pressure within the casing or between the casing, tubing, or drill pipe. ()

08. Casinghead. A metal flange attached to the top of the conductor pipe that is the primary interface for the diverter system during drilling out for surface casing. ()

09. Casinghead Gas. Any gas or vapor, or both, indigenous to an oil stratum and produced from such stratum with oil. ()

10. Common Source of Supply. The geographical area or horizon definitely separated from any other such area or horizon and which contains, or from competent evidence appears to contain, a common accumulation of oil or gas or both. Any oil or gas field or part thereof which comprises and includes any area which is underlaid, or which from geological or other scientific data or experiments or from drilling operations or other evidence appears to be underlaid by a common pool or accumulation of oil or gas or both oil and gas. ()

11. Completion. An oil well is considered completed when the first new oil is produced through

wellhead equipment into lease tanks from the ultimate producing interval after the production casing has been run. A gas well is considered completed when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after the production casing has been run. ()

12. Conductor Pipe. The first and largest diameter string of casing to be installed in a well. This casing extends from land surface to a depth great enough to keep surface waters from entering and loose earth from falling in the hole and to provide anchorage for the diverter system prior to setting surface casing. ()

13. Cubic Foot of Gas. The volume of gas contained in one (1) cubic foot of space at a standard pressure base and a standard temperature base. The standard pressure base shall be fourteen and seventy-three hundredths (14.73) pounds per square inch absolute and the standard temperature base shall be sixty (60) Degrees F. ()

14. Day. A period of twenty-four (24) consecutive hours from 8 a.m. one day to 8 a.m. the following day. ()

15. Development. Any work that actively promotes bringing in production. ()

16. Director. The head of the Idaho Department of Lands and secretary to the Oil and Gas Conservation Commission, or his designee. ()

17. Drilling Logs. The recorded description of the lithologic sequence encountered in drilling a well, and any electric, gamma ray, geophysical, or other logging done in the hole. ()

18. Fresh Water. All surface waters and those ground waters that are used, or may be used in the future, for drinking water, agriculture, aquaculture, or industrial purposes other than oil and gas development. The possibility of future use is based on hydrogeologic conditions, water quality, future land use activities, and social/economic considerations. ()

19. Gas-Oil Ratio. The volume of gas produced in standard cubic feet to each barrel of oil or condensate produced concurrently during any stated period. ()

20. Gas Processing Facility. A facility that conditions liquids or gas by compression, dehydration, refrigeration, or by other means. ()

21. Gas Well. ()

a. A well that produces primarily natural gas; ()

b. Any well capable of producing gas in commercial quantities and also producing oil from the same common source of supply but not in commercial quantities; or ()

c. Any well classed as a gas well by the Commission for any reason. ()

22. Geophysical or Seismic Operations. Any geophysical method performed on the surface of the land utilizing certain instruments operating under the laws of physics respecting vibration or sound to determine conditions below the surface of the earth that may contain oil or gas and is inclusive of, but not limited to, the preliminary line survey, the acquisition of necessary permits, the selection and marking of shot-hole locations, necessary clearing of vegetation, shot-hole drilling, implantation of charge, placement of geophones, detonation and backfill of shot-holes, and vibroseis. ()

23. Hydraulic Fracturing, or Fracing. A method of stimulating or increasing the recovery of hydrocarbons by perforating the production casing and injecting fluids or gels into the potential target reservoir at pressures greater than the existing fracture gradient in the target reservoir. ()

24. Inactive Well. An unplugged well that has no reported production, disposal, injection, or other permitted activity for a period of greater than twenty-four (24) continuous months, and for which no extension has been granted. ()

25. **Intermediate Casing.** The casing installed within the well to seal intermediate zones above the anticipated bottom hole depth. The casing is generally set in place after the surface casing and before the production casing. ()
26. **Junk.** Debris in a hole that impedes drilling or completion. ()
27. **Lease.** A tract(s) of land that by virtue of an oil and gas lease, fee or mineral ownership, a drilling, pooling or other agreement, a rule, regulation or order of a governmental authority, or otherwise constitutes a single tract or leasehold estate for the purpose of the development or operation thereof for oil or gas or both. ()
28. **Mechanical Integrity Test.** A test designed to determine if there is a significant leak in the casing, tubing, or packer of a well. ()
29. **Oil Well.** Any well capable of primarily producing oil in paying quantities, but not a gas well. ()
30. **Pit.** Any excavated or constructed depression or reservoir used to contain reserve, drilling, well treatment, produced water, or other fluids at the drill site. This does not include enclosed, mobile, or portable tanks used to contain fluids. ()
31. **Pollution.** Constituents of oil, gas, salt water, or other materials used in oil and gas extraction, occurring in fresh water supplies at levels that exceed the standards in IDAPA 58.01.02, "Water Quality Standards," and IDAPA 58.01.11, "Ground Water Quality Rules," as the result of the drilling, casing, treating, operation or plugging of wells. ()
32. **Pressure Maintenance.** The injection of gas, water, or other fluids into oil or gas reservoirs to maintain pressure or retard pressure decline in the reservoir for the purpose of increasing the recovery of oil or other hydrocarbons therefrom. ()
33. **Produced Water.** Water that is produced along with oil or gas. ()
34. **Production Casing.** The casing set across the reservoir interval and within which the primary completion components are installed. ()
35. **Proppant.** Sand or other materials used in hydraulic fracturing to prop open fractures. ()
36. **Release.** Any unauthorized spilling, leaking, emitting, discharging, escaping, leaching, or disposing into soil, ground water, or surface water. ()
37. **Spud.** To start the drilling process by removing rock, dirt, and other sedimentary material with the drill bit. ()
38. **Surface Casing.** The first casing that is run after the conductor pipe to anchor blow out prevention equipment and seals out fresh water zones. ()
39. **Surface Water.** Rivers, streams, lakes, and springs when flowing in their natural channels. ()
40. **Systems Approach.** The disclosure of chemical information by chemical abstract service name only, without disclosing component percentages or chemical relationships. ()
41. **Tank.** A concrete, metal, or plastic stationary vessel used to contain fluids. ()
42. **Tank Battery.** One (1) or more tanks that are connected to receive crude oil, condensate, or produced waters from a well(s) and that serves as the point of collection and disbursement of oil or gas from a well(s). ()

43. **Tank Dike.** An impermeable man-made structure constructed around a tank to contain leakage from the tank. ()
44. **Tubing.** Pipe used inside the production casing to convey oil or gas from the producing interval to the surface. ()
45. **Volatile Organic Compound.** Organic chemical compounds whose composition makes it possible for them to evaporate under normal indoor atmospheric conditions of sixty-eight (68) degrees F and an absolute pressure of fourteen point seven (14.7) psi atmospheric. ()
46. **Waterflooding.** The injection into a reservoir through one (1) or more wells with volumes of water for the purpose of increasing the recovery of oil therefrom. ()
47. **Well Report.** The written record progressively describing the strata, water, oil, or gas encountered in drilling a well with such additional information as to give volumes, pressures, rate of fill-up, water depths, casing strata, casing record, etc., as is usually recorded in normal procedure of drilling; also, it includes electrical radioactivity, or other similar logs run, lithologic description of all cores, and all drill-stem tests, including depth-tested, cushion-used, time tool open, flowing and shut-in pressures and recoveries. ()
48. **Well Site.** The areas that are directly disturbed during the drilling and subsequent operation of, or affected by production facilities directly associated with, any oil well, gas well, or injection well, and its associated well pad. ()
49. **Well Treatment.** Actions performed on a well to acidize, fracture, or stimulate the target reservoir. ()
50. **Wildcat Well.** An exploratory well drilled in an area of unknown subsurface conditions. ()
- 011. ABBREVIATIONS.**
01. **API.** American Petroleum Institute. ()
02. **ASTM.** American Society for Testing and Materials. ()
03. **BBL.** Oilfield Barrel. ()
04. **BOP.** Blowout Preventer. ()
05. **CAS.** Chemical Abstracts Service. ()
06. **EPA.** United States Environmental Protection Agency. ()
07. **F.** Fahrenheit. ()
08. **GPS.** Global Positioning System. ()
09. **HDPE.** High Density Polyethylene. ()
10. **IDAPA.** Idaho Administrative Procedure Act. ()
11. **IDEQ.** Idaho Department of Environmental Quality. ()
12. **IDWR.** Idaho Department of Water Resources. ()
13. **MCF.** One thousand cubic foot. ()

- 14. **MSDS.** Material Safety Data Sheet. ()
- 15. **OSHA.** Occupational Safety & Health Administration. ()
- 16. **PSI.** Pounds per Square Inch. ()
- 17. **PVC.** Polyvinyl Chloride. ()

012. -- 014. (RESERVED)

015. PROTECTION OF CORRELATIVE RIGHTS.

The Commission and the Department should afford a reasonable opportunity to each person entitled thereto to recover or receive the oil or gas in such person's tract(s) or the equivalent thereof, without being required to drill unnecessary wells or to incur other unnecessary expense to recover or receive such oil or gas or its equivalent. ()

016. -- 019. (RESERVED)

020. APPLICABILITY.

01. Oil and Gas Development. These rules apply to oil and gas development and carry out the Commission's duty to prevent waste, protect correlative rights, and prevent pollution of fresh water supplies through activities authorized by these rules. ()

02. Exclusions. These rules do not apply to the exploration and development of other mineral resources covered by Title 47, Chapter 13, Idaho Code; Title 47, Chapter 15, Idaho Code; or Title 42, Chapter 40, Idaho Code. ()

021. CLASS II INJECTION WELLS.

Class II injection wells, as described in IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells," are currently not authorized under this rule. Permits for Class II injection wells must be obtained through IDAPA 37.03.03. ()

022. -- 029. (RESERVED)

030. NOTICES - GENERAL.

01. Written Authorization Required. Any written notice of intention to do work or to change plans previously approved must be filed with the Department, unless otherwise directed, and must be approved before the work is begun. Such approval may be given orally and, if so given, shall thereafter be confirmed by the Department in writing. Written notices may be submitted to the Department by e-mail or facsimile. ()

02. Emergency Authorization. In case of emergency, or a situation where operations might be unduly delayed, any written notice required by these rules and regulations to be given the Department may be given orally or by wire and if approval is obtained, the transaction shall be confirmed in writing, as a matter of record. ()

03. Publication of Legal Notices. Whenever these rules require a legal notice to be published in a newspaper, the notice must be published once a week for two (2) consecutive weeks. ()

031. FORMS.

The Department will adopt such forms of notices, requests, permits, and reports as it may deem advisable or necessary in carrying out the provisions of law and its rules. ()

032. ORGANIZATION REPORTS.

01. Required Content. Before any person engages in any activity covered by the statutes and rules of the Commission, that person must file an organization report with the Department. The organization report must

include the following information: ()

- a. The person's name and the type of the business being operated or conducted; ()
- b. The mailing address to which all correspondence from the Department is to be sent; ()
- c. The telephone number(s), facsimile number(s), and e-mail address(es) for which contact by the Department may be made; ()
- d. The names of persons authorized to submit required forms, reports, and other documents to the Department; and ()
- e. If a legal entity, proof the person is authorized to transact business within the state. ()

02. Updates. A supplementary report must be filed with the Department within thirty (30) days of any change to facts stated in a previously-filed organization report. ()

033. DESIGNATION OF AGENT.

A "Designation of Agent" must be submitted to the Department in a manner and form approved by the Department prior to the commencement of operations. A Designation of Agent(s) will be accepted as authority of agent to fulfill the obligations of the owner and to sign any papers or reports required under these oil and gas operating regulations, and all authorized orders or notices given by the Department when given in the manner hereinafter provided will be deemed service of such orders or notices upon the owner and the lessee. All changes of address and any termination of the agent's authority must be immediately reported in writing to the Department and, in the latter case, the designation of a new agent(s) must be immediately made. If the designated agent(s) is at any time incapacitated for duty or absent from the address provided, the owner must designate in writing a substitute to serve in his or their stead, and in the absence of such owner or of notice of appointment of a substitute then, in such case, notices may be given by the Department by delivering a registered letter to the United States Post Office at Boise, Idaho, directed to the agent(s) at the address shown on the current Designation of Agent on file in the Department's office, and such notice will be deemed service upon the owner and lessee. ()

034. -- 039. (RESERVED)

040. PUBLIC COMMENT.

Applications submitted under Sections 100, 200, 210, 230 and 330 of these rules will be posted on the Department's website for a fifteen-day (15) written comment period. The Department will also send an electronic copy of the application to the respective county, and city if applicable, where the proposed operation is located. The purpose of the comment period is to receive written comments on whether a proposed application complies with these rules. These comments will be considered by the Department prior to permit approval or denial. Relevant comments will be posted on the Department's website following the comment period. ()

041. -- 049. (RESERVED)

050. ENFORCEMENT.

The Department enforces these rules pursuant to Section 47-325, Idaho Code. ()

051. -- 099. (RESERVED)

SUBCHAPTER B – EXPLORATION AND DEVELOPMENT

100. GEOPHYSICAL OPERATIONS.

01. Permit Required. Before beginning seismic operations in the state of Idaho, a representative of the client company and the seismic contractor will meet with the staff of the Department, file an application for a permit to conduct seismic operations, and pay an application fee. No seismic operation may be conducted without such a permit. The Department has discretion to waive the requirement of the pre-permit meeting for the client company. The permit for seismic operations may be revoked or suspended or the application for the permit denied by the

Department for failure to comply with the Commission's rules, statutes, and orders. The Department may revoke, suspend, or deny the application for a seismic permit without a hearing; provided that the seismic contractor will be given an opportunity for a hearing at the next regularly scheduled Commission meeting. The fact that a permit is revoked or suspended does not excuse the seismic contractor or client company from properly plugging existing seismic holes but does prohibit the person(s) from drilling any more. The application for a permit for seismic operations must include: ()

a. The proposed route of the seismic line on a topographic or recent air photo base map at a sufficient scale to show roads, buildings, surface waters, and Section, Township, and Range lines. The map must also show additional area as needed for any alternative routing. The alternative routing must be within at least one-half (1/2) mile of the proposed route. Reapplication must be made if the final route strays from the proposed route and outside the designated alternative routing areas; and ()

b. The energy sources proposed to be used for the seismic operation, such as vibroseis, shot holes, surface shot, or others. ()

c. The approximate number, depth, and location of the seismic holes and the size of the explosive charges. The application must be accompanied by a map with a scale of one inch equaling two (2) miles that shows the depth and location of the shotholes. ()

d. The name and permanent address of the client company the Department may contact about the seismic operation. ()

e. The name, permanent address, and phone number of the seismic contractor and his local representative whom the Department may contact about the seismic activity. ()

f. The name, phone number, and permanent address of the hole plugging contractor, if different from the seismic contractor. ()

g. A detailed description of the hole plugging procedures, and a description of the surface reclamation procedures, if such reclamation is needed. ()

h. The anticipated starting date of seismic operations. ()

i. The anticipated completion date of seismic operations, and the anticipated date of any required reclamation or hole plugging. ()

j. A description of the identifying mark that will be on the hat or nonmetallic plug to be used in the plugging of the seismic hole. ()

02. Operating Requirements. All geophysical operations must comply with the following requirements: ()

a. All vehicles utilized by the permit holder, or its agents or contractors, shall be clearly identified by signs or markings utilizing letters or numbers, or a combination thereof, a minimum of three (3) inches in height and one-half (1/2) inch wide, indicating the name of such agent. ()

b. No seismic source generation from vibroseis, shot holes, surface shot, or other method shall be conducted within two hundred (200) feet of any residence, water well, oil well, gas well, injection well or other structure without having first secured the express written authority of the owner(s) thereof and the permit holder shall be responsible for any resulting damages. ()

c. Written authority from the owner of a residence, water well, oil well, gas well, injection well or other structure must also be obtained from the owner(s) if any explosive charge exceeds the maximum allowable charge within the scaled distance below:

DISTANCE TO STRUCTURE (Feet)*	MAXIMUM ALLOWABLE CHARGE WEIGHTS (Pounds)*
50	0.5
100	2.0
150	4.5
200	8.0
250	12.0
300	18.0
350	25.0
* Based upon a charge weight of seventy (70) Foot/Pound ^{1/2}	

()

d. The maximum allowable charge weight is twenty-five (25) pounds, unless the permit holder requests and secures the prior written authorization from the Department. ()

e. All seismic sources placed for detonation shall contain additives to accelerate the biodegradation thereof and shall be handled with due care in accordance with industry standards. The cap leads for any seismic sources that fail to detonate shall be buried at least three (3) feet deep. ()

f. All vegetation cleared to the ground shall be cleared in a competent and workmanlike manner in the exercise of due care. ()

g. Unless otherwise consented to by the surface owner in writing, permit holder shall not cut down any tree measuring six (6) inches or more in diameter, as measured at a height of three (3) feet from the ground surface, unless there are no reasonable alternatives to the removal of such tree(s) available to permit holder. Permit holder shall compensate surface owner the value of all such trees. ()

h. All excessive rutting or soil disturbances shall be repaired or restored to the original condition and contour to the extent reasonable, unless otherwise agreed to by the permit holder and the surface owner in writing. ()

i. All fences removed shall be replaced, unless otherwise agreed to by the permit holder and the surface owner in writing. ()

j. All debris associated with the seismic activity shall be removed and properly disposed. ()

03. Bond Required. ()

a. Before beginning geophysical operations, the geophysical contractor must file and have approved by the Department a bond in the amount of at least ten thousand dollars (\$10,000). The Department may increase this bonding requirement for geophysical contractors based on the amount of potential damage from the contemplated operation. The condition of such bond shall comply with the Act, the rules and orders of the Commission, and orders of the Department. The obligation of the bond shall not be discharged until one (1) year from completion of the survey or until the geophysical contractor has complied with the Oil and Gas Conservation Law, the Commission's rules, and the orders of the Commission and the Department. ()

b. Persons or other entities who engage in the plugging of seismic holes and are not a regular full-time employee of the seismic company, owner, or operator shall have posted with the director a surety bond in favor of the Department. Said bond shall be on a form prescribed by the Department and in the amount of five thousand dollars (\$5,000). The condition of the bond shall comply with the Oil and Gas Conservation Law and the regulations and

orders of the Commission and the Department. ()

04. Newspaper Notice. Before a geophysical contractor conducts the geophysical operation, the contractor shall publish a legal notice in a newspaper of general circulation in the county where the survey will be conducted. The notice shall state the nature and approximate time period of the seismic operations. These requirements do not apply to operations conducted within a well or conducted by aerial surveys. ()

05. Owner and Occupant Notification. No entry shall be made by any person to conduct seismic operations, upon the lands where such seismic operations are to be conducted, without the permit holder having first given notice at least thirty (30) calendar days prior to commencement of field seismic operations. ()

a. The notice shall be in writing and given either personally or by certified United States mail to the following persons: ()

i. Surface owners reflected in the tax records of the counties where the lands are located, at the mailing addresses identified for such surface owners in such records; ()

ii. Occupants residing on the lands who are not the surface owners, if it can be reasonably ascertained that there are such occupants; and ()

iii. Owners or operators of oil and gas wells within the seismic survey area, as reflected in Department records. ()

b. The notice shall contain the following: ()

i. Name of the person or entity that is conducting the seismic operations; ()

ii. Proposed location of the seismic operations; and ()

iii. Approximate date the person or entity proposes to commence seismic operations. ()

06. Department Notifications. ()

a. The permit holder shall also notify the Department within five (5) business days of the commencement and completion of each seismic operation. ()

b. Before beginning geophysical operations other than seismic operations, the geophysical contractor shall file a notice of intention to do so with the Department. Said notice shall describe the geophysical method to be used and be accompanied by a map of a scale of one (1) inch equals two (2) miles showing the location of the project. ()

07. Reports and Notices Required. ()

a. Activity Report. Upon completion of the seismic activity or at thirty (30) day intervals after the work has commenced, whichever occurs first, the seismic contractor shall file with the Department a report of the completion or progress of the seismic project. The final completion report shall be in affidavit form and shall include a seven and one-half (7.5) - or fifteen (15) minute United States Geological Survey topographic quadrangle map (at a scale of one (1) inch equals two thousand (2,000) feet or one (1) inch equals four thousand (4,000) feet that shows section, township, and range) and the location of each survey so that the shotholes and other potential impacts can be easily located. The final completion report shall also include a statement that all work has been performed in compliance with the application for a permit to perform seismic activity, Section 100 of these rules, and permit provisions. Said maps, applications, and reports shall be kept confidential by the Department for a period of one (1) year from the date of receipt, subject to the needs of the Department to use them to enforce these regulations, the Act, and the orders of the Commission or the Department. Also, the owner of the surface of the land may be advised of the location of seismic lines or seismic holes on his land and of the exploration method used. ()

b. Plugging Notice. Seismic contractors shall give the Department at least twenty-four (24) hours

advance notice of shothole plugging operations, provided that notice of plugging operations planned for Sunday or Monday may be given on the previous Friday. ()

08. Client-Contractor Responsibility. The client company may be held responsible along with the seismic contractor for conducting the operation in compliance with the Commission's rules and orders, the Department's orders, and the Act for the seismic contractor's failure to comply with such rules, statutes, and orders. The hats used in the plugging of seismic holes shall be imprinted with the name of the contractor responsible for the plugging of the hole. ()

09. Plugging. Unless the seismic contractor can prove to the satisfaction of the Department that another method will provide better protection to ground water and long-term land stability, seismic shothole operations shall be conducted in the following manner: ()

a. When water is used in conjunction with the drilling of seismic shotholes and artesian flow is not encountered at the surface, seismic holes are to be filled with a high grade bentonite/water slurry mixture. Said slurry shall have a density that is at least four percent (4%) greater than the density of fresh water; said slurry shall also have a Marsh funnel viscosity of at least sixty (60) seconds per quart. Density and viscosity are to be measured prior to adding cuttings to the slurry. Cuttings not added to the slurry are to be disposed of in accordance with Paragraph 100.09.f. of this rule. Any other suitable plugging material commonly used in the industry may be substituted for the bentonite/water slurry as long as the physical characteristics of said substitute are at least comparable to those of the bentonite/water slurry. Between November 1 and May 1, coarse ground bentonite approved by the Department shall be used as a plugging material. ()

b. The hole will be filled with the slurry from the bottom up to a depth of three (3) feet (three (3) feet below ground level). A nonmetallic plug will be set at this depth of three (3) feet, and the remaining hole will be filled and tamped to the surface with cuttings and native soil. ()

c. When drilling with air and nonartesian water is encountered, the hole shall be plugged with the slurry mixture, or coarse ground bentonite, as specified in Paragraph 100.09.a., supra. ()

d. When drilling with air only and in completely dry holes, plugging may be accomplished by returning the cuttings to the hole, tamping the returned cuttings to the above-referenced depth of three (3) feet, and setting the permaplug topped with more cuttings and soil as per Paragraph 100.09.b. above. A small mound will be left over the hole for settling allowance. Auger holes twenty (20) feet or less in depth may be plugged in this same manner. ()

e. The foregoing seismic holes shall be properly plugged and abandoned as soon as practical after the shot has been fired; however, a shot hole shall not be left unplugged for more than thirty (30) days without approval of the Department. ()

f. Any slurry, drilling fluid, or cuttings which are deposited on the surface around the seismic hole will be raked or otherwise spread out to at least within one (1) inch of the surface, so that the growth of the natural grasses or foliage will not be impaired. ()

g. The requirements of Paragraphs 100.09.a. through 100.09.f. of this rule may be modified by any reasonable written agreement between the seismic company and the surface owner. ()

h. If artesian flow (water flowing at the surface) is encountered in the drilling of any seismic hole, cement will be used to seal off the water flow thereby preventing cross-flow, erosion, and/or contamination of freshwater supplies. Said holes shall be cemented immediately. ()

i. After completing the plugging of seismic shot holes and spreading the cuttings as required by this rule, the seismic contractor shall record the GPS location of the seismic hole, and the contractor shall provide the location data to the Department. ()

10. Forfeiture of Geophysical Exploration Bond. The Department may forfeit the bond submitted under Subsection 100.03 of this rule upon failure of the owner or operator to conduct the seismic survey and complete

reclamation in conformance with Section 100 of this rule. The owner or operator will be given an opportunity to address compliance issues prior to the Department taking action against the bond. ()

101. -- 199. (RESERVED)

SUBCHAPTER C – DRILLING, WELL TREATMENT, AND PIT PERMITS

200. PERMIT TO DRILL, DEEPEN, OR PLUG BACK.

01. Permits Required. Prior to the commencement of operations to drill, deepen, or plug back to any source of supply other than the existing producing horizon, application shall be delivered to the Department of intention to drill, deepen, or plug back any well for oil or gas, and approval obtained. ()

02. Fees. An application fee must accompany each application for permit to drill, deepen, or plug back. No service fee is required for a permit to deepen or plug back in a well for which the fee has been paid for permit to drill unless the drilling permit has expired. ()

03. Time Required to Commence Operations; Term of Permit. On the first anniversary of the date of issuance of a permit to drill, deepen, or plug back, said permit will expire and be of no further force or effect, unless the work for which the permit was issued has been started. Prior to the anniversary date, the owner or operator may apply for a one-time, six-month extension if work has not started. If conditions have not changed and no changes to the permit are requested, the extension may be approved by the Department. If a permit expires due to the failure to commence operations, then reapplication is required prior to commencing operations. ()

04. Application. The Application for Permit to Drill shall include a Department approved form and the following: ()

a. An accurate plat showing the location of the proposed well with reference to the nearest lines of an established public survey. ()

b. The location of the nearest structure with a water supply, or the nearest water well as shown on the IDWR registry of water rights or well log database. ()

c. Information on the type of tools to be used and the proposed logging program. ()

d. Proposed total depth to which the well will be drilled, estimated depth to the top of the important geologic markers, and the estimated depth to the top of the target formations. ()

e. The proposed casing program, including size and weight thereof, the depth at which each casing type is to be set. ()

f. The type and amount of cement to be used, and the intervals cemented. ()

g. Information on the drilling plan. ()

h. Best management practices to be used for erosion and sediment control. ()

i. Plan for interim reclamation of the drill site after the well is completed, and a plan for final reclamation of the drill site following plugging and abandonment of the well. These plans must contain the information needed to implement reclamation as described in Subsection 310.16 and Section 510 of these rules. ()

j. Applications that include the following actions must also provide the information from the respective Section of these rules: ()

i. Well treatments require the submittal of the information in Section 210. ()

- ii. Pit construction and use requires the submittal of the information in Section 230. ()
- iii. Directional or horizontal drilling requires the submittal of the information in Section 330. ()
- k. Any other information which may be required by the Department based on site specific reasons. ()
- 05. Permit Denial.** Applications may be denied for the following reasons: ()
 - a. Application fee was not submitted. ()
 - b. Application is incomplete. ()
 - c. Failure to post required bonds. ()
 - d. Proposed well will result in a waste of oil or gas, a violation of correlative rights, or the pollution of fresh water supplies. ()

201. MULTIPLE ZONE COMPLETIONS.

01. Requirements of the Owner or Operator; Request for Approval. A multiple zone completion may be approved by the Department upon application by the owner or operator and payment of an application fee, as herein provided. The application shall be accompanied by an exhibit showing the location of wells on applicant's lease and all offset wells on leases, and shall set forth all material facts involved and the manner and method of completion proposed, including a diagrammatic sketch of the mechanical installation of the proposed well. The application fee may not exceed that required by Subsection 200.02 of these rules. Notice of the filing of such application shall be given by the applicant by mailing to each offset operator a notice containing a full description of the proposed completion for which approval is requested, and proof of mailing such notice shall be made by affidavit, which shall be attached to the application showing names and addresses of those to whom notice was mailed. ()

02. Conditions for Approval; Cause for Hearing. In the event the Department is in agreement with the application and that no offset operator files a written objection to the application with the Department within fifteen (15) days of the date of the offset operator's receipt of application, the application shall be approved as an amendment to the drilling permit. If any offset operator shall file in writing with the Department an objection to such multiple completion, or if the Department is not in agreement with the application, the matter shall be immediately set for hearing and Notice of Hearing duly given by the Department. ()

03. Zone Effectiveness; Requirement for Production Testing. The Department may require such tests as necessary to determine the effectiveness of the segregation of the different productive zones. ()

04. Commingling Production. The Department may require that oil or gas from multiple zones be produced through different sets of tubing, if needed to protect correlative rights or to prevent waste. ()

202. -- 209. (RESERVED)

210. WELL TREATMENTS.

01. Application Required. An Application for Permit to Drill required by Section 200 must include any plans for well treatment if they are known before the well is drilled. If well treatments are not covered in the original drilling permit, then an application to amend the permit must be made to the Department with an application fee. Approval by the Department is required prior to the well treatments being implemented. Actions to clean the casing or perforations not in excess of pressures sufficient to overcome the fracture gradient in the surrounding formation are not considered to be well treatments, but operators must notify the Department when such actions occur. Applications for well treatments must include the permit number, well name, well location, as-built description if drilling has been completed, and the following: ()

- a. Depth to perforations or the openhole interval; ()
- b. The source of water or type of base fluid; ()
- c. Additives, meaning any substance or any combination of substances including proppant, having a specified purpose that is combined with base treatment fluid by trade name, if available, and MSDS for each additive; ()
- d. Type of proppant(s); ()
- e. Anticipated percentages by volume and total volumes of base treatment fluid, individual additives, and proppant(s); ()
- f. Estimated pump pressures; ()
- g. Method and timeline for the management, storage, and disposal of well treatment fluids, including anticipated disposal site of treatment fluids or plans for reuse; ()
- h. Size and design of storage pits, if proposed, in conformance with Section 230 of these rules; ()
- i. Information specific to hydraulic fracturing as described in Section 211 of these rules; ()
- j. Summary identifying all water bearing zones from the surface down to the bottom of the well; ()
- k. Fresh water protection plan that describes the proposed site specific measures to protect water quality from activities associated with well treatments. The Department will review this plan in consultation with the IDEQ. The Fresh Water Protection Plan shall include the following information: ()
 - i. Ground water and storm water best management practices; ()
 - ii. Statement certifying that the owner or operator is complying with Spill Prevention, Control, and Countermeasures (SPCC) requirements administered by the EPA; ()
 - iii. A preconstruction topographic site map or aerial photos identifying all habitable structures, wells, perennial and intermittent springs, surface waters, and irrigation ditches within one-quarter (1/4) mile of the oil or gas well. The distance or location may be changed based on site specific factors such as horizontal drilling, the expected length of fractures, or lack of suitable water sample locations within one-quarter (1/4) mile; ()
 - iv. A brief description of the structural geology that may influence ground water flow and direction; and ()
 - v. The general hydrogeological characteristics of the treatment area and surrounding land. ()
- l. Certification by the owner or operator that all aspects of the well construction, including the suitability and integrity of the cement used to seal the well, are designed to meet the requirements of proposed well treatments; ()
- m. Affidavit signed by the owner or operator stating that all home owners and water well owners within one-quarter (1/4) mile of the oil or gas well, and all owners of a public drinking water system that have a IDEQ recognized source water assessment or protection area within one-quarter (1/4) mile of the oil or gas well, have been notified of the proposed treatment. If a well deviates from the vertical, these surface distances will be from the entire length of the wellbore from the surface to total depth. The notification will also offer an opportunity to have the owner or operator sample and test the water, at the owner or operator's cost, prior to and after the oil or gas well being treated. Notification shall be by certified mail to the surface owner as identified by the county assessor's records, or to the well owner as identified on the IDWR registry of water rights or well log database; ()

n. Proof of publication in a newspaper of general circulation in the county where the well is located of a legal notice briefly describing the well treatment to be performed. Notice shall also advise all water well or public drinking water system owners, as described in Paragraph 210.01.m. of these rules, of the opportunity to have their water tested at the owner's or operator's cost before and after the well treatment; and ()

o. Additional information as required by the Department. ()

02. Master Drilling/Treatment Plans. Where multiple stimulation activities will be undertaken for several wells proposed to be drilled in the same field within an area of geologic similarity, approval may be sought from the Department for a comprehensive master drilling/treatment plan containing the information required. The approved master drilling/treatment plan must then be referenced on each individual well's Application for Permit to Drill. ()

03. Application Denial. The Department may deny well treatment applications for one (1) or more of the following reasons: ()

a. Application does not contain the information in Subsection 210.01 of these rules; ()

b. Application fee was not submitted. ()

c. Proposed treatment will result in a waste of oil or gas, a violation of correlative rights, or the pollution of fresh water supplies. ()

04. Time Limit. If a treatment approved in a drilling permit or amended drilling permit is not started within one (1) year of the approval of the well treatment, the well treatment permit will expire and reapplication will be required prior to conducting the well treatment. Prior to the anniversary date, the owner or operator may apply for a six-month (6) extension. If conditions have not changed, and no changes to the permit are requested, the extension may be approved by the Department. ()

05. Inspections. The Department may conduct inspections prior, during, and after well treatments. ()

06. Reporting Requirements. A report on the well treatment must be submitted within thirty (30) days of the treatment. The report shall present a detailed account of the work done and the manner in which such work was performed, including: ()

a. The daily production of oil, gas, and water both prior to and after the operation. ()

b. The size and depth of perforations. ()

c. Percentages by volume and total volumes of base treatment fluid, individual additives, and proppant(s). This requirement can be met by the submittal of well completion field tickets if they contain this information. ()

d. Documentation demonstrating the chemicals used in the well treatment have been reported to the website www.fracfocus.org, its successor website, or another publicly accessible database approved by the Department. The chemical information must be reported in a systems approach. ()

e. Information specific to hydraulic fracturing, as described in Section 211 of these rules. ()

f. Static pressure testing results before and after the well treatment. ()

g. The amounts, handling, and if necessary, disposal at an identified appropriate disposal facility, or reuse of the well stimulation fluid load recovered during flow back, swabbing, and/or recovery from production facility vessels. Reporting of recovered fluids shall be included with other monthly production reports required by the Department. Storage of such fluid shall be protective of ground water as demonstrated by the use of either tanks or

authorized lined pits as described in Section 230 of these rules. ()

h. Any other information related to operations which alter the performance or characteristics of the well. ()

07. Fresh Water Protections for Well Treatments. ()

a. The Department will not authorize pits, lagoons, ponds, or other methods of subsurface storage for treatment fluids within IDEQ recognized source water assessment or protection areas for public drinking water systems. Owners or operators must store and transport treatment fluids using above ground storage facilities and tanker trucks for well treatments in these locations. ()

b. The Department will not authorize well treatments to create fractures within five hundred (500) vertical feet above or below fresh water aquifers. ()

c. The Department shall require the owner or operator to complete fresh water monitoring at the owner's or operator's cost before and after a well treatment unless the Department, in consultation with the IDEQ, determines that the proposed treatment does not pose a threat of pollution to fresh waters. The Department will review and approve all monitoring proposals with the IDEQ. The monitoring will be done using representative existing water wells or surface waters within one-quarter (1/4) horizontal mile of the treated well. For wells that deviate from the vertical, sampling may be required within one-quarter (1/4) horizontal mile of the wellbore's projected location on the surface. If no water wells or surface waters are present in this area, the sampling area may be enlarged as needed with approval by the Department. If the Department determines that existing water wells are not representative of the ground waters that could be impacted, then the Department may require the owner or operator to install one (1) or more ground water monitoring wells at the owner's or operator's cost. The owner or operator must obtain consent from appropriate property owners to gain access prior to any sampling or well construction. When monitoring is required by the Department, the operator will prepare a monitoring plan that includes the following: ()

i. Location of proposed monitoring sites; ()

ii. Construction details of any sampled or constructed wells including total well depth, depth of screened interval(s), screen size, and drilling log. For existing wells, the operator must make every reasonable attempt to locate this information; ()

iii. When possible, data from the existing wells collected within the last five (5) years and analyzed in a state or EPA certified drinking water lab; ()

iv. List of proposed analytes, testing methods, and their detection limits; ()

v. Additional tests such as stable isotopic analysis; and ()

vi. Pre-treatment sampling and analysis when no relevant data exists, and a schedule for post-treatment sampling and analysis. ()

d. The owner or operator will provide the Department with copies of any analysis or reports within thirty (30) days of samples being taken. All samples must be analyzed in a state or EPA certified drinking water lab. ()

e. Pollution of fresh water supplies due to a well treatment is a violation of these rules and Title 47, Chapter 3, Idaho Code. ()

211. HYDRAULIC FRACTURING.

01. Application Requirements. In addition to the information required by Subsection 210.01 of this rule, the owner or operator shall provide the following application information regarding hydraulic fracturing: ()

a. The geological names and descriptions of the formation into which well stimulation fluids are to be injected; ()

b. Detailed information on the base stimulation fluid source. For each stage of the well stimulation program, provide the chemical additives and proppants and concentrations or rates proposed to be mixed and injected, including: ()

i. Stimulation fluid identified by additive type (such as but not limited to acid, biocide, breaker, brine, corrosion inhibitor, crosslinker, demulsifier, friction reducer, gel, iron control, oxygen scavenger, pH adjusting agent, proppant, scale inhibitor, surfactant); ()

ii. The chemical compound name and Chemical Abstracts Service (CAS) number as found on the previously submitted MSDS shall be identified (such as the additive biocide is glutaraldehyde, or the additive breaker is ammonium persulfate, or the proppant is silica or quartz sand, and so on for each additive used); ()

iii. The proposed rate or concentration for each additive and the total volume of each shall be provided (such as gel as pounds per thousand gallons, or biocide at gallons per thousand gallons, or proppant at pounds per gallon, or expressed as percent by weight or percent by volume, or parts per million, or parts per billion); and ()

iv. The formulary disclosure of the chemical compounds used in the well stimulation(s) for the purpose of protecting public health and safety. ()

c. A detailed description of the proposed well stimulation design that shall include: ()

i. The anticipated surface treating pressure range; ()

ii. The maximum injection treating pressure, which shall be within accepted safety limits. Accepted safety limits are generally eighty percent (80%) of the maximum pressure rating of the pressurized system; ()

iii. The estimated or calculated fracture height in both the horizontal and vertical directions. ()

02. Volatile Organic Compounds and Petroleum Distillates. The injection of volatile organic compounds, such as benzene, toluene, ethyl benzene and xylene, also known as BTEX compounds, or any petroleum distillates into ground water in excess of the applicable ground water quality standards is prohibited. Volatile organic compounds or petroleum distillates may be appropriate as additives, but they are not appropriate for use as the base fluids. The proposed use of volatile organic compounds or any petroleum distillates for well stimulation into hydrocarbon bearing zones may be authorized with prior approval of the director. Water that is produced with oil and gas, and which may contain small amounts of naturally occurring volatile organic compounds or petroleum distillates, may be used as well stimulation fluid in hydrocarbon bearing zones. ()

03. Well Integrity. Prior to the well stimulation, the owner or operator will perform a suitable mechanical integrity test of the casing or of the casing-tubing annulus or other mechanical integrity test methods and submit an affidavit certifying that the well was tested in anticipation of proposed treatment pressures. The owner or operator will notify the Department of this test twelve (12) to twenty-four (24) hours in advance. ()

04. Pressure Monitoring. During the well stimulation operation, the owner or operator shall monitor and record the annulus pressure at the casinghead. If intermediate casing has been set on the well being stimulated, the pressure in the annulus between the intermediate casing and the production casing shall also be monitored and recorded. If the annulus pressure increases by more than five hundred (500) psi gauge as compared to the pressure immediately preceding the stimulation, the owner or operator shall verbally notify the Department as soon as practicable but no later than twenty-four (24) hours following the incident. ()

05. Post Treatment Report. In addition to the information required by Subsection 210.06 of this rule, the owner or operator shall provide the following post-treatment reporting: ()

a. The actual total well stimulation treatment volume pumped; ()

- b.** The actual surface pressure and rate at the end of each fluid stage and the actual flush volume, rate and final pump pressure; ()
- c.** The instantaneous shut-in pressure, and the actual fifteen (15) minute and thirty (30) minute shut-in pressures when these pressure measurements are available; ()
- d.** A continuous record of the annulus pressure during the well stimulation; ()
- e.** A copy of the well stimulation service contractor's job log, without any cost/pricing data from the field ticket, in lieu of paragraphs (a) through (d) above. If the job log does not contain all the needed information, it must be supplemented with additional information needed to satisfy Paragraphs 211.05.a. through 211.05.d. of this rule. ()
- f.** A report containing all details pertaining to any annulus pressure increases of more than five hundred (500) psi gauge as described in Subsection 211.04 of this rule. The report shall include corrective actions taken, if necessary. ()
- g.** Results of post treatment fluid analysis used to help determine where the fluid can be disposed. ()

212. -- 219. (RESERVED)

220. BONDING.

01. Individual Bond. The Department shall, except as hereinafter provided, require from the owner or operator a good and sufficient bond in the sum of not less than ten thousand dollars (\$10,000) plus one dollar (\$1) for each foot of planned well length in favor of the Department. The bond shall be conditioned upon the performance of the owner's or operator's duty to comply with the requirements of the Act and the rules of the Commission, with respect to the drilling, maintaining, operating, and plugging of each well drilled for oil and gas and the reclamation of surface disturbance associated with these activities. Said bond shall remain in force and effect until the plugging of said well is approved by the Department and the well site is reclaimed as described in Section 510 of these rules, or the bond is released by the Department. ()

02. Blanket Bond. In lieu of the bond in Subsection 220.01 of this rule, any owner or operator may file with the Department a good and sufficient blanket bond covering all active wells drilled or to be drilled in the state of Idaho. The amount of the blanket bond will be as follows according to the number of active wells covered by the bond: ()

- a.** Up to ten (10) wells, fifty thousand dollars (\$50,000); ()
- b.** Eleven (11) to thirty (30) wells, one hundred thousand dollars (\$100,000); or ()
- c.** More than thirty (30) wells, one hundred fifty thousand dollars (\$150,000). ()

03. Inactive Well Bond. An owner or operator must provide the Department with a bond of at least ten thousand dollars (\$10,000) plus eight dollars (\$8) for each foot of planned well length for each inactive well conditioned upon the performance of the duty to comply with the requirements of the Act and the rules of the Commission, with respect to the drilling, maintaining, operating, and plugging of each well drilled for oil and gas. Said bond shall remain in force and effect until the plugging of said well is approved by the Department, or the bond is released by the Department. Inactive wells may not be covered by a blanket bond as provided in Subsection 220.02 of this rule. ()

04. Additional Bonding. The Department may impose additional bonding on an owner or operator given sufficient reason, such as non-compliance, unusual conditions, horizontal drilling, or other circumstances that suggest a particular well or group of wells has potential risk or liability in excess of that normally expected. The owner or operator may request a hearing to appeal either the decision to impose an additional bond or the proposed amount of the bond. ()

05. Authorized Bonds. The bond(s) referred to in Section 220 must be by a corporate surety authorized to do business in the state of Idaho or in cash. If cash is used to satisfy the bonding requirements in these rules, interest on the cash will be allocated to the general fund. ()

221. TRANSFER OF DRILLING PERMITS.

No person to whom a permit has been issued shall transfer the permit to any other location or to any other person until the following requirements have been complied with: ()

01. Prior to Drilling Well. If, prior to the drilling of a well, the person to whom the permit was originally issued desires to change the location, he shall submit a letter so stating and another application properly filled out showing the new location. Drilling shall not be started until the transfer has been approved and the new permit posted at the new location. ()

02. During Drilling or After Completion. If, while a well is being drilled or after it has been completed, the person to whom the permit was originally issued disposes of his interest in the well, he shall submit a written statement to the Department setting forth the facts and requesting that the permit be transferred to the person who has acquired the well. ()

03. Terms for Acceptance of Transfer. Before the transfer of a drilling permit shall be recognized, the person who has acquired the well must submit a written statement setting forth that he has acquired such well and assumes full responsibility for its operation and abandonment in conformity with the law, rules, regulations, and orders issued by the Commission. If bond is required to guarantee compliance with the rules and regulations of the Commission, the person acquiring such well shall furnish bond. ()

222. -- 229. (RESERVED)

230. PIT REQUIREMENTS.

01. Plans Required. If pits are proposed to be constructed in connection with another permit application required by these rules, then the owner or operator must include plans for pit construction in the application. If a pit is needed after the other permits have been approved, then an application to amend the permit must be made to the Department with an application fee. Approval by the Department is required prior to the pit being constructed unless the pit is necessary for an emergency action. Pit applications must include the permit number, well name, well location, as-built description if drilling has been completed, proposed pit location, and plans for pit construction, operation, and reclamation. ()

02. Location. ()

a. Pits must be located where they are structurally sound and the liner systems can be adequately protected against factors such as wild fires, floods, landslides, surface and ground water systems, equipment operation, and public access. ()

b. Pits located in a one hundred-year floodplain must be in conformance with any applicable floodplain ordinances pertaining to activities within the one hundred-year floodplain. ()

c. Pits shall not be located within an IDEQ recognized source water assessment or protection areas for public drinking water systems. ()

03. Site Preparation. All sites must be properly prepared prior to pit construction. Vegetation, roots, brush, large woody debris and other deleterious materials, topsoil, historic foundations and plumbing, or other materials that may adversely affect appropriate construction, must be removed from the footprint of the pit unless approved by the Department. ()

04. Pit Sizing Criteria. ()

a. Pits that have constructed berms ten (10) or more feet in height or hold fifty (50) acre-feet or more

of fluid must also comply with the dam safety requirements of IDAPA 37.03.06, "Safety of Dams Rules." ()

b. Pits must be designed to hold the maximum volume of fluids being used for drilling or well treatment and the volume of water associated with a one hundred-year, twenty-four-hour precipitation event. ()

c. Snowmelt events shall be considered in determining the containment capacity. ()

d. Pits that are left over winter must be able to contain one hundred twenty-five percent (125%) of the average annual precipitation that falls from October through May. ()

e. Pits must be designed to maintain a minimum two (2) foot freeboard at all times. Contingency plans for managing excesses of fluids shall be described in the application. At no time shall fluids in a pit be allowed to escape from the impoundment. ()

05. Minimum Plans and Specifications for Reserve, Well Treatment, and Other Short Term Pits.

Pits used for one (1) year or less, not including extensions, are short term pits. Construction plans and specifications for short term pits must include the requirements under Subsections 230.02 through 230.04 of this rule and the following: ()

a. A prepared subbase, which shall be free of plus three (3) inch rocks, roots, brush, trash, debris or other deleterious materials, and compacted to ninety-five percent (95%) of Standard Proctor Test ASTM D698-07e1 or ninety-five percent (95%) of Modified Proctor Test ASTM D1557-09; ()

b. Slopes of two (2) feet horizontal to one (1) foot vertical (2H:1V) or flatter for all interior and exterior pit walls. The top of a bermed pit wall must be a minimum of two (2) feet wide; ()

c. A primary liner system consisting of a synthetic liner of at least twenty (20) mils thickness and constructed according to manufacturers' standards with at least four (4) inches of welded seam overlap and complete coverage on the floor and inside walls of the pit. Seams must run parallel to the line of maximum slope so they do not traverse across the slope. The liner edges shall be anchored in a compacted earth filled trench at least eighteen (18) inches in depth. The liner must be protected against cracking, sun damage, ice, frost penetration or heaving, wildlife and wildfires, and damage that may be caused by personnel or equipment operating in or around these facilities. Liner compatibility shall comply with EPA SW-846 method 9090A. Alternative liner systems with similar standards may be proposed by the owner or operator and approved at the Department's discretion; ()

d. Minimum factors of safety, and the logic behind their selection, for the stability of the earthworks and the lining system of the pit; ()

e. Site-specific methods for excluding people, terrestrial animals, and avian wildlife from the pits; ()

f. Segregation and stockpiling of topsoil in a manner that will support reestablishment of the pre-disturbance land use after pit closure; and ()

g. A closure plan including the following: ()

i. Testing of residual fluids and any accumulated solids, if anything other than water based drilling fluid was placed in the pit; ()

ii. Plans for removal and disposal of residual fluids and accumulated solids, with the liner material, at an appropriate facility; ()

iii. Regrading plan, replacement of topsoil, and erosion control measures; and ()

iv. Reseeding and Revegetation. ()

06. Minimum Plans and Specifications for Long Term Pits. Pits used for more than one (1) year, not including extensions, are long term pits. Construction plans and specifications for long term pits must include the requirements under Subsections 230.02 through 230.05 of this rule and the following: ()

- a. A quality control/quality assurance construction and installation plan; ()
- b. Type of fluids to be contained in the pit; ()
- c. Secondary containment synthetic liners, which shall have a minimum thickness of sixty (60) mils consisting of HDPE and a maximum coefficient of permeability of 10^{-9} cm/sec, or comparable liners approved by the Department; ()
- d. Leak detection and collection systems. The plans and specifications shall: ()
 - i. Provide a material between primary and secondary containment synthetic liners to collect, transport and remove all fluids that pass through the primary containment synthetic liner at such a rate as to prevent hydraulic head from developing on the secondary containment synthetic liner to the level at which it may be reasonably expected to result in discharges through the secondary containment synthetic liner; ()
 - ii. Provide routines and schedules for the evaluation of the efficiency and effectiveness of the removal of fluids from the layer placed between primary and secondary containment synthetic liners. The properly working system shall continually relieve head pressures on the secondary containment synthetic liner; ()
 - iii. Provide specific triggers for maintenance routines, which shall be initiated in response to inadequate performance of primary or secondary containment synthetic liners; and ()
 - iv. Specify operation and maintenance procedures, which shall be initiated in response to inadequate performance of primary and secondary containment or leak detection and collection systems. ()
- e. All piping, including that contained in the leak detection and collection system, shall have a minimum wall thickness of PVC Schedule 80 and be designed to: ()
 - i. Withstand chemical attack from oil field waste or leachate; ()
 - ii. Withstand structural loading from stresses and disturbances from cover materials or equipment operation; and ()
 - iii. Facilitate clean-out and maintenance. ()
- f. Protections for the liner from excessive hydrostatic force or mechanical damage at the point of discharge into, or suction from, the pit. External discharge or suction lines shall not penetrate the liner; ()
- g. Plans for erosion control during and immediately following construction; and ()
- h. Operating and maintenance plans. ()

07. Time Limits for Short Term Pits. Reserve, well treatment, and other short term pits must be closed out and reclaimed within one (1) year of being constructed. The owner or operator may request a one-time extension for up to six (6) months. The Department may grant the request if the owner or operator gives sufficient cause and presents a plan for ensuring that the pit is adequately monitored and maintained. ()

a. Fluids may be left in a pit for up to six (6) months after the associated well activities are conducted. The owner or operator may request a one-time extension for up to one (1) year. The Department may grant the request if the owner or operator gives sufficient cause and presents a plan for keeping the fluids in a usable state. ()

b. Notwithstanding the above time limits, the owner or operator may request additional time based upon conditions wholly outside of the owner's or operator's control including, but not limited to, governmental lease

requirements and delays related to difficult drilling conditions. The Department may impose additional construction or monitoring requirements prior to granting additional time. ()

08. Emergency Pits. Pits constructed during an emergency situation may be approved by an after-the-fact application submitted to the Department. The requirements in Subsections 230.02 through 230.05 of this rule shall apply, and the pit must be closed out and reclaimed within six (6) months of being constructed. The Department must be notified within twenty-four (24) hours of an emergency situation requiring an emergency pit. ()

09. Operating Requirements. ()

a. Waste oil, hydraulic fluid, transmission fluids, trash, or any other miscellaneous waste products must not be disposed of in a pit. Placement of these materials into a pit may result in the creation of a mixed waste that requires handling and disposal as a hazardous waste. ()

b. If a pit liner's integrity is compromised, or if any penetration of the liner occurs above the liquid's surface, then the owner or operator shall notify the appropriate Department area office within forty-eight (48) hours of the discovery and repair the damage or replace the liner. ()

c. If a pit or closed-loop system develops a leak, or if any penetration of the pit liner occurs below the liquid's surface, then the owner or operator shall remove all liquid above the damage or leak line within forty-eight (48) hours, notify the appropriate Department area office within forty-eight (48) hours of the discovery, and repair the damage or replace the pit liner. ()

d. The owner or operator shall install, or maintain on site, an oil absorbent boom or other device to contain and remove oil from a pit's surface. Visible oil must be removed from short term pits immediately following the cessation of activity for which the pit was constructed. Visible oil must be removed from long term pits as soon as it is discovered. ()

10. Closure of Pits. ()

a. The owner or operator shall remove all liquids from the pit prior to closure and dispose of them at an appropriate facility or reuse them at a different location. If the nature of the fluids has substantially altered during their use, then the fluids must be sampled and tested to determine which disposal facility can accept them. ()

b. Any solids that have been accumulated in the bottom of the pit will be tested to determine which disposal facility can accept the material. The solid material and liner will then be removed and disposed of at an appropriate facility. ()

c. The owner or operator must notify the Department at least forty-eight (48) hours prior to removal of the pit liner so an inspection may be conducted. ()

d. The pit foundation will be inspected for signs of leakage. If evidence of leakage is observed, the owner or operator must contact the Department and the IDEQ within twenty-four (24) hours and report the type of fluids released and the estimated extent of release. The owner or operator must then remediate the site in conformance with the applicable standards administered by IDEQ in IDAPA 58.01.02, "Water Quality Standards," Sections 850 through 852. ()

e. After addressing any pit leakage concerns, the owner or operator shall perform the activities described in Subsections 510.04 through 510.08 of these rules. ()

11. Condemnation Due to Improper Impoundment. The Department shall have authority to condemn any pit that does not properly impound fluids and order the disposal of such fluids in conformance with IDAPA 58.01.16, "Wastewater Rules," and other applicable rules. ()

231. -- 299. (RESERVED)

SUBCHAPTER D – WELL SITES AND DRILLING

300. IDENTIFICATION OF WELLS.

01. Signs; Lease Access Roads. To identify all producing leases the owner or operator thereof shall cause a sign to be placed where the principal lease road enters the lease and such sign shall show the name of the lease and the owner or operator thereof and the section, township, and range. ()

02. Signs; Well Sites. Prior to spud activity, a legible sign must be placed near the well to identify the operator, permit number, well name, and emergency telephone number. If a multiple completion, each well head connection shall be identified. ()

301. WELL SITE OPERATIONS.

The owner or operator must conduct all operations and maintain the well site at all times in a safe and workmanlike manner. Best management practices and good housekeeping practices must be used at well sites. ()

01. Fencing. Within sixty (60) days after completion of the well, the owner or operator must install a fence around the well site to maintain safe working conditions, secure the well site, and prevent access by wildlife and livestock. The fence design must be acceptable to both the landowner and owner or operator. ()

02. Storage. All chemicals must be stored and maintained in accordance with the applicable MSDS requirements. Materials related to operations must be palletized where applicable. Vehicles and materials not in use must be removed from the well site. ()

03. Vegetation. All well sites must be kept free of excessive vegetation. ()

04. Trash. All trash, debris, and scrap metal must be removed from the well site. Pending removal, any trash or debris that might constitute a fire hazard shall be removed to a distance of at least one hundred (100) feet from the well location, tanks, and separator. ()

302. ACCIDENTS AND FIRES.

The owner or operator shall take all reasonable precautions to prevent accidents and fires. An emergency response plan will be prepared and available at the well for use or inspection. Coordination with local emergency responders and the Idaho Bureau of Homeland Security is recommended prior to rig set up. The following actions must be taken in event of a release, industrial accident, or fire of major consequence: ()

01. Provide Information to Emergency Response. Emergency workers will be given information on all fluids or chemicals involved in a spill or accident as needed according to OSHA Standard 1910.1200 (Hazard Communication). Nothing in this rule shall authorize any person to withhold information that is required by state or federal law to be provided to a health care professional, a doctor, or a nurse. All information required by a health care professional, a doctor, or a nurse shall be supplied, immediately upon request, by the owner or operator, or their contractors, directly to the requesting health care professional, doctor, or nurse, including the percent by volume of the chemical constituents (and associated CAS numbers) in the fluids and the additives; ()

02. Initiate Spill Response and Corrective Actions. Owner or operator must comply with the requirements of IDAPA 58.01.02, "Water Quality Standards," Sections 850 through 852; and ()

03. Notify the Department. Notify the Department within twenty-four (24) hours and submit a full report thereon within fifteen (15) days. ()

303. -- 309. (RESERVED)

310. GENERAL DRILLING RULES.

01. General Design Requirements for Casing and Cementing. Casing and cementing programs adopted for wells must be so planned as to protect any potential oil- or gas-bearing horizons penetrated during drilling from infiltration of injurious waters from other sources, and to prevent the migration of oil or gas from one horizon to

another. Owners and operators shall follow the standards for casing and tubing in API SPEC 5CT and the standards for cementing in API SPEC 10A. ()

02. Wildcat and High-Pressure Conditions. When drilling wildcat territory or in any field where high pressures are likely to exist, the owner or operator shall take all necessary precautions to keep the well under control at all times and shall use proper high-pressure fittings and equipment at the time the well is started. Under such conditions all strings of casings must be securely anchored. ()

03. High Temperature Conditions. Due to high geothermal gradients in Idaho, the temperature of the return drilling mud shall be monitored daily during the drilling of the surface casing hole and all deeper holes. The owner or operator must use cements appropriate for the temperatures expected or encountered. ()

04. Conductor Pipe or Casing Requirements. A minimum of forty (40) feet of conductor pipe shall be installed. If geologic conditions are such that forty (40) feet is not feasible, the owner or operator may request a variance from the Department. The annular space is to be cemented solid to the surface. A twenty-four (24) hour cure period for the grout must be allowed prior to drilling out the shoe unless sufficient additives, as determined by the Department, are used to obtain early strength. ()

05. Surface Casing Requirements. ()

a. The Department must be notified in writing seventy-two (72) hours in advance of planned spud activity for surface casing. The Department will post the spud activity notice on its website and send an electronic copy of the notice to the county where the well is located. ()

b. Surface casing must be set at a minimum depth equal to ten percent (10%) of the proposed total depth of the well. In areas where pressures and formations are unknown, a minimum of two hundred (200) feet of surface casing shall be set. ()

c. Surface casing shall provide for control of formation fluids, protection of fresh water, and for adequate anchorage of blow out prevention equipment. The casing must be seated through a sufficient series of low permeability, competent lithologic units such as claystone, siltstone, basalt, etc., to insure a solid anchor for blow out prevention equipment and to protect usable ground water from contamination. Additional surface casing may be required if the first string has not been cemented through a sufficient series of low permeability, competent lithologic units, or rapidly increasing thermal gradients or formation pressures are encountered. ()

d. All surface casing shall be cemented solid to the surface by pump and plug, displacement, or other approved method. When surface samples are cured, additional drilling activities may commence. ()

e. The Department must be notified in writing twenty-four (24) hours in advance of planned cementing activity for surface casing. The Department will witness and document all surface casing cementing activities. ()

06. Requirements for BOP Equipment. Unless altered, modified, or changed for a particular pool(s) upon hearing before the Commission, BOP and related equipment shall be installed and maintained during the drilling of all wells in accordance with the following rules: ()

a. BOP equipment installed on wells in which formation pressures to be encountered are abnormal or unknown shall consist of a double-gate, hydraulically operated preventer with pipe and blind rams or two (2) single-ram-type preventers; one (1) equipped with pipe rams, the other with blind rams and an annular type preventer. In addition, upper and lower kelly cocks, pit level indicators with alarms and/or flow sensors with alarms, and surface facilities to handle pressure kicks shall be installed prior to drilling any formation with known abnormal pressure. ()

i. Accumulators shall maintain a pressure capacity reserve at all times to provide for operation of the hydraulic preventers and valves with no outside source. ()

ii. In all other drilling operations, BOP equipment shall consist of at least one (1) double-gate

preventer with pipe and blind rams or two (2) single-ram-type preventers, one (1) equipped with pipe rams, the other with blind rams, and sufficient valving to permit fluid circulation at the surface. ()

b. All BOP equipment, choke lines, and manifolds shall be installed above ground level. Casing heads and optional spools may be installed below ground level provided they are visible and accessible. ()

c. BOP equipment and related casing heads and spools shall have a vertical bore no smaller than the inside diameter of the casing to which they are attached. ()

d. The working pressure rating of all BOP and related equipment shall equal or exceed the maximum anticipated pressure to be contained at the surface. ()

e. All ram-type BOP and related equipment, including casing, shall be tested to the full working pressure rating of said equipment upon installation, provided that components need not be tested to levels higher than the lowest working pressure rated component. Annular type BOP and related equipment must be tested in conformance with the manufacturer's published recommendations. If, for any reason, a pressure seal in the assembly is disassembled, a test to a full working pressure rating of that seal shall be conducted prior to the resumption of any drilling operation. In addition to the initial pressure tests, ram-type BOP shall be checked for physical operation at least once per week and all components, again with exception of the annular-type BOP, tested at least once every twenty-one (21) days to at least fifty percent (50%) of the rated pressure of the BOP equipment and/or to the maximum anticipated pressure to be contained at the surface, whichever is greater. ()

f. The Department will require an affidavit covering the initial pressure tests after installation signed by the owner, operator, or contractor attesting to the satisfactory pressure tests. The Department must be advised at least twenty-four (24) hours in advance of all tests. The Department may inspect and witness all BOP operations and testing. ()

g. A schematic diagram of the BOP and well head assembly shall be submitted to the Department upon application for a permit to drill. The schematic diagram should indicate the minimum size and pressure rating of all components of the well head and BOP assembly. ()

h. Studs on all well head and BOP flanges shall be checked for tightness each week. Hand wheels for locking screws shall be installed and operational, and the entire BOP and well head assembly shall be kept clean of mud and ice. ()

i. A drillstem safety valve shall be available on the rig floor at all times with correct thread for the pipe in use. ()

j. A drillstem float valve shall be installed in bit sub or as close to bit as reasonably possible. ()

07. Intermediate Casing. ()

a. Intermediate casing, if installed, shall be cemented solidly to the surface or to the top of the casing. ()

b. Intermediate casing not run to surface will be lapped into at least one hundred (100) feet of the surface casing, or at least one hundred (100) feet of the next larger casing to provide overlap and secure a seal. ()

c. Such casing shall be cemented and pressure tested before cement plugs are drilled. ()

d. The Department must be notified in writing twenty-four (24) hours in advance of planned cementing activity for intermediate casing. The Department may witness and document all intermediate casing cementing activities. ()

08. Production Casing; Cementing and Testing Requirements. ()

a. If and when it becomes necessary to run a production casing, such casing shall be cemented and pressure tested before cement plugs are drilled. ()

b. The Department must be notified in writing twenty-four (24) hours in advance of planned cementing activity for production casing. The Department may witness and document all production casing cementing activities. ()

c. When not run to the surface, production casing will be cemented from the bottom of the hole up into at least one hundred (100) feet of the next larger casing to provide overlap and secure a seal. ()

d. If the bottom plug will be drilled out, the open hole interval must be completed to protect any potential oil-bearing or gas-bearing horizons penetrated during drilling from infiltration of injurious waters from other sources, and to prevent the migration of oil or gas from one horizon to another. ()

09. Step-off. An owner or operator may submit to the Department a step-off request to complete a new borehole from surface if a borehole without production casing deviates from vertical plumb by more than five (5) degrees. A step-off borehole must be drilled within the existing pad of the permitted well. The incomplete borehole must be plugged and abandoned in accordance with Section 502 of these rules. ()

10. Well Control (Rotary Tools); Reserve Mud Tanks. When drilling with rotary tools, the owner or operator shall provide, as required by the Department, a reserve mud pit or tank of suitable capacity for the anticipated depth of the well and maintain an on-site supply of mud additives that can raise the mud weight by one (1) pound per gallon in case of loss of well control. ()

11. Mud Pits. Before commencing to drill, proper and adequate mud pits shall be constructed for the reception and confinement of mud and cuttings and to facilitate the drilling operation. Special precautions shall be taken, if necessary, to prevent contamination of fresh waters. These pits must conform to the standards in Section 230 of these rules. If tanks will be used, then mud pits may not be required. ()

12. Well Control (Cable Tools); Fluid Containment. Natural gas or oil which may be encountered in a substantial quantity in any section of a cabletool drilled hole above the ultimate objective shall be shut off with reasonable diligence either by mudding or by casing, or other approved method, and confined to its original source to the satisfaction of the Department. The use of cable tools for drilling activities requires written approval by the Department prior to spud activities. A request to use cable tools must include the following: ()

a. Proposed pressure control measures; ()

b. Diversion and disposal methods for stray gas; ()

c. Safety protocols for mud weights and well controls; and ()

d. Annual drill rig safety inspection information, including the date of last replacement of cables, draw works inspection report, and metallurgic report of safety compliance for structural integrity of the drill rig. ()

13. Drilling Mud Disposal. Drilling mud will be disposed of at an appropriate facility in compliance with applicable state and federal requirements. ()

14. Report of Water Encountered; Owner's or Operator's Duties. It shall be the duty of any owner or operator drilling an oil or gas well or drilling a seismic, core or other exploratory hole to report to the Department all potential water bearing zones encountered; such report shall be in writing and give the location of the well or hole, the depth at which the zones were encountered, the thickness of such zones, and the rate of flow of water if known. This requirement can be met by the submittal of the logs required in Section 340 of this rule. ()

15. Spill Prevention, Control, and Countermeasures Plan. The owner or operator must have a Spill Prevention, Control, and Countermeasures Plan in conformance with the requirements of the EPA. This plan must be

updated as needed when facilities or activities change. ()

16. Interim Drill Site Clean Up. If a well is completed for production or other purposes, interim reclamation must be completed within six (6) months of the rig being removed. Interim reclamation includes the following activities: ()

a. Debris and waste materials including, but not limited to, concrete, sack bentonite and other drilling mud additives, sand, plastic, pipe, and cable associated with the drilling, re-entry, or completion operations shall be removed and disposed of properly. ()

b. All disturbed areas affected by drilling or subsequent operations, except areas reasonably needed for production operations or for subsequent drilling operations to be commenced within twelve (12) months, shall be reclaimed and revegetated to approximately the pre-drilling condition or to the condition specified in an agreement with the surface owner. The reclamation standards in Subsections 510.04 through 510.07 of these rules, shall apply. ()

311. LOSS OF TOOL WITH RADIOACTIVE MATERIAL.

01. Recovery or Cementing of Tool. If a gamma ray tool, or some other tool containing radioactive material, becomes lost in a well, the owner or operator shall make every reasonable attempt to retrieve the tool from the well. If the tool cannot be recovered, the owner or operator must immediately cover the tool with cement sufficient to secure it in place and prevent it from contacting any fluids in the well. A whipstock or other approved deflection device shall be placed on top of the cement plug to prevent accidental or intentional mechanical disintegration of the radioactive source. ()

02. Sidetracking. If the hole is later sidetracked above the radioactive material, the sidetracked hole must be at least fifteen (15) feet from the original hole with the lost radioactive material. ()

03. Reporting. A report must be sent to the Department and IDEQ within thirty (30) days of cementing the tool. The report must describe the tool that was lost, the depth it was lost at, the specific type and amount of radioactive material in the tool, and an estimate of the length of cement covering the tool. This report may be included in a plugging report if the well will be plugged. ()

312. CHOKES.
All flowing wells shall be equipped with adequate chokes or beans to properly control the flow thereof. ()

313. USE OF EARTHEN RESERVOIRS.
Oil shall not be produced, stored, or retained in earthen reservoirs or in open receptacles. ()

314. VACUUM PUMPS PROHIBITED.
The use of vacuum pumps or other devices for the purpose of placing a vacuum on any gas- or oil-bearing stratum is prohibited; however, the Department may upon application and hearing and for good cause shown permit the use of vacuum pumps. ()

315. PULLING OUTSIDE STRINGS OF CASING.
Casing shall not be recovered if its recovery will expose any abnormal pressure, lost circulation, oil, gas, or water zone. In pulling outside strings of casing from any oil or gas well, the space outside the casing left in the hole shall be kept and left full of mud-laden fluid of adequate specific gravity to seal off all fresh and saltwater strata and any strata bearing oil or gas which is not producing. Casing may not be pulled without first making application to the Department and receiving approval. The application must describe how fresh waters will be protected. ()

316. -- 319. (RESERVED)

320. MECHANICAL INTEGRITY TESTING.

01. Mechanical Integrity Testing. ()

a. The mechanical integrity test shall include one (1) of the following tests to determine whether leaks are present in the casing, tubing, or packer: ()

i. A pressure test with liquid or gas at a pressure of not less than three hundred (300) psi or the minimum injection pressure, whichever is greater, and not more than the maximum injection pressure; or ()

ii. The monitoring and reporting to the Department, on a monthly basis for sixty (60) consecutive months, of the average casing-tubing annulus pressure, following an initial pressure test; or ()

iii. In lieu of Subparagraphs 320.01.a.i. and 320.01.a.ii. of this rule, any equivalent test or combinations of tests approved by the Department. ()

b. The mechanical integrity test shall include one (1) of the following tests to determine whether there are fluid movements in vertical channels adjacent to the well bore: ()

i. Tracer surveys; ()

ii. Cement bond log or other acceptable cement evaluation log; ()

iii. Temperature surveys; or ()

iv. In lieu of Subparagraphs 320.01.b.i. through 320.01.b.iii. of this rule, any other equivalent test or combination of tests approved by the Department. ()

c. Mechanical integrity tests shall be performed at the rate of not less than one (1) test every five (5) years, regardless of well status. The first five-year period shall commence on the date the initial mechanical integrity test is performed. ()

02. Inactive Wells. If, at any time, surface equipment excluding the wellhead is removed or the well becomes incapable of production, a mechanical integrity test shall be performed within thirty (30) days. The mechanical integrity test for an inactive well shall be isolation of the wellbore with a bridge plug or similar approved isolating device set one hundred (100) feet or less above the highest perforations and a pressure test with liquid or gas at a pressure of not less than three hundred (300) psi surface pressure or any equivalent test or combination of tests approved by the Department. ()

03. Prior Notification. Not less than ten (10) days prior to the performance of any mechanical integrity test required by this rule, any person required to perform the test shall notify the Department, in writing, of the scheduled date on which the test will be performed. ()

04. Reporting Requirements. Mechanical integrity test results shall be submitted to the Department within thirty (30) days of testing. ()

05. Mechanical Integrity Required. All wells shall maintain mechanical integrity. All wells that fail a mechanical integrity test, or that are determined through any other means to lack mechanical integrity, shall immediately be investigated by the owner or operator. The well shall be repaired or immediately shut down following the investigation. Repairs shall be completed within six (6) months, or the well shall be plugged and abandoned. If the repair cannot be completed within six (6) months, the owner or operator may request an extension and provide a plan for the repair. ()

321. -- 329. (RESERVED)

330. WELL DIRECTIONAL CONTROL.

01. General Restrictions; Allowable Deviation. The maximum point at which a well penetrates the producing formation shall not unreasonably vary from the vertical drawn from the center of the hole at the surface. Deviation is permitted without special permission to remedy blowouts and, for short distances, to straighten the hole, sidetrack junk, or correct other mechanical difficulties. ()

02. Controlled Directional Drilling. Except for the purposes recited in Subsection 330.01, no well hereafter drilled may be intentionally directionally deviated from the vertical unless the owner or operator thereof shall first file an application and application fee to amend the drilling permit and receive approval from the Department. Such application shall contain the following information: ()

- a. Name and address of the owner or operator. ()
- b. Lease name, well number, name of field and reservoir and county. ()
- c. Description of surface location and proposed location of the producing interval (footage from lease and section or block and survey lines). ()
- d. Reason for intentional deviation. ()
- e. List of offset operators and statement that each has been furnished a copy of the application by registered mail. ()
- f. Signature of representative of owner or operator. ()
- g. Notification to offset operators that any objection they may have to the proposed intentional deviation of the well must be filed with the Department within fifteen (15) days of receipt of a copy of the application. ()
- h. The application shall be accompanied by a neat, accurate plat or sketch of the lease and all offset leases showing the names of all offset operators and the surface and proposed producing interval locations of the well. Plat shall be drawn to a scale which will permit facile observation of all pertinent data. ()

03. Copy of Application to Offset Operators. At the time the application is filed with the Department, a copy of the application and the plat shall be forwarded by registered mail to all offset operators to the lease on which the well is to be drilled. ()

04. Department Action. Upon receipt, the Department will hold the application for fifteen (15) days. If objection from any offset operator to the proposed intentional deviation is received within fifteen (15) days of receipt of the application by said operator, or if the Department is not in agreement with the proposed deviation, the application shall be set down for public hearing. If no objection from either an offset operator or the Department is interposed within the fifteen (15) day period, the application shall be approved and permit issued by the Department. If written consent of the offset operator(s) is filed concurrently with the application to drill directionally, the Department may immediately approve the application without waiting fifteen (15) days. ()

05. Angular Deviation and Directional Survey. Upon completion, a complete angular deviation and directional survey of the well obtained by an approved well surveying company shall be filed with the Department, together with other regularly required reports. ()

06. Application for Exceptions. In the event the proposed, or final, location of the producing interval of the directionally deviated well is not in agreement with spacing or other rules of the Commission applicable to the reservoir, proper applications shall be made to obtain approval of exceptions to such rules. Such approval shall be granted or denied at the discretion of the Department, and shall be accorded with the same consideration and treatment as if the well had been drilled vertically to the producing interval. ()

331. -- 339. (RESERVED)

340. WELL COMPLETION/RECOMPLETION REPORT AND WELL REPORT.

Within thirty (30) days after the completion of a well drilled for oil or gas, or the recompletion of a well into a different source of supply, or where the producing interval is changed, a completion report shall be filed with the Department, on a form prescribed by the Department. Such report shall include name, number, and exact location of the well; lease name, date of completion and date of first production, if any; name and depth of hydrocarbon

reservoir(s), if a multiple completion, from which well is producing; annulus pressure test; initial production test, including oil, gas, and water, if any; a well report as defined in Section 010; and such other relevant information as the Department may require. ()

341. DRILLING LOGS.

01. Minimum Required Logs. All wells shall have a lithologic log from the bottom of the hole to the top, to the extent practicable. ()

02. Bottom Hole Survey. All wells shall have a bottom hole location survey. ()

03. Cement Bond Log. All wells that are cased and cemented shall have a cement bond log run across the casing. ()

04. Other Logs. If other logs are run, including, but not limited to, resistivity, gamma-neutron log, sonic log, etc., then the owner or operator shall retain a copy regardless of results. ()

05. Log Submittal. The above logs shall be submitted to the Department in paper and digital formats within thirty (30) days of the log being run. If logs were run in color, then the submitted copies shall also be in color. Digital formats must be Tiff and LAS 2.0 or higher. Logs submitted to the Department must have a scale of one (1) inch for correlation logs and five (5) inches for detail logs. ()

342. -- 399. (RESERVED)

SUBCHAPTER E – PRODUCTION

400. PRODUCTION REPORTS.

01. Required Content. An owner or operator must report production on a form created by the Department. Production reports submitted to the Department must include gas quantities sold in thousand cubic feet (mcf), condensate sold in barrel quantities (bbl), oil sold in barrel quantities (bbl), and formational waters produced in barrel quantities (bbl). ()

02. Annual Production Report. By January 31 of each year, an owner or operator must submit to the Department an aggregated report of all hydrocarbons and formational waters produced and sold or disposed of for each well during the previous calendar year. ()

401. MEASUREMENT OF OIL.

The volume of production of oil shall be computed in terms of barrels of clean oil on the basis of meter measurements or tank measurements of oil-level difference made and recorded to the nearest quarter-inch (1/4") of one hundred percent (100%) capacity tables, subject to the following corrections: ()

01. Correction for Impurities. The percentage of impurities (water, sand, and other foreign substances, not constituting a natural component part of the oil) shall be determined to the satisfaction of the Department, and the observed gross volume of oil shall be corrected to exclude the entire volume of such impurities. ()

02. Temperature Correction. The observed volume of oil corrected for impurities shall be further corrected to the standard volume at sixty (60) Degrees F in accordance with ASTM D-1250-08, Table 7, or any revisions thereof and any supplements thereto, or any close approximation thereof approved by the Department. ()

03. Gravity Determination. The gravity of oil at sixty (60) degrees F shall be determined in accordance with ASTM D-1250-08, Table 5, or any revisions thereof and any supplements thereto approved by the Department. ()

402. MEASUREMENT OF GAS.

Gas Measurement. For computing volume of gas to be reported to the Department, the standard of pressure shall be fourteen point seventy-three (14.73) psi atmospheric, and the standard of temperature shall be sixty (60) Degrees F. All volumes of gas to be reported to the Department shall be adjusted by computation to these standards, unless otherwise authorized by the Department. ()

403. GAS-OIL RATIO FOR WELL CLASSIFICATIONS.

In the absence of an order by the Commission setting a field-specific oil-gas ratio, a well that produces gas of five thousand (5,000) cubic feet or greater to one (1) bbl of oil at standard temperature and pressure will be classified as a gas well. ()

404. GAS-OIL RATIO LIMITATION.

01. Waste Prevention; Conditions for Emergency Order. To further prevent waste resulting from the production of wells with inefficient gas-oil ratios, the Department may enter an emergency order temporarily prohibiting the production of oil or gas from all wells in a pool producing both oil and gas when the Department believes that waste may be occurring or is imminent in said pool by reason of the operation of wells with inefficient gas-oil ratios. The order shall specify a date for the hearing described in Subsection 404.02 of these rules. The Department may use information provided by an offset operator or an owner or operator in a common source of supply to determine if waste is occurring. ()

02. Notice and Cause for Hearing. The Department will notify all offset operators and owners or operators in the common source of supply of the hearing date. A hearing regarding waste due to inefficient gas-oil ratios will held for any of the following reasons: ()

i. If an emergency order is issued as described in Subsection 404.01 of these rules. The hearing will be scheduled between five (5) and fifteen (15) days after the effective date of the order. ()

ii. Upon application to the Department from any person with an ownership interest in the common source of supply who believes that waste is occurring due to inefficient oil and gas ratios. The application must include credible evidence of such waste. The hearing shall be held within thirty (30) days of the Department receiving the application. ()

iii. Prior to an emergency situation and upon its own motion with reasonable cause, the Department may schedule a hearing regarding potential waste due to inefficient gas-oil ratios. ()

03. Determination of Inefficient Ratios; Power to Limit Production. If the Department after notice and hearing, whether held upon its own motion, upon the application of an interested party, or pursuant to an emergency order entered as hereinafter provided for, shall find that a well(s) in the pool are operating with inefficient gas-oil ratios, and that waste is occurring or is imminent as a result thereof, it shall enter an order limiting the production of oil and gas from said pool to that amount which the pool can produce without waste and in accordance with sound engineering practice. The order shall also limit the amount of oil or gas, or both, that may be produced from any well in the pool, so that each owner or operator is given an opportunity to produce his just and equitable share in the pool in accordance with sound engineering practice. ()

405. GAS-OIL RATIO SURVEYS AND REPORTS.

Within thirty (30) days following the completion or recompletion of each well producing oil and gas and thereafter as the Department may require, the owner or operator of such well shall make a gas-oil ratio test of such well and the results of such test shall be reported to the Department within twenty (20) days after the test is made. Certain wells may be excepted from this rule by the Department upon written request. Entire fields may be excepted from this rule after notice and hearing. ()

406. -- 409. (RESERVED)

410. METERS.

01. General Requirements. Meter fittings of adequate size to measure the gas efficiently for the purpose of obtaining gas-oil ratios shall be installed on the gas vent line of every separator or proper connections

made for orifice well tester. Well-head equipment shall be installed and maintained in excellent condition. Valves shall be installed so that pressures can be readily obtained on both casing and tubing. ()

02. Visibility. All required meters shall be accessible and viewable by the Department for the purpose of monitoring daily, monthly and/or cumulative production volumes from individual wells. ()

411. SEPARATORS.

All flowing oil wells must be produced through an adequate oil and gas separator or emulsion treater, provided, however, the director may approve producing wells without a separator or emulsion treater. ()

412. PRODUCING FROM DIFFERENT POOLS THROUGH THE SAME CASING STRING.

No well shall be permitted to produce either oil or gas from different pools through the same string of casing without first receiving written permission from the Department. ()

413. GAS UTILIZATION.

After a well is completed and while it is being tested, the owner or operator may flare gas for no more than fourteen (14) days without paying royalties and severance taxes on the flared gas. Under no conditions may gas be flared for more than sixty (60) days after a well is completed or recompleted. Prior to flaring gas, owners or operators must notify the county in which the well is located and all owners of occupied structures within one-quarter (1/4) mile radius of the well. After the owner or operator has tested a well, no gas from such well shall be permitted to escape into the air, and all gas produced therefrom shall be utilized without waste. ()

414. -- 419. (RESERVED)

420. TANK BATTERIES.

Tank batteries must meet the following requirements. ()

01. Containment Requirements. All tank batteries consisting of tanks containing produced fluids or crude oil storage tanks or containing tanks equipped to receive produced fluids must be surrounded by tank dikes that meet the following requirements: ()

a. Tank dikes must be designed to have a capacity of at least one and one-half (1½) times the volume of the largest tank which the dike surrounds. ()

b. The material used to construct a tank dike and the material used to line the bottom and sides of the containment reservoir must have a maximum coefficient of permeability of 10⁻⁹ cm/sec so as to contain fluids and resist erosion. An operator must submit proof of compliance for tank dike liner construction to the Department in the form of a manufacturer's statement of design or a nuclear density test performed by a third party trained to perform the test. ()

c. All piping and manmade improvements that perforate the tank dike wall or tank battery floor must be sealed to a minimum radius of twelve (12) inches from the outside edge of the piping or improvement. ()

d. Valves and quick-connect couplers on tank batteries must be at least eighteen (18) inches from the inside wall of the tank dike. ()

e. Vegetation on the top and outside surface of tank dike must be properly maintained so as to not pose a fire hazard. ()

f. A ladder or other permanent device must be installed over the tank dike to access the containment reservoir. ()

g. The containment reservoir must be kept free of vegetation, stormwater, produced fluids, other oil and gas field related debris, general trash, or any flammable material. Drain lines installed through the tank dike for the purpose of draining storm water from the containment reservoir must have a valve installed which must remain closed and capped when not in use. Any fluids collected, spilled or discharged within the containment reservoirs must be removed as soon as practical, characterized, treated if necessary, and disposed in conformance with IDAPA

58.01.16, “Wastewater Rules,” and other applicable rules. ()

421. -- 429. (RESERVED)

430. GAS PROCESSING FACILITIES.

Gas processing facilities must meet the following requirements. ()

01. Operations. Operators of gas processing facilities must notify the Department which wells, by API number, are served by a gas processing facility. All gas processing facilities not constructed on a well site must comply with the requirements in Sections 301 and 302 of these rules. ()

02. Meters and Facility Plans. Gas processing facilities must account for all liquids and gas entering and leaving the facility with accurate meters. A supervisory control and data acquisition systems or other data recording system must be used to monitor the liquids and gas in the facility. Operators of gas processing facilities must submit an as-built facility design plan to the Department upon completion of the facility, a facility design plan must contain at the minimum: ()

- a. Site layout; ()
- b. Piping and instrumentation diagram; ()
- c. Process Flow schematics; ()
- d. Electronic controls and sensing schematic; ()
- e. Equipment operations and maintenance manuals for, pumps, meters, heat exchangers and any other operationally critical equipment that requires periodic maintenance and calibration; ()
- f. Periodic maintenance schedule for critical equipment; ()
- g. Troubleshooting metric; and ()
- h. Other information or documentation necessary for the safe and continued operation of a gas processing facility. ()

03. Flaring. Flaring at gas processing facilities must be in conformance with IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho, and any permit issued by the IDEQ. ()

04. Inspections. Gas processing facilities must have site specific facility design plans and a log book of gas metered in and out of the facility available for review by Department staff during the inspections of gas processing facilities. During inspections, gas process facility staff must demonstrate knowledge of all operations and the location of all emergency shut off equipment, direction of flow lines, and heat exchangers. The Department will conduct quarterly inspections of facilities. ()

431. -- 499. (RESERVED)

SUBCHAPTER F – WELL ACTIVITY AND RECLAMATION

500. ACTIVE WELLS.

01. Gas Storage Wells. Gas storage wells are to be considered active at all times unless physically plugged. ()

02. Extension of Active Status. An owner or operator may request an extension of active well status for wells that are idled for more than twenty-four (24) continuous months. The owner or operator shall provide a written request to the Department stating the reason for the extension, the length of extension, the method used to close the well to the atmosphere, and the plans for future operation. The Department shall review the request for

approval, modification, or denial, and shall set the duration of the extension if approved. An extension shall not exceed five (5) years and may be renewed upon request. ()

03. Annual Reports for Active Wells. The owner or operator shall submit an annual report to the Department describing the current status of the well and the plans for future well operation by January 31 of each year. Failure to submit the annual report may result in the Department declaring the well inactive. ()

501. INACTIVE WELLS.

01. Determination of Inactive Status. The Department shall declare a well inactive after twenty-four (24) continuous months of inactivity if the owner or operator has not received approval for an extension of active status, or after an owner or operator fails to submit an annual report for an active well. The Department will immediately notify an owner or operator of this determination by certified mail, and the owner or operator may appeal this determination to the Commission. ()

02. Owner's or Operator's Responsibility for Inactive Wells. The owner or operator must plug and abandon an inactive well in accordance with Section 502 of these rules within six (6) months of being notified by the Department unless the owner or operator supplies the following information within the six-month time period: ()

- a.** A written request to extend inactive status; ()
- b.** An individual bond, as provided for in Subsection 220.03 of these rules, if the well was covered by a blanket bond; and ()
- c.** A description of how the well is closed to the atmosphere with a swedge and valve, packer, or other approved method, and how the well is to be maintained. ()

03. Inactive Review and Decision. The Department shall review the request for approval, modification, or denial, and shall set the duration of the extension if approved. An extension shall not exceed three (3) years and may be renewed upon request. ()

04. Testing of Inactive Wells. In addition to the requirements of Section 320 of these rules, inactive wells shall have a mechanical integrity test performed within two (2) years after the date of last use in order to retain inactive status. ()

05. Converting Inactive Wells to Active Wells. The owner or operator must apply to the Department to change the status of a well from inactive to active. The Department shall review the request for approval, modification, or denial. A mechanical integrity test may be required by the Department if the well has been worked over or if a test has not been conducted for five (5) years or longer. If approved, the well may again be covered by a blanket bond. ()

502. WELL PLUGGING.

01. Plugging Required. The operator or owner shall not permit any well drilled for oil, gas, saltwater disposal or any other purpose in connection with the production of oil and gas, to remain unplugged after such well is no longer used for the purpose for which it was drilled or converted. ()

02. Notice of Intention to Abandon Well. Before beginning abandonment work on an oil or gas well, a Notice of Intention to Abandon shall be filed with the Department and approval obtained as to the method of abandonment before the work is started. The notice must show the reason for abandonment and must give a detailed statement of the proposed work, including such information as kind, location, and length of plugs (by depths), and plans for mudding, cementing, shooting, testing, and removing casing as well as any other pertinent information. ()

03. Plugging Dry Holes. If a nonproductive well, or dry hole, is drilled and not needed for any specific purpose, it must be plugged and abandoned prior to removal of the drill rig. A verbal notification and approval may be used for dry holes in lieu of the written notification referenced in Subsection 502.02 of these rules. The standards

in Subsections 502.04 through 502.06 of these rules will still apply. ()

04. Plugging of Wells. The owner or operator of any well drilled for oil or gas, or any seismic, core, or other exploratory holes, whether cased or uncased, and regardless of diameter shall be responsible for the plugging of said hole in a manner sufficient to properly protect all freshwater-bearing and possible or probable oil- or gas-bearing formations. The material used in plugging, whether cement, mechanical plug, or some other equivalent method approved in writing by the Director, must be placed in the well in a manner to permanently prevent migration of oil, gas, water, or other substance from the formation or horizon in which it originally occurred. The preferred plugging cement slurry is that recommended in API Bulletin E3. Pozzolan, gel, and other approved extenders may be used if the owner or operator can document to the Department's satisfaction that the slurry design will achieve a minimum compressive strength of three hundred (300) psi after twenty-four (24) hours, and eight hundred (800) psi after seventy-two (72) hours measured at ninety-five (95) degrees F and at eight hundred (800) psi. No substances of any nature or description other than those normally used in plugging operations shall be placed in any well at any time during plugging operations. ()

05. Plugged Intervals. The following plugging standards shall be followed for all wells: ()

a. Cement must be placed for a length of at least one hundred (100) feet on either side of each casing shoe, or casing bottom if no shoe is present. If the bottom of the hole is less than one hundred (100) feet from the bottom of the lowest casing, then the entire length of the uncased hole below the casing will be cemented. ()

b. In the uncased portions of a well, cement plugs must be placed to extend from one hundred (100) feet below the bottom up to one hundred (100) feet above the top of any oil, gas, and abnormally high pressure zones, so as to isolate fluids in the strata in which they are found and to prevent them from escaping into other strata. ()

c. A cement plug shall be placed a minimum of one hundred (100) feet above all producing zones in uncased portions of a well. ()

d. A cement plug shall be placed a minimum of fifty (50) feet above and below the following intervals: ()

i. Where the casing is perforated or ruptured. If no cement is present behind the casing, then cement must also be squeezed out the perforations or ruptures and into the annular space between the casing and the borehole. ()

ii. Top and bottom of fresh water zones. If fresh water zone is less than one hundred (100) feet thick, then continuous cement must be placed from fifty (50) feet below the zone upward to fifty (50) feet above the zone. ()

e. The top of all cement plugs will be tagged to verify their depth. ()

f. The owner or operator shall have the option as to the method of placing cement in the hole by: ()

i. Dump bailer; ()

ii. Pumping a balanced cement plug through tubing or drill pipe; ()

iii. Pump and plug; or ()

iv. Equivalent method approved by the Director prior to plugging. ()

g. Unless prior approval is given, all wellbores shall have water based drilling muds, high viscosity pills, or other approved fluids between all plugs. ()

h. All abandoned wells shall have a plug or seal placed at the surface of the ground or the bottom of ()

the cellar in the hole in such manner as not to interfere with soil cultivation or other surface use. The top of the pipe must be sealed with either a cement plug and a screw cap, or cement plug and a steel plate welded in place or by other approved method, or in the alternative be marked with a permanent monument which shall consist of a piece of pipe not less than four (4) inches in diameter and not less than ten (10) feet in length, of which four (4) feet shall be above the general ground level, the remainder to be embedded in cement or to be welded to the surface casing. ()

06. Subsequent Report of Abandonment. If a well is plugged or abandoned, a subsequent record of work done must be filed with the Department. This report shall be filed separately within thirty (30) days after the work is done. The report shall give a detailed account of the manner in which the abandonment of plugging work was carried out, including the weight of mud, the nature and quantities of materials used in plugging, the location and extent (by depths) of the plugs of different materials, and the records of any tests or measurements made and of the amount, size, and location (by depths) of casing left in the well. If an attempt was made to part any casing, a complete report of the method used and the results obtained must be included. ()

07. Wells Used for Fresh Water (Cold Water < 85 degrees Fahrenheit), Low Temperature Geothermal (85 - 212 Degrees Fahrenheit) or Geothermal Wells (>212 Degrees Fahrenheit). ()

a. Oil and gas wells, seismic, core or other exploratory holes no longer being used for their original purpose may not be converted into fresh water, low temperature geothermal, or geothermal wells unless the following actions occur: ()

i. Owner, operator, or surface owner files an application with the IDWR describing the conversion and the proposed use for the water or geothermal resource and any modifications necessary to meet the applicable well construction standards; ()

ii. The surface owner provides written documentation assuming responsibility for the converted well including, should it become necessary, decommissioning (plugging) of the converted well in accordance with applicable law; ()

iii. IDWR issues a permit for a geothermal resource well, a water right, or recognizes a domestic exemption authorizing the withdrawal of water from the converted well; and ()

iv. A licensed driller in Idaho inspects and certifies that the converted well meets all well construction standards for its intended purpose. ()

b. The Department's bond may not be released, and the oil and gas permit cancelled, until all requirements in Paragraph 502.07.a. of these rules are met. ()

503. -- 509. (RESERVED)

510. SURFACE RECLAMATION.

01. Timing of Reclamation. After the plugging and abandonment of a well or closure of other oil and gas facilities, all reclamation work described in this Section shall be completed within twelve (12) months. The Director may grant an extension where unusual circumstances are encountered, but every reasonable effort shall be made to complete reclamation before the next local growing season. ()

02. General Clean Up. All debris, abandoned gathering line risers and flowline risers, surface equipment, supplies, rubbish, and other waste materials shall be removed within three (3) months of plugging a well. The burning or burial of such material on the premises shall be performed in accordance with applicable local, state, or federal solid waste disposal and air quality regulations. In addition, material may be burned or buried on the premises only with the prior written consent of the surface owner. ()

03. Road Removal. All access roads to plugged and abandoned wells and associated production facilities shall be ripped, regraded, and recontoured unless otherwise specified in a surface use agreement. Culverts and any other obstructions that were part of the access road(s) shall be removed. Roads to be left will be graded to drain and prepared with rolling dips or other best management practices to minimize erosion. ()

04. Regrading. Drill pads, pits, berms, cut and fill slopes, and other disturbed areas will be regraded to approximate the original contour. Where possible, slopes should be reduced to three (3) horizontal feet to one (1) vertical foot (3H:1V) or flatter. ()

05. Compacted Areas. All areas compacted by drilling and subsequent oil and gas operations that are no longer needed following completion of such operations shall be cross-ripped. Ripping shall be undertaken to a depth of eighteen (18) inches or bedrock, whichever is reached first. ()

06. Topsoiling. Stockpiled topsoil shall be replaced in a manner that will support reestablishment of the pre-disturbance land use and contoured to control erosion and provide long-term stability. If necessary, topsoiled areas shall be tilled adequately in order to establish a proper seedbed. ()

07. Revegetation. ()

a. The owner or operator shall select and establish plant species that can be expected to result in vegetation comparable to that growing on the affected lands prior to the oil and gas operations. Certified weed free seed should be used in revegetation. The owner or operator may use available technical data and results of field tests for selecting seeding practices and soil amendments that will result in viable revegetation. ()

b. The disturbed areas shall be reseeded in the first favorable season following rig demobilization, site regrading, and topsoil replacement. ()

c. Unless otherwise specified in the approved permit, the success of revegetation efforts shall be measured against the existing vegetation on site prior to the oil and gas operations, or against an adjacent reference area supporting similar types of vegetation. Reseeding or replanting is required until the following cover standards are met: ()

i. The ground cover of living plants on the revegetated area should be comparable to the ground cover of living plants on an adjacent reference area for two (2) full growing seasons after cessation of soil amendment or irrigation, if used; ()

ii. Ground cover shall be considered comparable if the planted area has at least seventy percent (70%) of the pre-disturbance, or adjacent reference area, ground cover; ()

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

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

v. In all cases, vegetative cover shall be established to the extent necessary to control erosion. ()

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

e. By mutual agreement of the Department, the surface owner, and the owner or operator, a site may be converted to a different, more desirable or more economically suitable habitat. ()

f. 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 revegetation applications. Broadcast and hydroseeding may be used on areas where other methods are impractical or unavailable. ()

g. The owner or operator should plant shrubs or shrub seed, as required, where shrub communities existed prior to oil and gas operations. Shrub seed may be planted as a portion of a grass seed mix or planted as bare-root transplants after grass seeding. Where the surface owner desires a specific land use such as grazing or cropland, shrubs will not be required in the revegetation species mix. Shrub lands undergoing revegetation with shrubs shall be protected from erosion by vegetation, chemical binders, or other acceptable means during establishment of the shrubs. ()

h. Tree stocking of forestlands should meet the following criteria: ()

i. Trees that are adapted to the site should be planted in a density which can be expected over time to yield a timber stand comparable to pre-disturbance timber stands; ()

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

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

i. Revegetation is not required on areas that the surface owner wishes to incorporate into an irrigated field and any roads which will be used for other oil and gas operations. ()

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

08. Reclamation Under a Surface Use Agreement. Notwithstanding the requirements of Subsections 510.03 through 510.07 of this rule, reclamation may be superseded by the conditions of a surface use agreement as long as the site is left in a stable, non-eroding condition that will not impact fresh waters. ()

511. -- 999. (RESERVED)

IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION

DOCKET NO. 26-0000-2000F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2021 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 67-4223, 67-7115, and 67-7116, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending fee rule and a statement of any change between the text of the proposed fee rule and the text of the pending fee rule with an explanation of the reasons for the change.

This pending fee rule adopts and re-publishes the following existing rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 26, rules of the Department of Parks and Recreation:

IDAPA 26

- 26.01.10, *Rules Governing the Administration of Temporary Permits on Lands Owned by the Idaho Department of Parks and Recreation*;
- 26.01.20, *Rules Governing the Administration of Park and Recreation Areas and Facilities*; and
- 26.01.33, *Rules Governing the Administration of the Land and Water Conservation Fund Program*.

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the Sept. 16, 2020, Idaho Administrative Bulletin, [Vol. 20-9SE, pages 1852-1887](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules, with one exception as noted below in IDAPA 26.01.20.

- IDAPA 26.01.10, Rules Governing the Administration of Temporary Permits on Lands Owned by the Idaho Department of Parks and Recreation. Fees related to temporary permit processing, compensation, application and enforcement.
- IDAPA 26.01.20, Rules Governing the Administration of Park and Recreation Areas and Facilities. Fees related to motor vehicle entrance, parking violations, camping, reservations (placing, modifying, and canceling), vessel moorage, overnight use, surcharges, group facility use, winter access, annual and temporary winter recreation parking permit, and returned checks. In anticipation of future changes to Idaho Code raising the fee for the Idaho State Parks Passport, IDPR seeks a corresponding raise on the fee cap for the annual motor vehicle entrance fee.
- IDAPA 26.01.33, Rules Governing the Administration of the Land and Water Conservation Fund Program. Service fee to administer and manage process to convert property from a recreation use.

This fee or charge is being imposed pursuant to Sections 67-4223, 67-7115, and 67-7116, 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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Anna Canning (208) 514-2252.

Dated this 20th day of October, 2020.

Anna Borchers Canning, AICP
Management Services Administrator
Idaho Department of Parks and Recreation
5657 Warm Springs Avenue, Boise, ID
P.O. Box 83720
Boise, ID 83720-0065
Phone: (208) 514-2252
anna.canning@idpr.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-4223, 67-7115, and 67-7116, Idaho Code.

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

PUBLIC HEARING

Friday, October 9, 2020 - 11:00 a.m. - 11:30 a.m. (MDT)

Dial-in Number:

Toll Free: 1-877-820-7831

Access Code: 145511#

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 the required finding and concise statement of the purpose of the proposed rulemaking:

This proposed rulemaking re-publishes the following existing temporary rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 26, rules of the Department of Parks and Recreation:

IDAPA 26

- 26.01.10, *Rules Governing the Administration of Temporary Permits on Lands Owned by the Idaho Department of Parks and Recreation;*
- 26.01.20, *Rules Governing the Administration of Park and Recreation Areas and Facilities;* and
- 26.01.33, *Rules Governing the Administration of the Land and Water Conservation Fund Program.*

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules, with one exception. In anticipation of future changes to Idaho Code raising the fee for the Idaho State Parks Passport, IDPR seeks a corresponding raise on the fee cap in IDAPA 26.01.20 for the annual motor vehicle entrance fee. The fee or charge is being imposed pursuant to Section 67-4223, 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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Anna Canning (208) 514-2252.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of August, 2020.

THE FOLLOWING IS THE TEXT OF OMNIBUS FEE DOCKET NO. 26-0000-2000F

26.01.10 – RULES GOVERNING THE ADMINISTRATION OF TEMPORARY PERMITS ON LANDS OWNED BY THE IDAHO DEPARTMENT OF PARKS AND RECREATION

000. LEGAL AUTHORITY.

These rules set forth procedures concerning the issuance of temporary permits on all lands owned by the Idaho Department of Parks and Recreation. Requests for permits on lands administered, but not owned by IDPR must be made directly to the land owner. These rules are promulgated pursuant to Idaho Code Section 67-4223(a) and are construed in a manner consistent with the duties and responsibilities of the Idaho Parks and Recreation Board as set forth in Idaho Code Title 67, Chapter 42. These rules are not be construed as affecting any valid existing rights.

()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is cited in full as Idaho Department of Parks and Recreation Rules, IDAPA 26.01.10, “Rules Governing the Administration of Temporary Permits on Lands Owned by the Idaho Department of Parks and Recreation.”

()

02. Scope. These rules are intended to set forth the procedures for the administration of temporary permits on lands owned by the department.

()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho Parks and Recreation Board or such representative as may be designated by the board.

()

02. Department and IDPR. The Idaho Department of Parks and Recreation.

()

03. Director. The director of the Idaho Department of Parks and Recreation or such representative as may be designated by the director.

()

04. Grantee. The party to whom a temporary permit is granted and their assigns and successors in interest.

()

05. Grantor. The State of Idaho and its assigns and successors in interest.

()

06. Park Manager. The person responsible for administering and supervising a specific state park area, or department owned land not yet a state park, as designated by the director of the Idaho Department of Parks and Recreation.

()

07. Person. An individual, partnership, association, or corporation qualified to do business in the state of Idaho, and any federal, state, county or local unit of government.

()

08. Temporary Permit. An instrument authorizing a temporary use of IDPR owned land for the construction, operation and maintenance of specific typically linear elements including but not limited to power and telephone lines, roadways, driveways, sewer lines, natural gas lines and water lines.

()

011. -- 049. (RESERVED)

050. POLICY.

01. Issuing Authority. Temporary permits are issued by the director in lieu of easements, and are required for all activities on or over IDPR owned land.

()

02. Discretion. The board retains absolute discretion to grant or withhold a temporary permit on land which it owns.

()

03. Consent Required. Temporary permits, their amendment, renewal and assignment and all subsequent actions are not valid without the written consent of the director.

()

04. Modifications. Temporary permits and subsequent modifications, assignments and renewals require a formal application, and payment of a processing fee to reimburse the agency for staff time devoted to processing the request.

()

05. Purpose Compatible. The purpose for which the temporary permit is sought must not interfere with the existing or anticipated values, objectives, or operation of department owned lands. ()

06. Compensation. An appropriate compensation for use of department-owned lands, as set out in Section 150 of this chapter, must be paid to the IDPR in cash or in the form of offsetting benefits to be determined by the director. ()

07. Control. At all times the control of gates, roads and park lands is retained by the State. The permit granted is for the grantee's use only, is revocable for cause, is issued for a specific period of time, not to exceed ten (10) years, but usually five (5) years or less, and automatically expires if not used for a period of one (1) year. ()

051. -- 099. (RESERVED)

100. PROCESSING FEES.

01. Issuance or Modification. The processing fee for a new temporary permit, or modification of an existing temporary permit, is one-hundred dollars (\$100), which must be received from all applicants before processing can proceed. The processing fees are designed to offset processing costs and are nonrefundable. ()

02. Assignment or Renewal. The processing fee for assignment or renewal of an existing temporary permit is twenty-five dollars (\$25), and must be received before processing can proceed. The processing fees are designed to offset processing costs and are nonrefundable. ()

101. -- 149. (RESERVED)

150. COMPENSATION.

01. Payable in Advance. Cash compensation for the entire term of the temporary permit will be collected from the applicant prior to issuance. ()

02. Cost per Acre. Cash compensation for a temporary permit is charged at a rate of fifty dollars (\$50) per acre of IDPR land utilized per year or any portion thereof, and is specified in the temporary permit. Temporary permits of less than one (1) year in duration will not be prorated. ()

03. Noncash Compensation. Offsetting (non-cash) compensation for a temporary permit may be approved on an individual basis by the director, and the terms of the agreement must be outlined in the temporary permit. ()

04. Nonrefundable. Compensation to IDPR for a temporary permit is non-refundable, except as set out in Subsection 200.08 of this chapter. ()

151. -- 199. (RESERVED)

200. STANDARD CONDITIONS.

All temporary permits issued are subject to the following standard conditions: ()

01. Term Limited. The use and term of a temporary permit is limited solely to that specifically stated in the instrument. ()

02. Utilities. Except under special circumstances with approval of the director, all utilities must be installed underground. ()

03. Construction, Operation and Maintenance. The grantee must construct, maintain and operate at grantee's sole expense the facility for which the temporary permit is granted, and maintain the permit site in a condition satisfactory to the Park Manager. ()

04. Compliance with Laws. The grantee will comply with all applicable state and local laws, rules, and ordinances, including but not limited to: state fire laws and all rules of the State Land Board pertaining to forest and watershed protection, and with the Stream Channel Protection Act as designated in Chapter 38, Title 42 of the Idaho Code. ()

05. Wetlands. The grantee will comply with all state and federal statutes, rules, and regulations pertaining to wetlands protection. ()

06. Land and Water Conservation Fund. Temporary permits on land located within Land and Water Conservation Fund 6(f) boundaries, their amendment, renewal, assignment and all subsequent actions must be subject to the terms and the requirements of the Land and Water Conservation Fund Act of 1965 (P.L. 88-578, 16 U.S.C.S. Section 4601-4 et seq.). ()

07. Hold Harmless. The grantee, its agents and contractors must indemnify and hold harmless the department, the state of Idaho and its representatives against and from any and all demands, claims or liabilities of every nature whatsoever, arising directly or indirectly from or in any way connected with the use authorized under the temporary permit. ()

08. Withdrawal for Park Use. Should the land be needed for park development or recreation use, the director reserves the right to order the change of location or the removal of any structure(s) or facility(ies) authorized by a temporary permit at any time. Any such change or removal will be made at the sole expense of the grantee, its successors or assigns. When a temporary permit is terminated prior to its stated expiration date pursuant to this provision, the grantee will receive a pro-rata refund of compensation paid. ()

09. Permits Not Exclusive. The temporary permit is not exclusive to the grantee, and must not prohibit the department from granting other permits or franchise rights of like or other nature to other public or private entities, nor must it prevent the department from using or constructing roads and structures over or near the lands encompassed by the temporary permit, or affect the department's right to full supervision or control over any or all lands which are part of the temporary permit. ()

10. Cancellation. The director may cancel the temporary permit or amend any of the conditions of the temporary permit if the grantee fails to comply with any or all of the provisions, or requirements set forth or through willful or unreasonable neglect, fails to heed or comply with notices given. ()

11. Removal of Facilities. Upon termination of the temporary permit for any reason including cancellation, expiration, or relinquishment, the grantee must have thirty (30) days from the date of termination to remove any facilities and improvements constructed by the grantee, and must restore the permit site to the satisfaction of the park manager. Upon written request, and for good cause shown, the director may allow a reasonable additional time for the removal of improvements and facilities and the restoration of the site. ()

201. -- 249. (RESERVED)

250. SPECIAL CONDITIONS. Special conditions addressing unique situations may be included in the temporary permit to protect natural or park resources, or to safeguard public health, safety or welfare. ()

251. -- 299. (RESERVED)

300. APPLICATION PROCEDURE.

01. Contents of Application. A temporary permit application must contain: ()

a. A temporary permit application/action form; ()

b. A plat of the proposed permit location; ()

c. The appropriate application fee; ()

d. An acceptable written legal description based on a survey of the centerline, or a metes and bounds survey of the temporary permit tract. The survey must be performed by a registered professional land surveyor as required by Idaho Code Section 54-1229. ()

02. Engineering Certification. As required in Section 58-601, Idaho Code, for any application for a ditch, canal or reservoir, the plats and field notes must be certified by the engineer under whose direction such surveys or plans were made and four (4) copies filed with the department and one (1) copy with the director, Idaho Department of Water Resources. ()

03. Application Submission. Temporary permit applications must be submitted to the Park Manager of the park in which the permit is requested. The park manager will forward it for processing as outlined in Section 800. of this chapter. ()

301. -- 349. (RESERVED)

350. MODIFICATION OF EXISTING TEMPORARY PERMIT.

A modification of an existing temporary permit must be processed in the same manner as a new application. Modification includes change of use, enlarging the permit area, or changing the location of the permit area. Modification does not include ordinary maintenance, repair, or replacement of existing facilities. ()

351. -- 399. (RESERVED)

400. ASSIGNMENT.

temporary permits issued by the director cannot be assigned without the approval of the director. To request approval of an assignment, the assignor and assignee must complete the department's standard temporary permit application/action form and forward it and the assignment fee to the park manager, for processing as outlined in Section 800 of this chapter. ()

401. -- 449. (RESERVED)

450. RENEWAL.

Renewal of temporary permits may be sought by completing a temporary permit application/action form and forwarding it together with the renewal fee to the park manager for processing as outlined in Section 800 of this chapter. Renewal applications must be submitted at least forty-five (45) days prior to the expiration date of the temporary permit. ()

451. -- 499. (RESERVED)

500. ABANDONMENT.

A temporary permit not used for the purpose for which it was granted for a period of one (1) year is presumed abandoned and must automatically terminate. The director must notify the grantee in writing of the termination. The grantee must have thirty (30) days from the date of the written notice to reply in writing to the director to show cause why the temporary permit should be reinstated. Within thirty (30) days of receipt of the statement to show cause, the director must notify the grantee in writing as to the director's decision concerning reinstatement. The grantee must have thirty (30) days after receipt of the director's decision to request to appear before the board as outlined in Section 003 of this chapter. Removal of property from and restoration of the site is governed by Subsection 200.11 of this chapter. ()

501. -- 549. (RESERVED)

550. RELINQUISHMENT.

The Grantee may voluntarily relinquish a temporary permit any time by submitting a temporary permit application/action Form to the park manager. Upon relinquishment, removal of property from and restoration of the site is governed by Subsection 200.11 of this chapter. ()

551. -- 599. (RESERVED)

600. EXPIRATION.

Upon expiration, and absent a request for renewal of the temporary permit, removal of property from and restoration of the site is governed by Subsection 200.11 of this chapter. ()

601. -- 649. (RESERVED)

650. CANCELLATION.

The director may cancel a temporary permit if the grantee fails to comply with any or all of its provisions, terms, conditions, or rules; or through willful or unreasonable neglect, fails to heed or comply with notices given. ()

651. -- 699. (RESERVED)

700. ENFORCEMENT.

Should it become necessary to enforce the terms of a temporary permit in a court of law and the grantor prevails, the grantee must pay all costs and fees. ()

701. -- 749. (RESERVED)

750. ADMINISTRATION.

01. Bureau Responsible. The IDPR Development Bureau must be responsible for uniform statewide administration of all IDPR temporary permits. ()

02. Disposition of Fees. All processing and compensation fees collected from applicants must be sent to the fiscal section for deposit into the appropriate account. ()

03. Status Report. The IDPR Development Bureau must maintain an up-to-date status report on all temporary permits issued. ()

751. -- 799. (RESERVED)

800. PROCESSING.

01. Receipt of Application. Upon receipt of a properly filed temporary permit application/action form and the appropriate application fee, the park manager must review the application and forward it, together with his comments, to the region supervisor. The region supervisor must review the application and forward his comments along with the temporary permit application/action package, to the chief, Development Bureau, IDPR for processing. ()

02. Time. Processing of temporary permit application/action forms must not exceed one hundred twenty (120) days from the date of acceptance of a complete application by the park manager. Applications not acted on within one hundred twenty (120) days are deemed denied. ()

03. Notification. All applicants must be notified in writing, by the development bureau chief, of the approval or denial of their application. ()

801. -- 999. (RESERVED)

**26.01.20 – RULES GOVERNING THE ADMINISTRATION OF PARK
AND RECREATION AREAS AND FACILITIES**

000. LEGAL AUTHORITY.

The Idaho Parks and Recreation Board is authorized under Section 67-4223, Idaho Code, to adopt, amend, or rescind rules as may be necessary for the proper administration of Title 67, Chapter 42, Idaho Code, and the use and protection of lands and facilities subject to its jurisdiction. The board is also authorized to further define and make specific the provisions regarding the winter recreational parking permit program as set forth in Sections 67-7115 through 67-7118, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is cited in full as Idaho Department of Parks and Recreation Rules, IDAPA 26.01.20, “Rules Governing the Administration of Park and Recreation Areas and Facilities.” ()

02. Scope. This chapter establishes fees for and rules governing the use of lands and facilities administered by the Department and the winter recreational parking permit; establishes procedures for obtaining individual and group use reservations; sets rules regarding visitor behavior and use of park lands and facilities; and authorizes employees to enforce these rules. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. ADA. Americans with Disabilities Act ()

02. Annual Motor Vehicle Entrance Fee Sticker. A sticker that allows a single motor vehicle to enter Idaho State Parks without being charged a motor vehicle entrance fee. ()

03. Annual Motor Vehicle Entrance Fee Sticker Replacement. Replacement due to a motor vehicle sale or damage to an existing annual motor vehicle entrance fee sticker. ()

04. Board. The Idaho Parks and Recreation Board, a bipartisan, six (6) member board, appointed by the Governor. ()

05. Camping Unit. The combined equipment and people capacity that a campsite or facility will accommodate. ()

06. Camping Day. ()

a. For individual and group campsites the period between 2 p.m. of one (1) calendar day and 1 p.m. of the following calendar day. ()

b. For individual and group facilities, the period between 4 p.m. of one (1) calendar day and 12 noon of the following calendar day. ()

07. Campsite. ()

a. Individual. An area within a department managed campground designated for camping use by an individual camping unit or camping party that includes a defined area for either a tent pad or RV pad/area and may include a table and/or grill. The definition includes companion campsites. ()

b. Group. An area within a department managed campground designated for group camping use or a block of individual campsites designated for group use within a campground primarily managed for individual use. ()

08. Commercial Motor Vehicle. A vehicle that has seating capacity of more than fifteen (15) persons including the driver, or that is maintained for the transportation of persons for hire, compensation or profit. ()

09. Day Use. Use of any non-camping lands and/or facilities between the hours of 7 a.m. and 10 p.m. unless otherwise posted. ()

10. Department. The Idaho Department of Parks and Recreation. ()

11. **Designated Beach.** Waterfront areas designated by the park or program manager for water-based recreation activities. The length and width of each designated beach will be visibly identified with signs. ()
12. **Designated Roads and Trails.** Facilities recognizable by reasonable formal development, signing, or posted rules. ()
13. **Director.** The director and chief administrator of the department, or the designee of the director. ()
14. **Division Administrator.** An employee, or designee, within the department that has supervisory authority over park and program managers. ()
15. **Dock and Boating Facility.** Floats, piers, and mooring buoys owned or operated by the department. ()
16. **Encroachments.** Non-recreational uses of lands under the control of the board including any utilization for personal, commercial, or governmental use by a non-department entity. ()
17. **Extra Vehicle.** An additional motor vehicle without built-in temporary living quarters or sleeping accommodations registered to a camp site. ()
18. **Facilities.** ()
- a. Individual. A camping structure within department managed lands designated for use by an individual camping unit. ()
- b. Group. A camping structure within department managed lands designated for group use. ()
- c. Day Use. A non-camping area or structure within department managed lands designated for group use during day use periods. ()
19. **Group Use.** Twenty-five (25) or more people, or any group needing special considerations or deviations from normal department rules or activities. ()
20. **Idaho State Parks Passport.** A sticker, purchased from any county Department of Motor Vehicles' office in the state of Idaho, that matches a particular motor vehicle license number and expiration date, allowing that vehicle to enter Idaho State Parks without being charged a motor vehicle entrance fee. ()
21. **Idaho State Parks Passport Replacement.** Replacement due to a motor vehicle registration transfer or damage to an existing passport. ()
22. **Motor Vehicle.** Every vehicle that is self-propelled except for vehicles moved solely by human power, electric bikes, and motorized wheelchairs. ()
23. **Motor Vehicle Entrance Fee (MVEF).** A fee charged for entry to or operation of a motor vehicle in an Idaho State Park. ()
24. **Overnight Use.** Use of any non-camping lands for the parking of motor vehicles or trailers not associated with a campsite between the hours of 10 p.m. and 7 a.m. unless otherwise posted. ()
25. **Overnight Use Fee.** A fee charged for overnight use of non-camping lands between the hours of 10 p.m. and 7 a.m. ()
26. **Park or Program Manager.** The person, or the person's designee, responsible for administering and supervising particular lands, facilities, and employees that are under the jurisdiction of the department. ()
27. **Recreational Vehicle (RV).** A vehicular type unit primarily designed as temporary living quarters

for recreational, camping, sleeping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The entities are travel trailer, camping trailer, truck camper, fifth-wheel trailer, and motorhome (all as defined in Section 39-4201, Idaho Code) and including buses or van type vehicles which are converted to recreation, camping, or sleeping use. It does not include pickup hoods, shells, or canopies designed, created, or modified for occupational use. ()

28. Vessel. Every description of watercraft, including a seaplane on the water, used or capable of being used as a means of transportation on water, but not including float houses, diver's aids operated and designed primarily to propel a diver below the surface of the water, and non-motorized devices not designed or modified to be used as a means of transportation on the water such as inflatable air mattresses, single inner tubes, and beach and water toys as defined in Section 67-7003(22), Idaho Code. ()

011. PURCHASE, EXPIRATION, DISPLAY AND PLACEMENT OF MVEF AND PASSPORT STICKERS.

01. Daily MVEF. ()

a. The daily MVEF may be purchased at any Idaho state park or online. ()

b. The daily MVEF expires at 10 p.m. on date of purchase or as posted; MVEF for overnight camping use expires upon checkout which is 1 p.m. for a campsite and 12 noon for a facility. ()

c. The proof of purchase of the MVEF must be visible and properly displayed. ()

02. Annual MVEF. ()

a. The Annual MVEF may be purchased at any Idaho state park, the department's central or regional offices, or online. ()

b. The Annual MVEF expires December 31 of the year issued. ()

c. The Annual MVEF sticker must be visible, legible at all times, and permanently affixed to the vehicle as follows. For vehicles with a windshield, the sticker must be clearly displayed on the lower corner of the driver's side windshield. For vehicles without a windshield, the sticker must be clearly displayed in a similar location. ()

03. Annual MVEF Sticker Replacement. ()

a. The applicant may apply at any Idaho state park or at the department's central or regional offices for a replacement sticker due to damage. ()

b. The applicant must establish proof of purchase of the original Annual MVEF. ()

c. Display and placement of the replacement sticker must comply with Subsection 011.02.c. of this chapter. ()

04. Idaho State Parks Passport. ()

a. The Idaho State Parks Passport may be purchased from any county department of motor vehicles office in the state of Idaho. ()

b. Idaho State Parks Passport expires concurrent with the expiration of that vehicle's registration. ()

c. Display and placement of the Idaho State Parks Passport sticker must comply with Subsection 011.02.c of this chapter. ()

05. Idaho State Parks Passport Sticker Replacement. ()

a. The applicant may apply in person to a county department of motor vehicles office for a replacement sticker. ()

b. Display and placement of the replacement sticker must comply with Subsection 011.02.c. of this chapter. ()

012. -- 074. (RESERVED)

075. AUTHORITY CONFERRABLE ON EMPLOYEES - ENFORCEMENT.

01. Director Authority. The director may, pursuant to Section 67-4239, Idaho Code, authorize any employee of the department to exercise any power granted to, or perform any duty imposed upon the director. ()

02. Park or Program Manager Authority. A park or program manager may establish and enforce all rules, including interim rules. Interim rules apply to the public safety, use, and enjoyment or protection of natural, cultural, or other resources within lands administered by the department. Interim rules will be posted for public view and will be consistent with established state laws and these rules. Interim rules expire in one hundred twenty (120) days from the established effective date unless approved by the board. ()

03. Additional Park or Program Manager Authority. A park or program manager may deny entry to, or reservation of, any department day use area, campsite, or facility, to any individual or group whose prior documented behavior has violated department rules, whose activities are incompatible with operations, or whose activities will violate department rules. ()

076. -- 099. (RESERVED)

100. PENALTIES FOR VIOLATIONS.

Failure of any person, persons, partnership, corporation, concessionaire, association, society, or any fraternal, social or other organized groups to comply with these rules constitutes an infraction. ()

01. Civil Claim. The penalty established in this chapter does not prevent the department from filing a civil claim against a violator to collect damages incurred to lands, resources, or facilities administered by the Department. ()

02. Violators. In addition to the penalty provided in chapter, or any other existing laws of the state of Idaho, any person failing to comply with any section of these rules or federal, state, or local laws, rules, or ordinances applicable under the circumstances, is a trespasser upon state land and subject to expulsion from any department managed lands for a period of time not less than forty-eight (48) hours. ()

101. -- 124. (RESERVED)

125. PRESERVATION OF PUBLIC PROPERTY.

The destruction, injury, defacement, removal, or disturbance in or of any public building, sign, equipment, monument, statue, marker, or any other structures; or of any tree, flower, or other vegetation; or of any cultural artifact or any other public property of any kind, is prohibited unless authorized by the park or program manager of a specific area. ()

126. -- 149. (RESERVED)

150. USE OF MOTOR VEHICLES.

Except where otherwise provided, motor vehicles may enter or be operated in park and recreation areas and facilities only upon payment of the motor vehicle entrance fee or display of a valid Idaho state Parks Passport or Annual Motor Vehicle Entrance Fee sticker. All motor vehicles must stay on authorized established department roadways or parking areas except for trails and areas which are clearly identified by signs for off-road use. Drivers and motor vehicles

operated within lands administered by the department must be licensed or certified as required under state law. The operators of all motor vehicles must comply with the motor vehicle entrance fee requirements, speed and traffic rules of the department, and all other federal, state, local laws, and ordinances governing traffic on public roads. ()

01. Use of Parking Spaces for Persons With a Disability. Special zones and parking spaces within state parks are designated and signed for exclusive use by vehicles displaying a special license plate or card denoting legal handicap status as provided in Section 49-213, Idaho Code. ()

02. Overdriving Road Conditions and Speeding Prohibited. No person may drive a vehicle at a speed greater than the posted speed or a reasonable and prudent speed under the conditions, whichever is less. Every person must drive at a safe and appropriate speed when traveling on park roads, in congested areas, when pedestrians or bicyclists are present, or by reason of weather or hazardous highway conditions as provided in Section 49-654, Idaho Code. ()

03. Safety Helmets. Persons under eighteen (18) years of age must wear a protective safety helmet when riding upon a motorcycle, motorbike, utility type vehicle, or an all-terrain vehicle as operator or passenger as provided in Section 49-666, Idaho Code. ()

04. Snowmobile Operation. No person may operate a snowmobile on any regularly plowed park road unless authorized by park or program manager. Access on non-plowed roads and trails are only permitted when authorized by the park or program manager. ()

05. Compliance with Posted Regulatory Signs. Persons operating vehicles within state parks are required to obey posted regulatory signs as provided in Section 49-807, Idaho Code. ()

06. Obedience to Traffic Direction. No person may willfully fail or refuse to comply with any lawful order or directions of any park employee invested with authority to direct, control, or regulate traffic within a state park. ()

07. Restrictions. The operation of motor vehicles within a designated campground is restricted to ingress and egress to a campsite or other in-park destination by the most direct route. ()

08. Official Use. This rule does not prohibit official use of motor vehicles by department employees anywhere within lands administered by the department. ()

09. Commercial Motor Vehicle. Commercial motor vehicles may only enter or be operated in park and recreation areas and facilities upon payment of the appropriate daily fee. ()

151. PARKING VIOLATIONS.

01. Land or Facilities Administered by the Department. No person may stop, stand, or park a motor vehicle or trailer anywhere within land or facilities administered by the department unless proof of payment of all required fees or other lawful authorization for entry is plainly visible and properly displayed. ()

02. Designated Campgrounds. No person may stop, stand, or park a motor vehicle within designated campgrounds unless proof of payment of the applicable campsite fees is plainly visible and properly displayed. ()

03. Designated Overnight Use Area. Except for authorized campers, no person may stop, stand, park, or leave a motor vehicle or trailer unattended outside day use hours unless the motor vehicle or trailer is in a designated overnight use area and proof of payment of the overnight-use fee is plainly visible and properly displayed. ()

04. Fee Collection Surcharge. Any person stopping, standing, or parking a motor vehicle or trailer without payment or properly displaying proof of payment of all required fees is subject to the fee collection surcharge as provided in Subsection 225.06 and Section 245 of this chapter. ()

05. Citations for Violations. Citations for violations of this section may be issued to the operator of the motor vehicle. If the operator cannot be readily identified, the citation may be issued to the registered owner or lessee of the motor vehicle, subject to the provisions of Section 67-4237, Idaho Code. ()

152. -- 174. (RESERVED)

175. PUBLIC BEHAVIOR.

01. Resisting and Obstructing a Park Employee. Persons may not willfully resist, delay, obstruct, or interfere with any park employee in his or her duties to protect the state's resources and facilities and to provide a safe place to recreate. ()

02. Day Use. Between the hours of 10 p.m. and 7 a.m., unless otherwise posted, all personal property must be removed from day use areas. ()

03. Quiet Hours. Within lands administered by the department, the hours between 10 p.m. and 7 a.m. are considered quiet hours unless otherwise posted. During that time, users are restricted from the production of noise that may be disturbing to other users. ()

04. Noise. Amplified sound, poorly muffled vehicles, loud conduct, or loud equipment are prohibited within lands administered by the department, except in designated areas or by authority of the park or program manager. ()

05. Alcohol. State laws regulating alcoholic beverages and public drunkenness are enforced within lands administered by the department. ()

06. Littering. Littering is prohibited within lands administered by the department. ()

07. Smoking. Persons may not smoke within park structures or facilities, or at posted "no smoking" outdoor areas. ()

08. Trespass. It is unlawful to enter, use, or occupy land or facilities administered by the department where such lands or facilities are posted against entry, use, or occupancy, except as authorized by the department. ()

09. Pets. Pets are allowed within lands administered by the department only if confined or controlled on a leash not longer than six (6) feet in length. No person may allow their pet to create a disturbance which might be bothersome to other users. Excepting persons with disabilities who are assisted by service animals, no person may permit their pet animals to enter or remain on any swim area or beach. Pet owners are responsible to clean up after their animals. Pet owners may not leave pets unattended. Areas for exercising pets off leash may be designated by the park or program manager. Department employees may impound or remove any stray or unattended animals at the owner's expense. ()

10. Fires. The use of fires is restricted to fire rings, grills or other places otherwise designated by the park or program manager. All fires must be kept under control at all times and must be extinguished before checking out of the campsite or whenever fire is left unattended. Areas may be closed to open fires during extreme fire danger. ()

11. Fireworks. No person may use fireworks of any kind within lands administered by the department, except under special permit issued by the director for exhibition purposes, and then only by persons designated by the director. ()

12. Protection of Wildlife. All molesting, feeding, injuring, or killing of any wild creature is strictly prohibited, except as provided by action of the board and as established in board policy. Persons in possession of wildlife, which may be legally taken within state park boundaries, must comply with Idaho Fish and Game rules. ()

13. Protection of Historical, Cultural and Natural Resources. The digging, destruction or removal of historical, cultural or natural resources is prohibited. Collection for scientific and educational purposes may be

allowed through a permit. ()

14. Personal Safety, Firearms. No person may purposefully or negligently endanger the life of any person or creature within any land administered by the department. No person may discharge firearms or other projectile firing devices within any lands administered by the department, except as follows: in the lawful defense of person, persons, or property; in the course of lawful hunting; for exhibition; or at designated ranges as authorized by the director. ()

15. Non-traditional Recreational Activities. Non-traditional recreational activities such as model airplane and glider operations, geo-caching, gold panning, drone operation, and metal detecting may be authorized by the park or program manager if such activities do not interfere with traditional uses of the park and are consistent with preservation of park resources. ()

176. -- 199. (RESERVED)

200. CAMPING.

01. Occupancy and Capacity. ()

a. Occupancy. Camping is permitted only in designated campsites, areas, or facilities. A campsite or facility will be determined occupied only after all required fees have been paid, registration information completed, and all permits properly displayed. Unique circumstances may arise, and specific sites or facilities by virtue of design may require exceptions to the capacity limits. ()

b. Campsite Capacity. Maximum capacity limits on each campsite are subject to each site's design and size. Unless otherwise specified, and provided the combined equipment and people fit within the designated camping area of the site selected, the maximum capacity will be one (1) family unit or a party of no more than eight (8) persons, two (2) tents and two (2) motor vehicles. No more than one (1) RV may occupy a site. Two (2) motorcycles are the equivalent of one (1) motor vehicle when determining campsite capacity. Each motorcycle will be subject to the MVEF. In general, companion campsites have double the capacity listed above. ()

c. Facility Capacity. Maximum capacity limits on each facility are based on facility design, size, and applicable occupancy code. ()

02. Self Registration. In those areas so posted, campers must register themselves for the use of campsites and facilities, paying all required fees as provided for herein and in accordance with all posted instructions. ()

03. Length of Stay. Except as provided herein, no person, party or organization may be permitted to camp on any lands administered by the department for more than fifteen (15) days in any thirty (30) consecutive day period. This applies to both reservation and "first come first served" customers. The department operations division administrator may authorize shorter or longer periods for any individual area. ()

04. Registration. All required fees must be paid, registration information completed, and all permits properly displayed prior to occupying a campsite or facility. Saving or holding campsites or facilities for individuals not physically present at the time of registration for "first come first served" camping is prohibited. ()

05. Condition of Campsite. Campers must keep their individual or group campsite or facility and other use areas clean. ()

06. Liquid Waste Disposal. All gray water and sewage wastes must be held in self-contained units or collected in water-tight receptacles in compliance with state adopted standards and dumped in sanitary facilities provided for the disposal of such wastes. ()

07. Motorized Equipment. No generators or other motorized equipment emitting sound and exhaust are permitted to be operated during quiet hours. ()

08. Campsite Parking. All motor vehicles and trailers, must fit entirely within the campsite parking pad/area provided with the assigned individual or group campsite or facility. All equipment that does not fit entirely within the designated campsite parking area must be parked at another location within the campground, or outside the campground, as may be designated by the park or program manager. If no outside parking is available, the park or program manager may require the party to register on a second campsite, if available. ()

09. Equipment. All camping equipment and personal belongings of a camper must be maintained within the assigned individual or group campsite or facility perimeter. ()

10. Check Out. Customers are required to clean, vacate, and check out of registered campsites or facilities as follows: ()

a. Individual or group campsite by 1 p.m. of the day following the last paid night of camping. ()

b. Individual or group facility by 12 noon of the day following the last paid night of camping. ()

11. Visitors. Individuals visiting campers must park in designated areas, except with permission of the park or program manager. Visitors must conform to established day use hours and day use fee requirements. ()

12. Responsible Party. The individual reserving or registering to use an individual or group campsite or facility is responsible for ensuring compliance with the rules within this chapter. ()

13. Camping. Camping in individual or group facility sites is prohibited unless in areas specifically designated for camping or by authorization of the park or program manager. ()

14. ADA Designated Campsites. Although the department offers campsites that are designated and built to meet ADA accessibility requirements, these campsites are not managed exclusively for ADA use. ()

15. ADA Accessible Facilities. Although the department offers facilities that provide for ADA accessibility, these facilities are not managed exclusively for ADA use. ()

201. BOATING FACILITIES.

The provisions of this section do not apply to department-operated marinas which provide moorage on a lease or long-term rental basis. ()

01. Moorage and Use of Marine Facilities. No person or persons may moor or berth a vessel of any type in a department-owned or operated park or marine area that is signed for other use. Vessel moorage is limited to no more than fifteen (15) days in any consecutive thirty (30) day period. ()

02. Moorage Fees. Vessels moored between 10 p.m. and 7 a.m. at designated facilities will be charged an overnight moorage fee. ()

03. Use of Onshore Campsites. If any person or persons from a vessel moored at a department boating facility also occupies any designated campsite onshore, all required fees for such campsite(s) must be paid in addition to any moorage fee provided herein. ()

04. Self-Registration. In those areas so posted, boaters must register themselves for the use of marine facilities and onshore campsites, paying all required moorage and campsite fees as provided for herein and in accordance with all posted instructions. ()

202. OVERNIGHT USE.

01. Occupancy. Overnight use is permitted only in designated areas. Overnight use is only allowed after all required fees have been paid, registration information completed, and all permits properly displayed. ()

02. Overnight Use Fees. Motor vehicles or trailers not associated with campers between 10:00 p.m. and 7:00 a.m. at designated facilities will be charged an overnight use fee. ()

03. Self Registration. In those areas so posted, overnight users must register themselves for the use of overnight use areas, paying the appropriate fees as provided for herein and in accordance with all posted instructions. ()

04. Length of Stay. Except as provided herein, no person, party, or organization may be permitted to utilize overnight use areas on any lands administered by the department for more than fifteen (15) days in any thirty (30) consecutive-day period. This applies to both reservation and “first come first served” customers. The director may authorize shorter or longer periods for any individual area. ()

05. Registration. All required fees must be paid, registration information completed, and all permits properly displayed prior to occupying an overnight use area. ()

06. Check Out. Overnight users are required to check out by 1 p.m. of the day following the last paid overnight of use. ()

07. Responsible Party. The individual purchasing an overnight use permit or the registered owner of the motor vehicle or trailer is responsible for ensuring compliance with the rules within this chapter. ()

08. Overnight Use. Overnight use is prohibited except in areas specifically designated for overnight use or by authorization of the park or program manager. ()

203. WATERFRONT AREAS.

01. Swimming. Swimming or water contact is at an individual’s own risk. ()

02. Restrictions on Designated Beaches. No glass containers or pets are allowed on designated beaches or swim areas. ()

03. Restricted Areas. Vessels must remain clear of designated beaches and other areas signed and buoyed for public safety. ()

04. Ramps and Docks. The use of docks located next to boat ramps is limited to the active launching and loading of boats. ()

05. Compliance with Laws. Vessels operating on public waters administered by the department must fully comply with the Idaho Safe Boating Act, Title 67, Chapter 70 and the Marine Sewage Disposal Act, Title 67, Chapter 75, Idaho Code, and the rules promulgated thereunder. The director may establish rules prohibiting the use of boat motors or to limit the horsepower capacity on those vessels operating on waters administered by the department. ()

204. WINTER RECREATION PROGRAMS.

The department manages two winter recreation programs: the winter access program which provides for recreation within state parks and the winter recreational parking pass program which provides for recreation outside of state parks. ()

01. Winter Access Program. The purpose of the winter access program is to fund state park services such as maintaining parking areas, providing warming facilities and winter-accessible restroom facilities, regularly grooming trails, signing ski routes, and having ski patrol services available. Any person using winter access program facilities must purchase and properly display a daily or season pass. Winter access program areas are designated by board policy. ()

02. Winter Recreational Parking Permits. The purpose of the winter recreational parking permit program, known as “Park N Ski”, is to designate winter recreational parking locations and use the funds from permit sales to maintain the designated parking areas. Winter recreational parking areas are designated by board policy. ()

- a.** Permit. Any person parking a vehicle in a designated winter recreation parking location must purchase and properly display a winter recreation parking permit, except, snowmobilers may park their transportation vehicles in a designated parking area without displaying a parking permit when a current snowmobile validation sticker is affixed to the snowmobile. ()
- b.** Designation of Primary Use Area. The purchaser of a permit will be allowed to designate on the appropriate form, a primary winter recreational parking use area. The full portion of fees not allocated to the vendor or the department will be apportioned to the designated use area. Should a purchaser fail to designate a primary use area, those fees will be apportioned to a use area determined by the department. ()
- c.** Parking Restrictions. No person may park a vehicle in a designated winter recreational parking location in such a manner as to deprive other users of reasonable access to all or part of the remainder of that parking area. ()
- d.** Permit Location. An annual winter recreational parking permit must be permanently affixed on the front window of the vehicle nearest the driver's seat. A temporary three-day permit must be displayed on the vehicle's dashboard with the dated side displayed to the front of the vehicle in such a manner that it is completely visible and kept in legible condition. ()
- e.** Replacement Permits. No person may file or attempt to file for a duplicate annual winter recreational parking permit unless the original permit was stolen or destroyed. A temporary three (3) day winter recreational parking permit which is lost, stolen, or destroyed will not be reissued. ()
- f.** Transfer. No person may transfer or attempt to transfer an annual winter recreational parking permit decal or a temporary three-day permit from the vehicle upon which it was legally permitted and placed. ()
- g.** Permit Expiration. The annual winter recreational parking permit is valid until the expiration date printed on the decal. The temporary winter recreational parking permit is valid for only the three (3) consecutive days written on the permit. ()

205. -- 224. (RESERVED)

225. FEES AND SERVICES.

- 01. Authority.** ()

 - a.** All fees in this chapter are maximum fees unless otherwise stated. The board has the authority to set actual fees by board policy. ()
 - b.** Park and program managers have the authority to set fees for goods available for resale, equipment rentals, and services provided by employees to enhance the users experience unique to the individual park or program. ()
- 02. Payment.** Visitors must pay all required fees. ()
- 03. Camping.** Camping fees include the right to use designated campsites and facilities for the period camp fees are paid. Utilities and facilities may be restricted by weather or other factors. ()
- 04. Group Use.** ()

 - a.** Groups of twenty-five (25) persons or more, or any group needing special considerations or deviations from these rules must obtain a permit. Permits may be issued after arrangements have been made for proper sanitation, population density limitations, safety of persons and property, and regulation of traffic. ()
 - b.** Permits for groups of up to two hundred fifty (250) people may be approved by the park manager with thirty (30) days advance notice. Permits for groups of two hundred fifty (250) or more people may be approved by the director with forty-five (45) days advance notice. ()

c. Group use fees for day use facilities, general use areas, and events may be negotiated by the park or program manager and will generally not fall below the cost of providing services. MVEF is required unless specifically waived by the park or program manager. ()

05. Fees and Deposits. Fees and deposits, including cleaning fees or damage/cleaning deposits, may be required for certain uses or the reservation of certain facilities unique to an individual park. Where deposits are required, they are to be paid prior to check-in ()

06. Fee Collection Surcharge. A surcharge may be added to all established fees when the operator of a motor vehicle or responsible party of a camping unit fails to pay all required fees or fails to properly display proof of payment for required fees prior to entering a park area or occupying a campsite. If the surcharge is assessed, and the operator of the vehicle or responsible party is not present, all required fees in addition to the surcharge will be assessed against the registered owner of the motor vehicle or camping unit. ()

07. Admission Fees. An admission fee may be charged for internal park facilities which provide an educational opportunity or require special accommodations. ()

08. Cooperative Fee Programs. The department may collect and disperse fees in cooperation with fee programs of other state and federal agencies. ()

09. Encroachment Permit Application Fee. The department may assess an encroachment application fee as set by the board to cover administrative costs incurred by the department in reviewing the application and the site, and in preparing the appropriate document(s). ()

10. Sales Tax. Applicable sales tax may be added to all sales. ()

11. Returned Checks. The cost to the agency for returned checks will be passed on to the issuer of the insufficient funds check. ()

226. -- 244. (RESERVED)

245. FEE SCHEDULE: FEE COLLECTION SURCHARGE.

Category	Fee
Fee Collection Surcharge	\$25/day

()

246. (RESERVED)

247. FEE SCHEDULE: ENTRANCE.

Category	Fee
Daily MVEF	\$7/day/vehicle
Annual MVEF	\$80/year/vehicle
Annual MVEF Replacement	\$5/vehicle
Commercial Motor Vehicle Entrance	\$50/day/vehicle
Admission	\$20/person

()

248. -- 249. (RESERVED)

250. FEE SCHEDULE: INDIVIDUAL CAMPSITE OR FACILITY.

Category	Fee
Basic Campsite: site may have water	\$34/day
Electric Campsite: site has electricity and may have water	\$42/day
Full Hook-up Campsite: site has electricity, water, and sewer	\$46/day
Companion Campsite: site has electricity and may have water	\$84/day
Hike-in/Bike-in Campsite	\$12/person/day
Extra Vehicle	\$8/day
Overnight Use of Parking Areas	\$20/night/vehicle, trailer, or vehicle with attached trailer
Use of Campground Showers by Non-campers	\$3/person/day
Camping Cabins and Yurts	\$500/night
Each additional person above the base occupancy of camping cabin or yurt	\$12/person/night
Pets	\$15/pet/night
Cleaning	\$50

()

251. -- 253. (RESERVED)

254. FEE SCHEDULE: GROUP CAMPSITE OR FACILITY.

Group Facility Fees. Reservation service fee, designated group campground or facility.

()

Category	Fee
Reservation Service Charge (non-transferable, non-refundable)	\$25
Group use of day use facility, overnight facility, or group camp (set by park or program manager)	Varies
Each additional person above the base occupancy of the overnight facility	\$12/person/night

()

255. (RESERVED)

256. FEE SCHEDULE: BOATING FACILITIES.

Boating Facilities:

Category	Fee
Vessel Launching	MVEF or \$7/day/vessel
Overnight moorage at dock or buoy, person staying at campsite or facility and not staying on the vessel	\$9/night

Category	Fee
Overnight moorage at dock, person staying on vessel	\$10/night
Overnight moorage at buoy, person staying on vessel	\$9/night

()

257. -- 258. (RESERVED)

259. FEE SCHEDULE: WINTER RECREATION PROGRAMS.

Category	Fee
Winter Access Daily Pass, individual	\$6/person/day
Winter Access Daily Pass, family	\$100/family/season
Winter Access Season Pass, individual	\$50/person/season
Winter Access Season Pass, couple	\$75/couple/season
Winter Recreation Parking, temporary three-day permit	\$10/three days
Winter Recreation Parking, annual permit	\$30/year

()

260. -- 274. (RESERVED)

275. CRITERIA FOR RESERVATIONS.

01. Responsible Party. ()

a. The person booking reservations for an individual campsite or facility is responsible for ensuring compliance with the rules within this chapter. ()

b. The person booking reservations for multiple individual campsites is designated the group leader and is responsible for ensuring compliance with the rules within this chapter. The group leader may approve another person to register for a campsite as the primary occupant prior to check-in or at the park. Once the primary occupant registers for the campsite, the primary occupant becomes the responsible party. ()

c. The person booking reservations for a group campsite or facility is designated the group leader and is responsible for ensuring compliance with the rules within this chapter. ()

02. Reservation Service Charges, Individual or Group Campsite or Facility. Reservations are non-transferable (from one party to another). Reservation fees are non-refundable. ()

a. A reservation service charge may be assessed for each individual or group campsite or facility reserved. ()

b. The service charge for an individual campsite or facility will be waived for campers with a current Idaho RV registration sticker and reimbursed to the department by the RV Program. ()

03. Cleaning Fee. A cleaning fee or a damage/cleaning deposit may be required by the park or program manager as a condition of reservation. ()

04. Confirmation Requirements. ()

a. Confirmation of an individual campsite or facility reservation. Full payment of all required fees must be made before a reservation is confirmed. ()

b. Confirmation of a designated group campground, group campsite, or group facility reservation. Before a reservation is confirmed, the group leader must: ()

i. Supply primary occupant (point of contact) name, address, and phone number for multiple bookings of individual campsites for a group. ()

ii. Pay all required fees for each campsite or facility reserved. ()

05. Reservation Modifications. A reservation service fee will be assessed for any modification to a previously made reservation that involves reducing the planned length of stay, or to change the reservation dates where part of the new stay includes part of the original stay booked (rolling window). Modifications that change the original stay so that no part of the new stay includes part of the original stay are to be considered a cancellation and re-book will be mandatory to keep a reservation. With the exception of the reservation service charge as defined in Section 276, any overpaid fees will be reimbursed at the time the reservation is modified. ()

06. Reservation Cancellations. ()

a. Individual Campsite or Facility. A reservation service fee will be assessed for the cancellation of a reservation. This service fee will be assessed for each campsite or facility involved. If the customer cancels after the scheduled arrival date the customer forfeits all usage fees for the time period already expired. Cancellations received after checkout time will result in the forfeiture of that day’s usage fees for the campsite or facility. At no time will the customer be charged a cancellation fee that exceeds the amount originally paid. The IDPR or its reservation service provider may cancel a customer’s reservation for insufficient payment of fees due. With the exception of the reservation service fees, all fees paid will be reimbursed at the time the reservation is cancelled. ()

b. Park Board Designated Special Use Campsites and Facilities. A reservation service fee will be assessed for the cancellation of a reservation. If a cancellation for a group facility occurs twenty-one (21) or fewer calendar days prior to arrival, the customer forfeits the first night or daily facility usage fees (base rate). If a cancellation for a group facility occurs more than twenty-one (21) calendar days prior to arrival, a cancellation charge will be assessed. If the customer cancels after the arrival date the customer forfeits all usage fees for the time period already expired. Cancellations received after checkout time will result in the forfeiture of that day’s usage fees for the campsite or facility. At no time will the customer be charged a cancellation fee that exceeds the amount originally paid. The department or its reservation service provider may cancel a customer’s reservation for insufficient payment of fees due. An individual site cancellation fee applies to each campsite in a group campground. With the exception of the reservation service fees, all fees paid will be reimbursed at the time the reservation is cancelled. ()

07. Insufficient Payment. The department may cancel a customer’s reservation for insufficient payment of fees due. ()

276. FEE SCHEDULE: RESERVATIONS.

Category	Fee
Reservation Service Charge, individual campsite or facility	Current RV sticker or \$10/campsite or facility
Reservation Service Charge, group reservation for campsite or facility	\$25
Modification	\$10/campsite or facility
Cancellation, individual campsite or facility, prior to check-in time	\$10/campsite or facility

Category	Fee
Cancellation, individual campsite or facility, after check-in time	First night's fee
Cancellation, special use campsite or facility, more than 21 days in advance	\$50/facility
Cancellation, individual campsite or facility, 21 days or less in advance	First night's or daily usage fee

()

277. -- 399. (RESERVED)

400. PARK CAPACITIES.

Where applicable, park or program managers may limit or deny access to an area whenever it has reached its designated capacity. ()

401. -- 499. (RESERVED)

500. LIVESTOCK.

Grazing of livestock is not permitted within lands administered by the department. Exceptions may be made by the board for grazing permits or otherwise permitting the use of lands administered by the department for livestock. The use of saddle or other recreational livestock is prohibited on trails, roadways, and other areas unless designated through signing for that purpose or with permission of the park or program manager. ()

501. -- 576. (RESERVED)

577. SPREADING OF HUMAN ASHES.

Persons may spread human ashes on lands owned by the Idaho Department of Parks and Recreation. The exact location must be pre-approved by the park or program manager. Persons may not spread ashes in the water within a state park. The department does not assign or convey any rights or restrictions by allowing the placement of ashes on the land, and there are no restrictions in the ability of the landowner to operate, develop, or otherwise use the land at their sole discretion without any obligation associated with the placement of ashes on the land. ()

578. -- 624. (RESERVED)

625. ADVERTISEMENTS/PROMOTIONS/DEMONSTRATIONS.

01. Printed Material. Public notices, public announcements, advertisements, or other printed matter may only be posted or distributed in a special area approved by the park or program manager. ()

02. Political Advertising. Political advertising is strictly prohibited within any lands administered by the Department. ()

03. Demonstrations. Public demonstrations are limited to areas approved by the park or program manager and subject to an approved permit issued after arrangements for sanitation, population density limitations, safety of persons and property, and regulation of traffic are made. ()

626. -- 649. (RESERVED)

650. AUTHORIZED OPERATIONS.

No person, firm, or corporation may operate any concession, business, or enterprise within lands administered by the Department without written permission or permit from the board. No person(s), partnership, corporation, association or other organized groups may: ()

01. Beg or Solicit for Any Purpose. ()

02. Game or Operate a Gaming Device of Any Nature. ()

03. Abandon Any Property. Leave any property on department lands. Leaving property is prohibited unless registered in a campsite or permitted by the park or program manager. Property left on department lands for more than twenty-four (24) hours may be removed at the owner's expense. ()

651. -- 674. (RESERVED)

675. DEPARTMENT RESPONSIBILITY.

The department is not responsible for damage to, or theft of personal property within lands administered by the department. All visitors use facilities and areas at their own risk. ()

676. NONDISCRIMINATION.

No person may discriminate in any manner against any person or persons because of race, color, national origin, religion, gender, age or disability within lands administered by the department. Facilities constructed or maintained with, and programs supported by the cross-country skiing recreation account must be available for public use without discrimination and must comply with requirements as set out in the Americans with Disabilities Act. ()

677. -- 999. (RESERVED)

**26.01.33 – RULES GOVERNING THE ADMINISTRATION OF
THE LAND AND WATER CONSERVATION FUND PROGRAM**

000. LEGAL AUTHORITY.

The Idaho Parks and Recreation Board is authorized under Section 67-4223, Idaho Code, to adopt, amend, or rescind rules as may be necessary for proper administration of the department and its programs. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is cited in full as Idaho Department of Parks and Recreation Rules, IDAPA 26.01.33, “Rules Governing the Administration of the Land and Water Conservation Fund Program.” ()

02. Scope. This chapter establishes procedures for the administration of the Land and Water Conservation Fund program, including requirements for project application, eligibility, review, award, and management. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

As used in this chapter: ()

01. Acquisition. The gaining of rights of public use by purchase or donation of fee or less than fee interests in real property. ()

02. Board. The Idaho Parks and Recreation Board, a bipartisan, six (6) member board, appointed by the governor. ()

03. Development. The act of physically improving an area or constructing facilities necessary to increase its ability to serve outdoor recreation purposes. ()

04. Director. The director and chief administrator of IDPR or the designee of the director. Designated by the governor to serve as the State Liaison Officer for the LWCF program. ()

05. Evaluation Committee. Representatives from federal, state and local agencies with expertise in community development or public outdoor recreation needs. The committee determines acceptability of projects based on technical criteria, rates LWCF projects, and assists IDPR staff in making funding priority recommendations to the Idaho Parks and Recreation Board. ()

06. Grants Program. All funding programs administered by IDPR. ()

07. IDPR. The Idaho Department of Parks and Recreation. ()

08. LWCF. The Land and Water Conservation Fund, a federal grant program that provides fifty percent (50%) matching grants to states, and through states to local governments, for the planning, acquisition and development of public outdoor recreation areas and facilities. ()

09. NPS. The National Park Service. ()

10. Open Project Selection Process (OPSP). The overall objective decision making process by which IDPR selects LWCF projects for funding. ()

11. Participation Manual and Internal Procedures Manuals. A compilation of state procedures, rules, and instructions that have been assembled in manual form and that have been approved by the board for dissemination to the public and public agencies that may wish to participate in grant programs of IDPR or that outline operation of the Land and Water Conservation Program by IDPR for staff use. ()

12. Planning. The development of documents and programs to identify and propose actions for managing recreational resources and the preparation and review of designs and specifications for such resources. ()

13. Priority Needs Assessment. Incorporates SCORTP related activities that refined Idaho’s priorities for LWCF obligation. These area are reflected in the OPSP criteria (see Section 440 of this chapter). ()

14. Project. The undertaking that is or may be funded in whole or in part with funds administered by IDPR. ()

15. Retroactive Cost. Costs incurred after receipt of application but prior to the execution of the project contract. ()

16. SCORP/SCORTP. Statewide Comprehensive Outdoor Recreation Plan/Statewide Comprehensive Outdoor Recreation and Tourism Plan. ()

17. Scope Element. A specific item, for example, one (1) facility or amenity, listed on a project application or project agreement that is a part of the whole. ()

18. Sponsor. A state or local government agency that solicits a grant of funds from IDPR for a projector is responsible for administering the grant or funding of an approved application or completed project. ()

19. State Liaison Officer (SLO). The director is designated by the governor to serve as the State Liaison Officer to the National Park Service for the LWCF program. The chief of the Recreation Resources Bureau is designated as the Alternate State Liaison Officer. ()

011. -- 049. (RESERVED)

050. GENERAL PROVISIONS.

Federal Land and Water Conservation Fund (LWCF) grants are available through IDPR for the acquisition or development of land to be used for outdoor recreation or for the combined acquisition and development of land to be used for outdoor recreation. Any land acquired or developed with these funds are held in perpetuity for outdoor recreation or, with approval from IDPR and NPS, be replaced with land of equal or higher fair market value, recreation utility and location. LWCF grants may be used for SCORTP activities. ()

051. -- 064. (RESERVED)

065. COMPLIANCE WITH LAWS.

LWCF administration is subject to all applicable state and federal statutes, rules, regulations, ordinances and requirements. ()

066. -- 079. (RESERVED)

080. FUND ALLOCATION.

01. Eligible Applicants. Governmental agencies that are eligible to receive or apply for the grant funds include incorporated cities, counties, state agencies, recreation districts and other state or local governmental agencies authorized to provide general public recreation facilities. ()

02. Allocation of Funds. Idaho's cost of administering the SCORTP program, the LWCF program and a contingency fund are deducted from the state's annual apportionment. The remaining funds are divided fifty percent (50%) for local governmental agencies and fifty percent (50%) for state agencies. This policy may be altered in any year at the discretion of the board. ()

a. To assure that the needs of rural areas are met, twenty percent (20%) of the amount dedicated for local governmental agencies is dedicated for use by governmental agencies of five thousand (5,000) population or less. If the cumulative request of the governmental agencies of five thousand (5,000) population or less is more than the twenty percent (20%) of the amount dedicated for local governmental agencies, governmental agencies of five thousand (5,000) population or less may compete for the total remaining allocation. ()

b. If the total cost for a single project of a governmental agency with a population of five thousand (5,000) or less requires over one-half (1/2) of the twenty percent (20%) dedicated for use by governmental agencies

of five thousand (5,000) population or less, that project will compete with the large governmental agency projects. ()

03. Exceptions. The board may suspend (through formal action at the board meeting at which LWCF grant requests are considered) any provision of Subsection 080.02 of this chapter if the allocation is too small to warrant viable projects. ()

04. Project Requests Insufficient. The board is not required to distribute all available funds. IDPR staff may recommend, and the board determine, to reject projects with evaluation scores so low as to be noncompetitive. ()

081. -- 094. (RESERVED)

095. CONTINGENCY FUND. Twenty percent (20%) of the total allocation may be held out for needed cost overruns, special projects, and emergency needs. Any unused funds at the end of the funding cycle are obligated through the normal process. ()

096. -- 109. (RESERVED)

110. SPONSOR'S MATCHING SHARE. The sponsor will be reimbursed up to fifty percent (50%) of the approved project cost. The sponsor's share can be either local funds, acceptable state funds, force account, or donation of privately owned lands, goods or services. Reimbursement varies according to the type of project and total project cost (see Section 515 of this chapter). The use of specific types of sponsor's share match may be adjusted in any year at the discretion of the board (see Section 140.04 of this chapter). ()

111. -- 124. (RESERVED)

125. PROJECT TIME LIMITATIONS. The project must be completed by the applicant within twenty-four (24) months of the federal contract signing. ()

126. -- 139. (RESERVED)

140. ELIGIBLE PROJECTS.

01. Generally. LWCF grants are available for up to fifty percent (50%) of the cost to acquire or develop land that is to be used for outdoor recreation purposes and is to be held in perpetuity for public outdoor recreation uses. ()

02. Less Than Fee Acquisition. Acquisition of less than fee interest, such as easements and development right, must be considered in the same manner as simple fee acquisition subject to the following conditions: ()

- a. The interest cannot be revocable; ()
- b. The value can be supported through standard appraisal techniques; and ()
- c. Recreation can be demonstrated as the primary purpose of the acquisition. ()

03. Ineligible Projects. Acquisitions or developments that do not contribute directly to general public outdoor recreation facilities or activities are ineligible for LWCF funding. Acquisition of leases are not eligible. ()

04. SCORTP. LWCF grants are available for up to fifty percent (50%) of the cost of the SCORTP. ()

141. -- 154. (RESERVED)

155. ELIGIBLE PROJECT COSTS.

IDPR may place restrictions on reimbursement of some acquisition and development costs. ()

156. -- 169. (RESERVED)

170. ACQUISITION OF PUBLICLY OWNED LANDS.

The cost to the sponsor of land purchased from another public agency is generally not eligible for matching assistance. ()

171. -- 184. (RESERVED)

185. ACQUISITION OF STRUCTURES.

Structures that are proposed to be retained and are incidental to the land are eligible for LWCF matching funds if they are to be used primarily for support facilities for outdoor recreation activities. The anticipated use must be clearly identified in the project application so that IDPR may exercise reasonable judgment in determining the eligibility of the structure for funding assistance. ()

186. -- 199. (RESERVED)

200. WAIVER OF RETROACTIVELY.

01. Generally. The SLO may grant permission to a sponsor to proceed prior to normal processing of an application through a written waiver of retroactivity. This is not to be construed as a qualitative approval of the proposed project. Should the project subsequently be approved, the costs incurred must be eligible for assistance. ()

02. NPS Waiver Required. The SLO may not grant a waiver of retroactivity until the NPS has issued its waiver of retroactivity. A waiver may be granted only if LWCF moneys are available and only if an emergency situation warrants it. ()

03. Limitations. Retroactive development costs are not eligible for reimbursement, other than expenses necessary for planning a development project and then only if it is specifically requested in the project application. ()

201. -- 214. (RESERVED)

215. ENCUMBRANCES.

Property rights obtained with LWCF assistance must be free of all reservations or encumbrances that would limit the use of the site disproportionate to the public benefit. ()

216. -- 229. (RESERVED)

230. ACQUISITION COSTS EXCEEDING FAIR MARKET VALUE.

An approved appraisal is an acceptable estimate of property value (see Section 350 of this chapter). The negotiation between a willing seller and a willing buyer may set a price that is higher than the appraisal, and this market place value can be considered along with the appraised value in establishing the reasonable limits of assistance. If the sponsor believes that the negotiated price is a better indication of market value, yet it is higher than the appraised value, a detailed and well documented statement of this differences must be submitted, together with a formal request for a cost increase (see Section 620 of this chapter). ()

231. -- 259. (RESERVED)

260. ACQUISITIONS INVOLVING COMPATIBLE MULTIPLE USES.

Nonrecreation uses, such as timber management, grazing, and other natural resource uses, may be carried out on

lands acquired with LWCF assistance if they are clearly compatible with and secondary to recreation use, and are approved by IDPR prior to execution of the project contract. ()

261. -- 274. (RESERVED)

275. ACQUISITIONS INVOLVING NONRECREATION USE.

01. Nonrecreation Use Limited. Lands acquired with LWCF assistance are immediately dedicated to public outdoor recreation and therefore, in the interim period between acquisition and planned development, the public cannot be denied use. In some instances during this period the temporary continuation of nonrecreation uses of LWCF assisted areas may be appropriate if not at the expense of public use. Continuation of existing nonrecreation uses must be approved by IDPR. When approved by IDPR, the used will be phased out within three (3) years from the date of the acquisition. ()

02. Life Estates. Life estates, whereby an owner is allowed to use the property to the end of his life, is an allowable nonrecreation use provided all of the following conditions are met: ()

a. The life estate must not totally limit public use of the site; ()

b. The value of the life estate is not included within the total project cost as established through acceptable appraisal techniques; and ()

c. The life estate provisions are approved by IDPR. ()

276. -- 289. (RESERVED)

290. PUBLIC PARK AND SCHOOL DEVELOPMENT PROJECTS.

Projects clearly designed and located to meet identified needs for general public recreation, as well as to provide school districts with outdoor education, physical education, and recreation facilities may be eligible for funding, provided general public recreation is clearly the primary use. ()

291. -- 304. (RESERVED)

305. DONATED REAL PROPERTY AS MATCHING SHARE.

01. Generally. The value of privately owned donated real property may be used as a portion or as all of the sponsor's matching share of an approved project when the transfer of title to the sponsor has not been accomplished prior to the execution by IDPR of the project contract, unless such action has been previously approved by IDPR under the waiver of retroactivity procedure (see Section 200 of this chapter). ()

02. Limitations. The donation must consist of real property that would normally qualify for LWCF funding. If the donation does not adjoin the tract being acquired or is not being developed as part of the project then it must stand on its own merits as an acceptable public recreation area in order to be considered an eligible donation. It also must be within the jurisdiction of the sponsor. ()

03. Appraisal Required. The value of the donation must be established by an appraisal report prepared under the provision of Section 350 of this chapter. Any portion of the value of the donation not utilized by the sponsor for matching in the project is not available for subsequent projects. The amount of donation that is matchable is the value of the land donation up to the limit of the local agency's share of the project. The maximum reimbursed by IDPR may never exceed the cash expended on the project. ()

306. -- 319. (RESERVED)

320. DONATED GOODS AND SERVICES AS MATCHING SHARE.

01. Generally. Donated services, materials and equipment are eligible for reimbursement. Allowable rates must be agreed upon by IDPR prior to initiation of construction and must be in accordance with current federal

regulations and state rules. Partial reimbursement on projects involving such donations are limited to the amount of actual cash outlay by the grantee. ()

02. Excess Value. Donated services above the needs for a project are not eligible for further funding assistance. ()

03. Requirements. Donated services may be furnished by professional and technical personnel, consultants, and other skilled or unskilled labor. The services must be an integral and necessary part of an approved project. Rates for donated services must be consistent with those paid for similar work in other activities of the state or local government. In those instances in which the required skills are not found in the sponsor's organization, rates must be consistent with those paid for similar work in the labor market in which the sponsor competes for the kind of services involved. ()

321. -- 334. (RESERVED)

335. FORCE ACCOUNT AS MATCHING SHARE.

All or a portion of the sponsor's share can be provided through force account (i.e., use of sponsor's staff and equipment) when such contributions are verifiable from the sponsor's records, are not included as contributions for any other IDPR program, and are necessary and reasonable for proper and efficient accomplishment of the project. ()

336. -- 349. (RESERVED)

350. APPRAISAL REQUIREMENTS.

A real estate appraisal is required for all land to be acquired. The appraisal must be prepared and paid for by the sponsor. The type of appraisal to be used must be determined by the cost of the property, and difficulty of the appraisal assignment. All appraisal must be done according to "Uniform Appraisal Standards for Federal Land Acquisitions." ()

351. -- 364. (RESERVED)

365. APPRAISAL REVIEWS.

IDPR reviews appraisals as necessary. Any appraisal report that does not meet the basic content requirement or use correct analysis procedures must be corrected to the satisfaction of IDPR. All costs are paid by the sponsor. ()

366. -- 379. (RESERVED)

380. REVENUE FEASIBILITY STUDIES.

At the discretion of the SLO, a feasibility report prepared by a fiscal specialist may be required prior to funding consideration by the board. Specifically, it must provide the SLO with detailed financial information and data that is incorporated in staff recommendations to the board. This report is paid for by the sponsor. ()

381. -- 394. (RESERVED)

395. TECHNICAL REVIEW.

At the discretion of the SLO, a technical report prepared by a licensed, certified engineer may be required prior to funding consideration by the board. This report is paid for by the sponsor. ()

396. -- 409. (RESERVED)

410. FUNDING CYCLE.

01. Generally. A funding cycle is held at a minimum of once every two (2) years with the following exception: subject to the level of funding, the board may suspend (through formal action at any regular meeting) a funding cycle. ()

02. Procedure. The funding cycle consists of the following: ()

a. Notification to begin a funding cycle must be made no less than ninety (90) days before applications are due. ()

b. The evaluation committee meeting must be held within one hundred twenty (120) days of the application due date. ()

c. Recommendations must be formulated by IDPR staff within thirty (30) days following the evaluation committee meeting and must be made to the board no later than the next regularly scheduled meeting. ()

d. Subject to the level of funding, the board may suspend (through formal action at any regular meeting) the evaluation committee meeting and may elect to adopt staff recommendations. ()

03. Fees. At the discretion of the SLO, fees may be charged for the various stages of any funding cycle. When charged, fees are assessed equally on all applicants. Fees charge may not exceed fifty dollars (\$50) for all stages combined. ()

411. -- 424. (RESERVED)

425. APPLICATION PROCEDURE.

01. Initial Review. Participation manuals are available to guide sponsors in preparing projects for funding consideration. Materials submitted for consideration are reviewed by IDPR staff for completeness and for project eligibility. Once all application materials are submitted and a project is determined to be potentially eligible under criteria established in the OPSP, IDPR will ask the sponsor to make a presentation to the evaluation committee. ()

02. Eligible Projects. Eligible projects are ranked according to the (OPSP (see Section 440 of this chapter) and approved by the board (see Section 470 of this chapter). Full federal application materials must be submitted to NPS for final funding approval (see Section 485 of this chapter). ()

426. -- 439. (RESERVED)

440. OPEN PROJECT SELECTION PROCESS (OPSP).

01. Generally. The procedures outlined in OPSP through the SCORTP process are for the purpose of defining criteria that a proposed LWCF project must meet in order to be eligible for funding, and to establish priorities on the basis of which competing eligible projects can be rated objectively. The intent is to ensure that available funds are used to fund those projects that most nearly satisfy the intent of the LWCF Act, and the recreational needs of the people of Idaho. ()

02. Requirements. Requirements for the SCORTP and the OPSP can be found in the "LWCF Participation Manual," available from IDPR or NPS. ()

03. Availability. Copies of the SCORTP and the OPSP criteria used in prioritizing those projects submitted for LWCF assistance may be obtained from IDPR or NPS. Typically, this criteria is provided in all LWCF application guidelines. ()

04. Suspension of OPSP. Subject to the level of funding, the board may elect to suspend OPSP (through formal action at any regular meeting). ()

441. -- 454. (RESERVED)

455. EVALUATION COMMITTEE.

01. Composition. The evaluation committee includes representatives with experience in community

development or public outdoor recreation. The committee ranks projects based on its review of the application and a presentation by the sponsor. It rates all projects based on the selected criteria found in OPSP. The evaluation committee includes nine (9) members as follows: ()

- a. Three (3) members are representatives of state and federal agencies with a technical relationship to community development or the outdoor recreation needs in the state. ()
- b. One (1) member represents a community of five thousand (5,000) population or more ()
- c. One (1) members represents a community of five thousand (5,000) population or less. ()
- d. One (1) member represents the interests of ethnic minorities. ()
- e. One (1) member represents the interests of the elderly. ()
- f. One (1) member represents the interests of people with disabilities. ()
- g. One (1) member must be from the board. ()

02. Quorum. A quorum is required to conduct committee business. Five (5) people constitute a quorum. ()

03. Appointment and Term. Members are appointed by and serve at the discretion of the SLO for three (3) funding sessions and may be reappointed, except, the board member must be selected by and serve at the discretion of the board. As necessary, the SLO provides public notice of available seats. Any interested individual or organization may nominate individuals to serve on the committee. ()

456. -- 469. (RESERVED)

470. BOARD REVIEW AND APPROVAL.

The board reviews and approves projects according to the priority list provided by IDPR staff. Applications are submitted to NPS according to priority after LWCF moneys have been appropriated by congress and allocated to the state. ()

471. -- 484. (RESERVED)

485. NPS PROJECT APPROVAL.

When a project is approved by NPS, the announcement is made by one of the state's congressional delegation following notification from IDPR. All appraisals, title and deed work must be finalized prior to submitting a project to NPS. ()

486. -- 499. (RESERVED)

500. PROCEEDING ON THE PROJECT.

After project approval, the IDPR staff assists the sponsor in meeting the requirements of the LWCF including providing information on the steps and required documentation for acquisition and development projects along with financial responsibilities and allowable costs. The sponsor must complete work on the project according to the scope elements in the state/local agreement. ()

501. -- 514. (RESERVED)

515. DISBURSEMENT OF FUNDS.

01. Authorization. Except as otherwise provided herein, the SLO must authorize disbursement of funds allocated to a project through reimbursement basis. The LWCF program is a reimbursement program, which means that the participants initially pay all project costs and then seek reimbursement through IDPR. ()

02. Documentation. Reimbursement not be made by IDPR until deed, title insurance and appraisal requirements are satisfied on all projects. Reimbursement may be made on development or combination acquisition and development projects once construction shows evidence and reasonable progress toward the completion of all scope elements and LWCF requirements. ()

03. Partial Reimbursement. Partial reimbursement is not made for projects where the project sponsor's matching share is less than fifteen thousand dollars (\$15,000). When reimbursement is granted prior to project completion, the sponsor receives a reimbursement for fifty percent (50%) of the eligible costs incurred less a fifteen percent (15%) hold back. When the project has been completed and receives final approval from IDPR, the sponsor is paid the fifteen percent (15%) hold back. If multiple payments are to be incurred as part of the project, the final payment may be used as the fifteen percent (15%) hold back. ()

04. Request for Reimbursement. Reimbursement must be requested by local governmental agencies on voucher forms provided by IDPR and includes all required documentation. The sponsor will receive a reimbursement for fifty percent (50%) of the eligible costs incurred. The amount of reimbursement must never exceed the cash expended on the project. ()

05. Advance Payment. An advance payment is a payment made to a sponsor upon its request before cash outlays are made by the sponsor or payment made through the use of predetermined payment schedules before such payments are due. Advance payment may be made subject to the conditions outlined below: ()

a. IDPR will consider the payment of advances on development projects where the matching share is non-cash, and on acquisition projects where funds must be available up front in order to prevent the loss of an available site to other interested buyers. Such advances must receive prior approval of NPS. A written request must be submitted by the sponsor to IDPR to initiate the process. ()

b. Advances must be timed and procedures observed to assure that cash withdrawals occur only as and when essential to meet the needs of the project sponsors. Advances are limited to the minimum amounts needed and timed to be in accord with the requirements of carrying out the purpose of the approved project. Any moneys advanced to the sponsor are public moneys (owned by the federal government and the State of Idaho) and must be deposited in a bank with FDIC insurance coverage and the balances exceeding the FDIC coverage must be collaterally secure. ()

c. One (1) month after the advance has been received, the sponsor must submit a billing indicating expenditures made from the advanced funds. This will be used by IDPR as a basis for liquidating obligations, reducing the advance account and making charges to the appropriate cost account. ()

d. At least monthly, IDPR reviews the sponsor's disbursements of advanced funds for reasonableness of cash balances on hand. In the event IDPR determines a sponsor is making insufficient progress using advanced funds, IDPR may request an immediate refund. ()

516. -- 529. (RESERVED)

530. PROJECT CONTRACT.

For every funded project, a project contracts must be executed. The project contract must be prepared by the IDPR staff subsequent to approval of the project. Upon execution by the sponsor, the parties are thereafter bound by the project contract terms. The sponsor may not proceed with the project until the project contract has been executed. IDPR may not execute a project contract until federal funding has been authorized by NPS. ()

531. -- 544. (RESERVED)

545. CONTROL AND TENURE.

The sponsor has title to or adequate control and tenure of the area to be developed. The sponsor must list all outstanding rights or interests held by others in the property to be developed. In the event that outstanding rights later prove to be incompatible with public outdoor recreation uses of the site, the sponsor assumes the responsibility for having to replace the facilities developed with state or federal assistance with others of at least equal value and reasonably equivalent usefulness and location at the sole cost of the sponsor. ()

546. -- 559. (RESERVED)

560. APPLICABILITY.

All LWCF requirements apply to each area or facility, regardless of the extent of LWCF assistance. When LWCF development assistance is given to a project limited to less than a complete recreational property, all lands immediately adjacent to that LWCF development that are designated as recreational property must be identified as being within the LWCF project boundary and must be subject to LWCF guidelines. ()

561. -- 574. (RESERVED)

575. SPONSOR COMMITMENT.

A proclamation from the sponsor's governing body committing the project and the sponsor to LWCF requirements must be submitted to IDPR prior to IDPR project approval. ()

576. -- 589. (RESERVED)

590. RESTRICTION ON TITLE.

Land acquired in fee or developed with outdoor recreation funds must be dedicated to outdoor recreation use in perpetuity by a recorded "Deed of Right to Use Land for Public Recreation Purposes" (Deed of Right) that conveys a real property interest to the public. This must be executed and recorded by the sponsor after it has taken title to the property, and before it applies for reimbursement. ()

591. -- 604. (RESERVED)

605. RECORDS.

Project records must be maintained by the state and sponsor for three (3) years after final payment. The material must be maintained beyond the required three (3) year period if audit findings have not been resolved. Property records must be maintained in perpetuity. ()

606. -- 619. (RESERVED)

620. PROJECT AMENDMENTS, COST INCREASES AND TIME EXTENSIONS.

01. Amendments. The project contract may be amended by execution of a project amendment. All amendment requests must be made in writing and must include a detailed justification. Sponsors are expected to complete projects as originally proposed and evaluated. However, amendments for minor changes in scope may be requested. Cost increases of twenty-five percent (25%) or more or changes in project elements that change the total project cost by twenty-five percent (25%) or more require that the project be presented as a totally new proposal and compete through the OPSP (see Sections 440 through 485 of this chapter) during a current funding cycle. Should the revised project not receive enough points to be funded, the sponsor is required to complete the scope of the project as originally proposed at its expense or return any funds reimbursed so that the project may be canceled and the funds reallocated. This does not apply to SCORP projects. ()

02. Cost Increases on Development Projects. For cost increase requests on development projects to be considered, all of the following requirements must be met: ()

a. The increase, or any portion thereof, is to be used only for costs incurred on elements specified in the project agreement; and ()

b. The sponsor has initiated implementation of the project in a timely manner and has had little control over the condition causing the cost overrun. ()

03. Cost Increases on Acquisition Projects. Acquisition project cost increases must meet all of the following conditions: ()

a. The increased market value is supported by an acceptable appraisal; ()

b. The sponsor has diligently pursued the acquisition; and ()

c. If increased relocation costs have caused a cost overrun, an explanation is required. ()

04. Condemnation. Acquisition cost increases based on condemnation awards, if granted, must be based on compensation for the property and direct relocation costs; no court or legal costs are eligible for reimbursement. ()

05. Basis for Cost Increase. Cost increase requests for development projects are based on the total approved costs. Cost increase requests for acquisition projects are based on a parcel by parcel determination. ()

06. Extensions of Time. Extensions of time limitations will be considered if based on unavoidable circumstances such as condemnation of property for acquisition projects and delays due to unusually poor weather or unavailability of supplies for a development project. Extensions are generally granted in six (6) month intervals. Avoidable project delays may result in loss of funding with the sponsor being required to return any funds reimbursed so that the project can be canceled. ()

621. -- 634. (RESERVED)

635. DEVELOPMENT PROJECT CONTRACT REQUIREMENTS. Development projects require competitive bidding according to state and federal statutes. ()

636. -- 649. (RESERVED)

650. CONVERSION TO OTHER USES.

01. Generally. Property acquired or developed with LWCF assistance is not converted to other than public outdoor recreation uses without prior approval of the SLO and the NPS regional director. The SLO has authority to disapprove conversion requests or to reject proposed property substitutions. ()

02. Prerequisites to Approval of Conversion. IDPR will only consider a conversion request once the following prerequisites have been met: ()

a. All practical alternatives to the conversion have been evaluated and rejected on a sound basis. ()

b. At least thirty (30) days prior to IDPR submitting a request to NPS to convert LWCF properties, the sponsors must hold a public hearing. ()

c. The fair market value of the property to be converted has been established and the property proposed for substitution is of at least equal fair market value as established by a state approved appraisal. ()

d. The property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. It must be administered by the same political jurisdiction as the converted property. ()

e. The property proposed for substitution meets the eligibility requirements for LWCF assisted acquisition. The replacement property constitutes or is part of a viable recreation area. ()

f. Public land may not be used for substitution on acquisition projects unless it meets the criteria for an eligible acquisition project. However, in the case of development projects for which the state match was not derived from the cost of the purchase or value of a donation of the land to be converted, public land not currently dedicated to recreation or conservation use may be used as replacement land even if this land is transferred from one public agency to another without cost. ()

g. All necessary coordination with other federal agencies has been satisfactorily accomplished. ()

- h.** The guidelines for environmental evaluation have been satisfactorily completed and considered. ()
- i.** The proposed conversion and substitution are in accord with the SCORTP. ()
- j.** Staff consideration of the above points reveals no reason for disapproval and the project files are so documented. ()
- k.** It should also be noted that the acquisition of one (1) parcel of land may be used in satisfaction of several approved conversions. However, previously acquired property cannot be used to satisfy substitution requirements except in the case of development projects. ()

03. Project Amendments. Approved conversions require amendments in the project contract when the property to be substituted is off site or when replacement of property is deferred. ()

04. Fees. Deposit, cost and fees for the administration and management of the LWCF conversion process must be as follows: ()

a. The sponsor is required to pay a deposit of two and five-tenths percent (2.5%) of the appraised value of the property or the total cost of the project grant, whichever is greater. This deposit may not be less than one thousand dollars (\$1,000). ()

b. IDPR will charge the sponsor for all administrative costs relating to the conversion and a service fee of one percent (1%) of the current appraised value of the converted property. The service fee may not exceed three thousand five hundred dollars (\$3,500) for each converted tract of property. ()

c. The administrative costs and the service fee will be deducted from the deposit. The sponsor will be reimbursed the remaining amount upon the successful completion of the conversion. Any incidental costs exceeding the deposit will be paid by the sponsor. ()

651. -- 664. (RESERVED)

665. USER FEES, CHARGES AND INCOME.

01. User Fees. User or other types of fees may be charged in connection with facilities developed with LWCF grants, provided that the fees and charges are commensurate with the value of recreation services or opportunities furnished and are in the prevailing range of public fees and charges for the particular activity involved. Discrimination on the basis of residence, including preferential reservation or membership systems and annual permit systems, is prohibited except to the extent that reasonable differences in admission and other fees may be maintained on the basis of residence. ()

02. Nonrecreational User Fees. Nonrecreational income that accrues to an outdoor recreation area other than the intended recreational use, including income from land management practices, must derive from use that is consistent with, and complementary to, the intended outdoor recreational use of the area. Gross nonrecreational income that accrues during the project period established in the project contract must be used to reduce the total cost of the project. Gross nonrecreational income that accrues subsequent to the ending date identified in the project contracts must be used only to offset the expense of operation and maintenance of the facility. ()

666. -- 679. (RESERVED)

680. PERMANENT PROJECT SIGNS.

Permanent public acknowledgment of LWCF assistance at project sites is required on at least one (1) prominently placed area identification sign. The LWCF symbol established and provided by IDPR must be used for such acknowledgment at the project site entrance, or other appropriate locations. The sponsor may desire to provide a more detailed identification. IDPR staff must approve the sponsor's park sign prior to its construction to ensure proper

designation is included. ()

681. -- 694. (RESERVED)

695. ARCHITECTURAL BARRIERS.

Sponsors in the LWCF programs must assure that persons with disabilities are not precluded from the use of LWCF assisted recreational facilities. ()

696. -- 709. (RESERVED)

710. UNIFORM RELOCATION COMPLAINT PROCEDURE.

The two (2) appeal procedure recommended by NPS are an appeal to the SLO and then to the board for resolution (see IDAPA 26.01.01, Section 250, "Rules of Administrative Procedure of the Idaho Park and Recreation Board"). ()

711. -- 724. (RESERVED)

725. AVAILABILITY TO USERS.

01. Nondiscrimination. Property must be open to entry and use by all persons regardless of race, color, or national origin. Discrimination is also prohibited on the basis of age, disability, religion or gender. ()

02. Seasons and Hours. Facilities must be kept open for public use at reasonable hours and times of the year based on intended use. ()

726. -- 739. (RESERVED)

740. CIVIL RIGHTS COMPLAINT PROCEDURE.

An opportunity is provided for filing civil rights complaints. A written complaint must be filed with the SLO within one hundred eighty (180) days from the date the alleged discrimination occurred. Within ten (10) working days of IDPR receiving the complaint, the complainant must be notified of action that has been or must be taken to resolve the complaint. An investigation must be conducted by the deputy director or his designee within thirty (30) working days of IDPR's receipt of the complaint. The SLO or SLO's designee must send a written response to the complainant regarding the results of the investigation within thirty (30) working days of the time the investigation began. If dissatisfied with the results of the investigation, the complainant may submit a written request for reconsideration to the SLO within ten (10) days of the receipt of resolution. The complainant may also file a complaint with the Idaho Human Rights Commission and The Office of Equal Opportunity. Addresses are available from IDPR. ()

741. -- 999. (RESERVED)

**IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES
AND IDAHO WATER RESOURCE BOARD**

DOCKET NO. 37-0000-2000F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2021 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 42-238(12), 42-603, 42-1414, 42-1701A(1), 42-1714, 42-1709, 42-1721, 42-1734(19), 42-1761, 42-1762, 42-1765, 42-1805(8), 42-3803, 42-3913, 42-3914, 42-3915, 42-4001, 42-4010, 67-2356, and 67-5206(5), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending fee rule and a statement of any change between the text of the proposed fee rule and the text of the pending fee rule with an explanation of the reasons for the change.

This pending fee rule adopts and re-publishes the following existing rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 37, rules of the Idaho Department of Water Resources (IDWR) and Idaho Water Resource Board (IWRB):

IDAPA 37

- 37.01.01, *Rules of Procedure of the Idaho Department of Water Resources;*
- 37.02.03, *Water Supply Bank Rules;*
- 37.03.01, *Adjudication Rules;*
- 37.03.02, *Beneficial Use Examination Rules;*
- 37.03.03, *Rules and Minimum Standards for the Construction and Use of Injection Wells;*
- 37.03.04, *Drilling for Geothermal Resources Rules;*
- 37.03.05, *Mine Tailings Impoundment Structures Rules;*
- 37.03.06, *Safety of Dams Rules;*
- 37.03.07, *Stream Channel Alteration Rules;*
- 37.03.08, *Water Appropriation Rules;*
- 37.03.09, *Well Construction Standards and Rules;* and
- 37.03.10, *Well Driller Licensing Rules.*

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the Sept. 16, 2020, Idaho Administrative Bulletin, [Vol. 20-9SE, pages 1946-2151](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

IDAPA 37.01.01 establishes the rules of procedure governing contested case proceedings before IDWR and the IWRB. The rule also addresses filing fees associated with such proceedings. This chapter was adopted under the legal authority of Sections 42-1701A(1), 42-1734(19), 42-1805(8), 67-2356 and 67- 5206(5), Idaho Code.

IDAPA 37.02.03 governs IWRB's operation and management of the water supply bank authorized by statute. The purpose of the water supply bank is to encourage the highest beneficial use of water; provide a source of adequate water supplies to benefit new and supplemental water users; and provide a source of funding for improving water user facilities and efficiencies. The rule also establishes lease and rental fees that are used to carry out the program which are credited to IWRB's revolving development and water management accounts. This chapter was adopted under the legal authority of Section 42-1762, Idaho Code.

IDAPA 37.03.01 implements the filing of notices of claims to water rights claimed under state law and the collection of fees for filing notices of claims to water rights acquired under state law in general adjudications. Idaho is currently in the midst of the North Idaho Adjudication (NIA) and IDWR has recently commenced the Palouse Basin Adjudication and anticipates commencing the final phase of the NIA—the Clark Fork-Pend Oreille River Basin adjudication—sometime after 2020. The rule is integral to the processing of these general adjudications. This chapter was adopted under the legal authority of Sections 42-1414, and 42-1805(8), Idaho Code.

IDAPA 37.03.02 governs the examination requirements necessary to consider and determine the extent of application of water to beneficial use accomplished under a water right permit. The rule also establishes that field examinations can be conducted by certified water right examiners appointed by the Director. Finally, the rule governs licensing examination fees which are used to offset costs incurred by IDWR in reviewing and determining the extent of beneficial use. This chapter was adopted under the legal authority of Section 42-1805(8), Idaho Code.

IDAPA 37.03.03 governs injection wells in Idaho. The rule requires all injection wells to be permitted and constructed in accordance with the Well Construction Standards Rules (IDAPA 37.03.09), which protect ground water resources from quality impairment. This rule is also necessary for the IWRB to maintain compliance with federal law, under which authority Idaho regulates the permitting, construction, and operation of certain injection wells within the state. Finally, the rule governs inventory and permit fees which are used to partially fund the operation of the Underground Injection Control program in Idaho. This chapter was adopted under the legal authority of Sections 42-3913, 42-3914, and 42-3915, Idaho Code.

IDAPA 37.03.04 governs the regulation of geothermal resource exploration and development and ensures that such activities occur in the public interest. The rule ensures Idaho’s geothermal policy, “to maximize the benefits to the entire state which may be derived from the utilization of our geothermal resources, while minimizing the detriments and costs of all kinds which could result from their utilization” is met. The rule also requires fees for geothermal exploratory wells, production wells, injection wells, and amendments to permits, as set forth in Sections 42-4003 and 42-4011, Idaho Code.

IDAPA 37.03.05 establishes acceptable construction standards and governs IDWR’s design and technical review of mine tailing and water impoundment structures. The rule also supports the collection of a fee to review plans, drawings, and specifications pertaining to any mine tailings impoundment structure as set forth in Section 42-1713, Idaho Code. This chapter was adopted under the legal authority of Section 42-1714, Idaho Code.

IDAPA 37.03.06 establishes acceptable standards for construction of dams and establishes guidelines for safety evaluation of new or existing dams. The rule applies to all new dams, existing dams to be enlarged, altered or repaired, and maintenance of certain existing dams, as specifically provided in the rule. This chapter also establishes the collection of a fee to review plans, drawings, and specifications pertaining to the construction, enlargement, alteration, or repair of small high-risk, intermediate, or large dams as set forth in Section 42-1713, Idaho Code. This chapter was adopted pursuant to Section 42-1714, Idaho Code.

IDAPA 37.03.07 governs the permitting of stream channel alterations that are of a common type, which do not propose alterations which will be a hazard to the stream channel and its environment. This chapter also establishes the collection of stream channel alteration statutory filing fees as authorized in Section 42-3803, Idaho Code. This chapter was adopted pursuant to Section 42-3803, Idaho Code.

IDAPA 37.03.08 governs appropriations from all sources of unappropriated public water in the state of Idaho under the authority of Chapter 2, Title 42, Idaho Code. Sources of public water include rivers, streams, springs, lakes and groundwater. The rules are also applicable to the reallocation of hydropower water rights (i.e. Swan Falls Trust Water) held in trust by the state of Idaho. The rule also implements the application, re-advertisement, and mailing fees set forth in Sections 42-221F and 42-203(A)3, Idaho Code.

IDAPA 37.03.09 governs IDWR’s statutory responsibility for the statewide administration of the rules governing well construction. These rules establish minimum standards for the construction of all new wells and the modification and decommissioning (abandonment) of existing wells. The intent of the rule is to protect ground water resources of the state against waste and contamination. The rule also implements the drilling permit fees set forth in Section 42-235, Idaho Code. This chapter was adopted pursuant to Section 42-235, Idaho Code.

IDAPA 37.03.10 establishes the requirements and procedures for obtaining and renewing authorization to drill wells in the state of Idaho. The rules also establish the requirements and procedures for obtaining authorization to operate drilling equipment under the supervision of a licensed driller. The licensing rules are applicable to all individuals and companies drilling or contracting to drill wells. The rules also implement the application licensing fees set forth in Section 42-238, Idaho Code.

In summary, the fee categories described in the attached rules include: (1) administrative appeals filing fees; (2) water supply bank lease and rental fees; (3) adjudication application fees; (4) water right licensing examination fees; (5) injection well inventory and permit fees; (6) geothermal well permit fees; (7) design review fees for mine tailings impoundment structure and select dams; (8) stream channel alteration statutory filing fees; (9) water right application, re-advertisement, and mailing fees; (10) well drilling permit fees; and (11) application licensing fees for well drillers.

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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Mathew Weaver, Deputy Director at (208) 287-4800.

Dated this 18th day of November, 2020.

Gary Spackman, Director
Idaho Department of Water Resources
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THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 42-238(12), 42-603, 42-1414, 42-1701A(1), 42-1714, 42-1709, 42-1721, 42-1734(19), 42-1761, 42-1762, 42-1765, 42-1414, 42-1805(8), 42-3803, 42-3913, 42-3914, 42-3915, 42-4001, 42-4010, 67-2356, and 67-5206(5), Idaho Code.

PUBLIC HEARING SCHEDULE: Opportunity for presentation of oral comments concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: This proposed rulemaking re-publishes the following existing temporary rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 37, rules of the Idaho Department of Water Resources (IDWR) and Idaho Water Resource Board (IWRB):

IDAPA 37

- 37.01.01, *Rules of Procedure of the Idaho Department of Water Resources;*
- 37.02.03, *Water Supply Bank Rules;*
- 37.03.01, *Adjudication Rules;*

- 37.03.02, *Beneficial Use Examination Rules*;
- 37.03.03, *Rules and Minimum Standards for the Construction and Use of Injection Wells*;
- 37.03.04, *Drilling for Geothermal Resources Rules*;
- 37.03.05, *Mine Tailings Impoundment Structures Rules*;
- 37.03.06, *Safety of Dams Rules*;
- 37.03.07, *Stream Channel Alteration Rules*;
- 37.03.08, *Water Appropriation Rules*;
- 37.03.09, *Well Construction Standards and Rules*; and
- 37.03.10, *Well Driller Licensing Rules*.

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules.

IDAPA 37.01.01 establishes the rules of procedure governing contested case proceedings before IDWR and the IWRB. The rule also addresses filing fees associated with such proceedings. This chapter was adopted under the legal authority of Sections 42-1701A(1), 42-1734(19), 42-1805(8), 67-2356 and 67- 5206(5), Idaho Code.

IDAPA 37.02.03 governs IWRB’s operation and management of the water supply bank authorized by statute. The purpose of the water supply bank is to encourage the highest beneficial use of water; provide a source of adequate water supplies to benefit new and supplemental water users; and provide a source of funding for improving water user facilities and efficiencies. The rule also establishes lease and rental fees that are used to carry out the program which are credited to IWRB’s revolving development and water management accounts. This chapter was adopted under the legal authority of Section 42-1762, Idaho Code.

IDAPA 37.03.01 implements the filing of notices of claims to water rights claimed under state law and the collection of fees for filing notices of claims to water rights acquired under state law in general adjudications. Idaho is currently in the midst of the North Idaho Adjudication (NIA) and IDWR has recently commenced the Palouse Basin Adjudication and anticipates commencing the final phase of the NIA—the Clark Fork-Pend Oreille River Basin adjudication—sometime after 2020. The rule is integral to the processing of these general adjudications. This chapter was adopted under the legal authority of Sections 42-1414, and 42-1805(8), Idaho Code.

IDAPA 37.03.02 governs the examination requirements necessary to consider and determine the extent of application of water to beneficial use accomplished under a water right permit. The rule also establishes that field examinations can be conducted by certified water right examiners appointed by the Director. Finally, the rule governs licensing examination fees which are used to offset costs incurred by IDWR in reviewing and determining the extent of beneficial use. This chapter was adopted under the legal authority of Section 42-1805(8), Idaho Code.

IDAPA 37.03.03 governs injection wells in Idaho. The rule requires all injection wells to be permitted and constructed in accordance with the Well Construction Standards Rules (IDAPA 37.03.09), which protect ground water resources from quality impairment. This rule is also necessary for the IWRB to maintain compliance with federal law, under which authority Idaho regulates the permitting, construction, and operation of certain injection wells within the state. Finally, the rule governs inventory and permit fees which are used to partially fund the operation of the Underground Injection Control program in Idaho. This chapter was adopted under the legal authority of Sections 42-3913, 42-3914, and 42-3915, Idaho Code.

IDAPA 37.03.04 governs the regulation of geothermal resource exploration and development and ensures that such activities occur in the public interest. The rule ensures Idaho’s geothermal policy, “to maximize the benefits to the entire state which may be derived from the utilization of our geothermal resources, while minimizing the detriments and costs of all kinds which could result from their utilization” is met. The rule also requires fees for geothermal exploratory wells, production wells, injection wells, and amendments to permits, as set forth in Sections 42-4003 and 42-4011, Idaho Code.

IDAPA 37.03.05 establishes acceptable construction standards and governs IDWR’s design and technical review of mine tailing and water impoundment structures. The rule also supports the collection of a fee to review plans, drawings, and specifications pertaining to any mine tailings impoundment structure as set forth in Section 42-1713, Idaho Code. This chapter was adopted under the legal authority of Section 42-1714, Idaho Code.

IDAPA 37.03.06 establishes acceptable standards for construction of dams and establishes guidelines for safety evaluation of new or existing dams. The rule applies to all new dams, existing dams to be enlarged, altered or repaired, and maintenance of certain existing dams, as specifically provided in the rule. This chapter also establishes the collection of a fee to review plans, drawings, and specifications pertaining to the construction, enlargement, alteration, or repair of small high-risk, intermediate, or large dams as set forth in Section 42-1713, Idaho Code. This chapter was adopted pursuant to Section 42-1714, Idaho Code.

IDAPA 37.03.07 governs the permitting of stream channel alterations that are of a common type, which do not propose alterations which will be a hazard to the stream channel and its environment. This chapter also establishes the collection of stream channel alteration statutory filing fees as authorized in Section 42-3803, Idaho Code. This chapter was adopted pursuant to Section 42-3803, Idaho Code.

IDAPA 37.03.08 governs appropriations from all sources of unappropriated public water in the state of Idaho under the authority of Chapter 2, Title 42, Idaho Code. Sources of public water include rivers, streams, springs, lakes and groundwater. The rules are also applicable to the reallocation of hydropower water rights (i.e. Swan Falls Trust Water) held in trust by the state of Idaho. The rule also implements the application, re-advertisement, and mailing fees set forth in Sections 42-221F and 42-203(A)3, Idaho Code.

IDAPA 37.03.09 governs IDWR's statutory responsibility for the statewide administration of the rules governing well construction. These rules establish minimum standards for the construction of all new wells and the modification and decommissioning (abandonment) of existing wells. The intent of the rule is to protect ground water resources of the state against waste and contamination. The rule also implements the drilling permit fees set forth in Section 42-235, Idaho Code. This chapter was adopted pursuant to Section 42-235, Idaho Code.

IDAPA 37.03.10 establishes the requirements and procedures for obtaining and renewing authorization to drill wells in the state of Idaho. The rules also establish the requirements and procedures for obtaining authorization to operate drilling equipment under the supervision of a licensed driller. The licensing rules are applicable to all individuals and companies drilling or contracting to drill wells. The rules also implement the application licensing fees set forth in Section 42-238, Idaho Code.

In summary, the fee categories described in the attached rules include: (1) administrative appeals filing fees; (2) water supply bank lease and rental fees; (3) adjudication application fees; (4) water right licensing examination fees; (5) injection well inventory and permit fees; (6) geothermal well permit fees; (7) design review fees for mine tailings impoundment structure and select dams; (8) stream channel alteration statutory filing fees; (9) water right application, re-advertisement, and mailing fees; (10) well drilling permit fees; and (11) application licensing fees for well drillers.

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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mathew Weaver, Deputy Director at (208) 287-4800.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of August, 2020.

THE FOLLOWING IS THE TEXT OF OMNIBUS FEE DOCKET NO. 37-0000-2000F

IDAPA 37 – DEPARTMENT OF WATER RESOURCES

37.01.01 – RULES OF PROCEDURE OF THE IDAHO DEPARTMENT OF WATER RESOURCES

SUBCHAPTER A – GENERAL PROVISIONS (Rules 0 through 99)

000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted under the legal authority of Sections 42-1701A(1), 42-1734(19), 42-1805(8), 67-2356 and 67-5206(5), Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

01. **Title.** The title of this chapter is “Rules of Procedure of the Idaho Department of Water Resources.” ()

02. **Scope.** This chapter contains the rules of procedure that govern contested case proceedings before the Department of Water Resources and the Water Resource Board of the state of Idaho. ()

002. -- 004. (RESERVED)

005. DEFINITIONS (RULE 5).

As used in this chapter: ()

01. **Administrative Code.** The Idaho administrative code established in Chapter 52, Title 67, Idaho Code. ()

02. **Agency.** The Department of Water Resources or the Water Resource Board acting within their respective authority to make rules or to determine contested cases. ()

03. **Agency Action.** Agency action means: ()

a. The whole or part of a rule or order; ()

b. The failure to issue a rule or order; or ()

c. An agency’s performance of, or failure to perform, any duty placed on it by law. ()

04. **Agency Head.** An individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. ()

05. **Board.** The Idaho Water Resource Board. ()

06. **Bulletin.** The Idaho administrative bulletin established in Chapter 52, Title 67, Idaho Code. ()

07. **Contested Case.** A proceeding which results in the issuance of an order. ()

08. **Coordinator.** The Administrative Rules Coordinator Prescribed in Section 67-5202, Idaho Code. ()

09. **Department.** The Idaho Department of Water Resources. ()

10. **Director.** The agency head of the Idaho Department of Water Resources. ()

11. **Document.** Any proclamation, executive order, notice, rule or statement of policy of an agency. ()

12. **Electronically Signed Communication.** A message that has been processed by a computer in such a manner that ties the message to the individual that signed the message in accordance with Rules 306 through 311 of these rules. ()

13. License. The whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes. ()

14. Official Text. The text of a document issued, prescribed, or promulgated by an agency in accordance with this chapter, and is the only legally enforceable text of such document. ()

15. Order. An agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. ()

16. Party. Each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. ()

17. Person. Any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character. For purposes of electronic signature rules, a human being or any organization capable of signing a document, either legally or as a matter of fact. ()

18. Provision of Law. The whole or a part of the state or federal constitution, or of any state or federal: ()

a. Statute; or ()

b. Rule or decision of the court. ()

19. Publish. To bring before the public by publication in the bulletin or administrative code, or as otherwise specifically provided by law. ()

20. Rule. The whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of Chapter 52, Title 67, Idaho Code, and that implements, interprets, or prescribes: ()

a. Law or policy, or ()

b. The procedure or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule, but does not include: ()

i. Statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; ()

ii. Declaratory rulings issued pursuant to Section 67-5232, Idaho Code; ()

iii. Intra-agency memoranda; or ()

iv. Any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule. ()

21. Rulemaking. The process for formulation, adoption, amendment or repeal of a rule. ()

22. Signer. A person who signs a communication, including an electronically signed communication with the use of an acceptable technology to uniquely link the message with the person sending it. ()

006. (RESERVED)

007. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS (RULE 7).

01. State Office. The mailing address of the state office of the Idaho Department of Water Resources and the office of the Idaho Water Resource Board is P.O. Box 83720, Boise, Idaho 83720-0098; the street address,

subject to change, is 322 East Front Street, 6th Floor, Boise, Idaho 83702; the telephone number is (208) 287-4800; and the Facsimile Machine number is (208) 287-6700. Documents may be filed at the state office during regular business hours of 8:00 am to 5:00 pm Monday through Friday. ()

008. FILING OF DOCUMENTS -- NUMBER OF COPIES (RULE 8).

In all rulemakings or contested cases, an original of all documents shall be filed with the Director of the Department of Water Resources or the Chairman of the Idaho Water Resource Board, as the case may be, showing service upon all other parties. No copies in addition to the original document need be filed with the agency unless requested by the agency. ()

009. -- 049. (RESERVED)

050. PROCEEDINGS GOVERNED (RULE 50).

Rules 100 through 799 govern procedure before the Department and the Board in contested cases, unless otherwise provided by rule, notice or order of the agency. The Department and the Board through the promulgation of these rules decline in whole to adopt the contested case portion of the "Idaho Rules of Administrative Procedure of the Attorney General," cited as IDAPA 04.11.01.100 through 04.11.01.799. Rulemaking before the Department and the Board shall be governed by Rules 800 through 860 of the "Idaho Rules of Administrative Procedure of the Attorney General," cited as IDAPA 04.11.01.800 through 04.11.01.860. ()

051. REFERENCE TO AGENCY (RULE 51).

Reference to the agency in these rules includes the agency director, the board, hearing officer appointed by the agency or the board, or presiding officer, as context requires. Reference to the agency head means the agency director or the board, as context requires, or such other officer designated by the agency head or the board to review recommended or preliminary orders. ()

052. LIBERAL CONSTRUCTION (RULE 52).

The rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. Unless prohibited by statute, the agency may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest. Unless required by statute, or otherwise provided by these rules, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested case proceedings conducted before the agency. ()

053. COMMUNICATIONS WITH AGENCY (RULE 53).

All written communications and documents that are intended to be part of an official record for a decision in a contested case must be filed with the officer designated by the agency. Unless otherwise provided by statute, rule, order or notice, documents are considered filed when received by the officer designated to receive them, not when mailed, or otherwise transmitted. ()

054. IDENTIFICATION OF COMMUNICATIONS (RULE 54).

Parties' communications addressing or pertaining to a given proceeding should be written under that proceeding's case caption and case number, if applicable. General communications by other persons should refer to case captions, case numbers, permit or license numbers, or the like, if this information is known. ()

055. SERVICE BY AGENCY (RULE 55).

Unless otherwise provided by statute or these rules, the officer designated by the agency to serve rules, notices, complaints, and orders issued by the agency may serve these documents by regular mail or by certified mail, return receipt requested, to a party's last known mailing address or by personal service. Unless otherwise provided by statute, these rules, order or notice, service of orders and notices is complete when a copy, properly addressed and stamped, is deposited in the United States mail, or the Statehouse mail if the party is a state employee or state agency. The officer designated by the agency to serve documents in a proceeding must serve all orders and notices in a proceeding on the representatives of each party designated pursuant to these rules for that proceeding and upon other persons designated by these rules or by the agency. ()

056. COMPUTATION OF TIME (RULE 56).

Whenever statute, these or other rules, order, or notice requires an act to be done within a certain number of days of a given day, the given day is not included in the count, but the last day of the period so computed is included in the

count. If the day the act must be done is Saturday, Sunday or a legal holiday, the act may be done on the first day following that is not Saturday, Sunday or a legal holiday. ()

057. ADDITIONAL TIME AFTER SERVICE BY MAIL (RULE 57).

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three (3) days shall be added to the prescribed period. This rule, however, shall not extend the time for filing a protest, a petition for reconsideration of a preliminary, recommended or final order before the agency, the time for filing exceptions with the agency head to a preliminary or recommended order, or the time for filing an appeal with the district court from a final decision of the agency. ()

058. FEES AND REMITTANCES (RULE 58).

If submitted by mail, fees and remittances to the agency may be paid by money order, bank draft or check payable to agency. Remittances in currency or coin, submitted by mail, are strongly discouraged and are wholly at the risk of the remitter, and the agency assumes no responsibility for their loss. The agency may, upon the completion of necessary arrangements by the agency, accept the payment of fees and remittances by credit card. Filings required to be accompanied by a fee are not complete until the fee is paid. ()

059. -- 099. (RESERVED)

100. INFORMAL PROCEEDINGS DEFINED (RULE 100).

Informal proceedings are proceedings in contested cases authorized by statute, rule or order of the agency to be conducted using informal procedures, i.e., procedures without a record to be preserved for later agency or judicial review, without the necessity of representation according to Rule 230, without formal designation of parties, without the necessity of hearing examiners or other presiding officers, or without other formal procedures required by these rules for formal proceedings. Unless prohibited by statute, an agency may provide that informal proceedings may precede formal proceedings in the consideration of a rulemaking or a contested case. ()

101. INFORMAL PROCEDURE (RULE 101).

Statute authorizes and these rules encourage the use informal proceedings to settle or determine contested cases. Unless prohibited by statute, the agency may provide for the use of informal procedure at any stage of a contested case. Informal procedure may include individual contacts, consistent with Rule 417, by or with the agency staff asking for information, advice or assistance from the agency staff, or proposing informal resolution of formal disputes under the law administered by the agency. Informal procedures may be conducted in writing, by telephone or television, or in person. ()

102. FURTHER PROCEEDINGS (RULE 102).

If statute provides that informal procedures shall be followed with no opportunity for further formal administrative review, then no opportunity for later formal administrative proceedings must be offered following informal proceedings. Otherwise, except as provided in Rule 103, any person participating in an informal proceeding must be given an opportunity for a later formal administrative proceeding before the agency, at which time the parties may fully develop the record before the agency. ()

103. INFORMAL PROCEEDINGS DO NOT EXHAUST ADMINISTRATIVE REMEDIES (RULE 103).

Unless all parties agree to the contrary in writing, informal proceedings do not substitute for formal proceedings and do not exhaust administrative remedies, and informal proceedings are conducted without prejudice to the right of the parties to present the matter formally to the agency. Settlement offers made in the course of informal proceedings are confidential and shall not be included in the agency record of a subsequent formal proceeding. ()

104. FORMAL PROCEEDINGS (RULE 104).

Formal proceedings, which are governed by rules of procedure other than Rules 100 through 103, must be initiated by a document (generally a notice, order or complaint if initiated by the agency) or another pleading listed in Rules 210 through 280 if initiated by another person. Formal proceedings may be initiated by a document from the agency informing the party(ies) that the agency has reached an informal determination that will become final in the absence of further action by the person to whom the correspondence is addressed, provided that the document complies with the requirements of Rules 210 through 280. Formal proceedings can be initiated by the same document that initiates informal proceedings. ()

105. -- 149. (RESERVED)

150. PARTIES TO CONTESTED CASES LISTED (RULE 150).

Parties to contested cases before the agency are called applicants or claimants or appellants, petitioners, complainants, respondents, protestants, or intervenors. On reconsideration or appeal within the agency parties are called by their original titles listed in the previous sentence. ()

151. APPLICANTS/CLAIMANTS/APPELLANTS (RULE 151).

Persons who seek any right, license, award or authority from the agency are called “applicants” or “claimants” or “appellants.” ()

152. PETITIONERS (RULE 152).

Persons not applicants who seek to modify, amend or stay existing orders or rules of the agency, to clarify their rights or obligations under law administered by the agency, to ask the agency to initiate a contested case (other than an application or complaint), or to otherwise take action that will result in the issuance of an order or rule, are called “petitioners.” ()

153. COMPLAINANTS (RULE 153).

Persons who charge other person(s) with any act or omission are called “complainants.” In any proceeding in which the agency itself charges a person with an act or omission, the agency is called “complainant.” ()

154. RESPONDENTS (RULE 154).

Persons against whom complaints are filed or about whom investigations are initiated are called “respondents.” ()

155. PROTESTANTS (RULE 155).

Persons who oppose an application or claim or appeal and who have a statutory right to contest the right, license, award or authority sought by an applicant or claimant or appellant are called “protestants.” ()

156. INTERVENORS (RULE 156).

Persons, not applicants or claimants or appellants, complainants, respondents, or protestants to a proceeding, who are permitted to participate as parties pursuant to Rules 350 through 354 are called “intervenors.” ()

157. RIGHTS OF PARTIES AND OF AGENCY STAFF (RULE 157).

Subject to Rules 558, 560, and 600, all parties and agency staff may appear at hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in hearings or arguments. ()

158. PERSONS NOT PARTIES -- INTERESTED PERSONS (RULE 158).

Persons other than the persons named in Rules 151 through 156 are not parties for the purpose of any statute or rule addressing rights or obligations of parties to a contested case. Persons not parties who have an interest in a proceeding are called “interested persons.” Interested persons may participate in a proceeding as “public witnesses” in accordance with Rule 355. ()

159. -- 199. (RESERVED)

200. INITIAL PLEADING BY PARTY -- LISTING OF REPRESENTATIVES (RULE 200).

The initial pleading of each party at the formal stage of a contested case (be it an application or claim or appeal, petition, complaint, protest, motion, or answer) must name the party’s representative(s) for service and state the representative’s(s’) address(es) for purposes of receipt of all official documents. No more than two (2) representatives for service of documents may be listed in an initial pleading. Service of documents on the named representative(s) is valid service upon the party for all purposes in that proceeding. If no person is explicitly named as the party’s representative, the person signing the pleading will be considered the party’s representative. If an initial pleading is signed by more than one (1) person without identifying the representative(s) for service of documents, the presiding officer may select the person(s) upon whom documents are to be served. If two (2) or more parties or persons file identical or substantially like initial pleadings, the presiding officer may limit the number of parties or persons

required to be served with official documents in order to expedite the proceeding and reasonably manage the burden of service upon the parties and the agency. ()

201. TAKING OF APPEARANCES -- PARTICIPATION BY AGENCY STAFF (RULE 201).

The presiding officer at a formal hearing or prehearing conference will take appearances to identify the representatives of all parties or other persons. In all proceedings in which the agency staff will participate, or any report or recommendation of the agency staff (other than a recommended order or preliminary order prepared by a hearing officer) will be considered or used in reaching a decision, at the timely request of any party the agency staff must appear at any hearing and be made available for cross-examination and otherwise participate in the hearing, at the discretion of the presiding officer, in the same manner as a party. ()

202. REPRESENTATION OF PARTIES AT HEARING (RULE 202).

01. Appearances and Representation. To the extent authorized or required by law, appearances and representation of parties or other persons at formal hearing or prehearing conference must be as follows: ()

a. Natural Person. A natural person may represent himself or herself or be represented by a duly authorized employee, attorney, or family member, or by a next friend if the person lacks full legal capacity to act for himself or herself. ()

b. A partnership may be represented by a partner, duly authorized employee, or attorney. ()

c. A corporation may be represented by an officer, duly authorized employee, or attorney. ()

d. A municipal corporation, local government agency, unincorporated association or nonprofit organization may be represented by an officer, duly authorized employee, or attorney. ()

e. A state, federal or tribal governmental entity or agency may be represented by an officer, duly authorized employee, or attorney. ()

02. Representatives. The representatives of parties at hearing, and no other persons or parties appearing before the agency, are entitled to examine witnesses and make or argue motions. ()

203. SERVICE ON REPRESENTATIVES OF PARTIES AND OTHER PERSONS (RULE 203).

From the time a party files its initial pleading in a contested case, that party must serve and all other parties must serve all future documents intended to be part of the agency record upon all other parties' representatives designated pursuant to Rule 200, unless otherwise directed by order or notice or by the presiding officer on the record. The presiding officer may order parties to serve past documents filed in the case upon those representatives. The presiding officer may order parties to serve past or future documents filed in the case upon persons not parties to the proceedings before the agency. ()

204. WITHDRAWAL OF PARTIES (RULE 204).

Any party may withdraw from a proceeding in writing or at hearing. ()

205. SUBSTITUTION OF REPRESENTATIVE -- WITHDRAWAL OF REPRESENTATIVE (RULE 205).

A party's representative may be changed and a new representative may be substituted by notice to the agency and to all other parties so long as the proceedings are not unreasonably delayed. The presiding officer at hearing may permit substitution of representatives at hearing in the presiding officer's discretion. Persons representing a party who wish to withdraw their representation of a party in a proceeding before the agency must immediately file in writing a notice of withdrawal of representation and serve that notice on the party represented and all other parties. ()

206. CONDUCT REQUIRED (RULE 206).

Representatives of parties and parties appearing in a proceeding must conduct themselves in an ethical and courteous manner. Smoking is not permitted at hearings. ()

207. -- 209. (RESERVED)

210. PLEADINGS LISTED -- MISCELLANEOUS (RULE 210).

Pleadings in contested cases are called applications or claims or appeals, petitions, complaints, protests, motions, answers, and consent agreements. Affidavits or declarations under penalty of perjury may be filed in support of any pleading. A party's initial pleading in any proceeding must comply with Rule 200, but the presiding officer may allow documents filed during informal stages of the proceeding to be considered a party's initial pleading without the requirement of resubmission to comply with this rule. All pleadings filed during the formal stage of a proceeding must be filed in accordance with Rules 300 through 303. A party may adopt or join any other party's pleading. Two (2) or more separately stated grounds, claims or answers concerning the same subject matter may be included in one (1) pleading. ()

211. -- 219. (RESERVED)

220. APPLICATIONS/CLAIMS/APPEALS -- DEFINED -- FORM AND CONTENTS (RULE 220).

All pleadings requesting a right, license, award or authority from the agency are called "applications" or "claims" or "appeals." All pleadings must be submitted on Department approved forms if available. Applications or claims or appeals not submitted on Department approved forms should: ()

01. Facts. Fully state the facts upon which they are based. ()

02. Refer to Provisions. Refer to the particular provisions of statute, rule, order, or other controlling law upon which they are based. ()

03. Other. State the right, license, award, or authority sought. ()

221. -- 229. (RESERVED)

230. PETITIONS -- DEFINED -- FORM AND CONTENTS (RULE 230).

01. Pleadings Defined. All pleadings requesting the following are called "petitions:" ()

a. Modification, amendment or stay of existing orders or rules; ()

b. Clarification, declaration or construction of the law administered by the agency or of a party's rights or obligations under law administered by the agency; ()

c. The initiation of a contested case not an application, claim or complaint or otherwise taking action that will lead to the issuance of an order or a rule; ()

d. Rehearing; or ()

e. Intervention. ()

02. Petitions. Petitions should: ()

a. Fully state the facts upon which they are based; ()

b. Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; ()

c. State the relief desired; and ()

d. State the name of the person petitioned against (the respondent), if any. ()

231. -- 239. (RESERVED)

240. COMPLAINTS -- DEFINED -- FORM AND CONTENTS (RULE 240).

01. Complaints - Defined. All pleadings charging other person(s) with acts or omissions under law administered by the agency are called “complaints.” ()

02. Form and Contents. Complaints must: ()

a. Be in writing; ()

b. Fully state the acts or things done or omitted to be done by the persons complained against by reciting the facts constituting the acts or omissions and the dates when they occurred; ()

c. Refer to statutes, rules, orders or other controlling law involved; ()

d. State the relief desired; ()

e. State the name of the person complained against (the respondent). ()

241. -- 249. (RESERVED)

250. PROTESTS -- DEFINED -- FORM AND CONTENTS (RULE 250).

01. Protests - Defined. All pleadings opposing an application or claim or appeal as a matter of right are called “protests.” ()

02. Form and Contents. Protests should: ()

a. Fully state the facts upon which they are based, including the protestant’s claim of right to oppose the application or claim; ()

b. Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; and ()

c. State any proposed limitation (or the denial) of any right, license, award or authority sought in the application. ()

251. -- 259. (RESERVED)

260. MOTIONS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING (RULE 260).

01. Motions - Defined. All other pleadings requesting the agency to take any other action in a contested case, except consent agreements or pleadings specifically answering other pleadings, are called “motions.” ()

02. Form and Contents. Motions should: ()

a. Fully state the facts upon which they are based; ()

b. Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which they are based; and ()

c. State the relief sought. ()

03. Other. If the moving party desires oral argument or hearing on the motion, it must state so in the motion. Any motion to dismiss, strike or limit an application or claim or appeal, complaint, petition, or protest must be filed before the answer is due or be included in the answer, if the movant is obligated to file an answer. If a motion is directed to an answer, it must be filed within fourteen (14) days after service of the answer. Other motions may be filed at any time upon compliance with Rule 565. ()

261. -- 269. (RESERVED)

270. ANSWERS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING (RULE 270).

All pleadings responding to the allegations or requests of applications or claims or appeals, complaints, petitions, or motions are called “answers.” ()

01. Answers to Pleadings Other than Motions. Answers to applications, claims, appeals, complaints, or petitions when required to be filed by provision of statute, rule, or order must be filed and served on all parties of record within twenty-one (21) days after service of the pleading being answered, unless order or notice modifies the time within which answer may be made, or a motion to dismiss is made within twenty-one (21) days. When an answer is not timely filed under this rule, the presiding officer may issue a notice of default against the respondent pursuant to Rule 700. Answers to applications or claims, complaints, or petitions, must admit or deny each material allegation of the applications or claims, complaint, or petition. Any material allegation not specifically admitted shall be considered to be denied. Matters alleged by cross-complaint or affirmative defense must be separately stated and numbered. This rule does not prevent a party from filing a responsive pleading in instances not required under these rules. ()

02. Answers to Motions. Answers to motions may be filed by persons or parties who are the object of a motion or by parties opposing a motion within fourteen (14) days of the filing of the motion. The time to file an answer to a motion may be enlarged or shortened by the presiding officer upon a showing of good cause by a party. The presiding officer may act upon a prehearing motion under Rule 565. ()

271. -- 279. (RESERVED)

280. CONSENT AGREEMENTS -- DEFINED -- FORM AND CONTENTS (RULE 280).

Agreements between the agency or agency staff and another person(s) in which one (1) or more person(s) agree to engage in certain conduct mandated by statute, rule, order, case decision, or other provision of law, or to refrain from engaging in certain conduct prohibited by statute, rule, order, case decision, or other provision of law, are called “consent agreements.” Consent agreements are intended to require compliance with existing law. ()

01. Requirements. Consent agreements must: ()

a. Recite the parties to the agreement; and ()

b. Fully state the conduct proscribed or prescribed by the consent agreement. ()

02. Additional. In addition, consent agreements may: ()

a. Recite the consequences of failure to abide by the consent agreement; ()

b. Provide for payment of civil or administrative penalties authorized by law; ()

c. Provide for loss of rights, licenses, awards or authority; ()

d. Provide for other consequences as agreed to by the parties; and ()

e. Provide that the parties waive all further procedural rights (including hearing, consultation with counsel, etc.) with regard to enforcement of the consent agreement. ()

281. -- 299. (RESERVED)

300. FILING DOCUMENTS WITH THE AGENCY -- NUMBER OF COPIES -- FACSIMILE TRANSMISSION (FAX) -- ELECTRONICALLY SIGNED DOCUMENTS (RULE 300).

An original and necessary copies (if any are required by the agency) of all documents intended to be part of an agency record must be filed with the officer designated by the agency to receive filing in the case. Pleadings and other documents not exceeding ten (10) pages in length requiring urgent or immediate action may be filed by facsimile

transmission (FAX). Whenever any document is filed by FAX, the original must be mailed by United States mail or physically delivered to the agency the next working day. A document required to be accompanied by a filing fee shall not be filed with the agency until the fee is received. There shall be no limit as to the number of pages of a facsimile copy which was not transmitted directly to the agency by the facsimile machine process. The Department will accept electronic signatures and electronically signed communications complying with the requirements of Rules 306 through 311 and Sections 67-2351 through 67-2357, Idaho Code, for all communications, filings and transactions with the Department. ()

301. FORM OF PLEADINGS (RULE 301).

01. Pleadings. All pleadings, except those on agency forms, submitted by a party and intended to be part of an agency record should: ()

a. Be submitted on white eight and one-half inch (8 1/2") by eleven inch (11") paper copied on one (1) side only; ()

b. State the case caption, case number, if applicable, and title of the document; ()

c. Include on the upper left corner of the first page the name(s), mailing and street address(es), and telephone and FAX number(s) of the person(s) filing the document or the person(s) to whom questions about the document can be directed; and ()

d. Have at least one inch (1") left and top margins. ()

02. Form. Documents complying with this rule will be in the following form:

Name of Representative
Mailing Address of Representative
Street Address of Representative (if different)
Telephone Number of Representative
FAX Number of Representative (if there is one)
Attorney/Representative for (Name of Party)

BEFORE THE AGENCY
(Title of Proceeding)) CASE NO.
)
) (TITLE OF DOCUMENT)
) ()

302. SERVICE ON PARTIES AND OTHER PERSONS (RULE 302).

All documents intended to be part of the agency record for decision must be served upon the representatives of each party of record concurrently with filing the original with the officer designated by the agency to receive filings in the case. ()

303. PROOF OF SERVICE (RULE 303).

Every document filed with and intended to be part of the agency record must be attached to or accompanied by proof of service by the following or similar certificate:

I HEREBY CERTIFY (swear or affirm) that I have this day of, served the foregoing (name(s) of document(s) upon all parties of record in this proceeding, (by delivering a copy thereof in person: (list names)) (by mailing a copy thereof, properly addressed with postage prepaid, to: (list names)).
(Signature) ()

304. DEFECTIVE, INSUFFICIENT OR LATE PLEADINGS (RULE 304).

Defective, insufficient or late pleadings may be returned or dismissed. ()

305. AMENDMENTS TO PLEADINGS – WITHDRAWAL OF PLEADINGS (RULE 305).

The presiding officer may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and serve all parties with a copy. Unless otherwise ordered by the presiding officer, the notice is effective fourteen (14) days after filing. ()

306. ELECTRONICALLY SIGNED COMMUNICATIONS (RULE 306).

The Department will accept electronic signatures and electronically signed communications complying with the requirements of Rules 306 through 311 and Sections 67-2351 through 67-2357, Idaho Code, for all communications, filings and transactions with the Department. For an electronic signature to be valid for use by the Department, it must be created by a technology that is accepted for use by the Department. ()

307. CRITERIA FOR ACCEPTABLE ELECTRONIC SIGNATURE TECHNOLOGY (RULE 307).

For an electronic signature technology to be accepted for use by the Department, it must comply with the following criteria: ()

01. Statutory Criteria. An acceptable electronic signature technology must be capable of creating signatures that conform to the requirements set forth in Section 67-2354, Idaho Code: ()

a. It is unique to the person using it; ()

b. It is capable of verification; and ()

c. It conforms to the applicable rules promulgated by the Department pursuant to Section 67-2356, Idaho Code. ()

02. Additional Criteria. An electronic signature technology acceptable to the Department also must be capable of creating a signature that satisfies the following additional criteria: ()

a. It is under the sole control of the person using it; ()

b. It is linked to the data in such a manner that if the data are changed, the electronic signature is invalidated; and ()

c. It meets International Standards Organization ISO X.509 standard. ()

308. PUBLIC KEY CRYPTOGRAPHY (RULE 308).

The technology known as Public Key Cryptography is an accepted technology for use by the Department, provided that the electronic signature is created consistent with the provisions in these rules. ()

01. Terminology. For purposes of Rules 306 through 311, and unless the context expressly indicates otherwise, the following terms shall have the meanings here ascribed to them: ()

a. Approved certification authority. The Certification Authority authorized and accepted by the State of Idaho to issue certificates for electronic signature transactions involving the State; ()

b. Asymmetric cryptosystem. A computer algorithm or series of algorithms that utilize(s) two (2) different keys with the following characteristics: ()

i. Identifies the certification authority issuing it; ()

ii. One (1) key verifies a given message; and ()

iii. The keys have the property that, knowing one (1) key, it is computationally infeasible to discover the other key. ()

c. Certificate. A computer-based record that: ()

- i. Identifies the certification authority issuing it; ()
- ii. Names or identifies its subscriber; ()
- iii. Contains the subscriber’s public key; ()
- iv. Is electronically signed by the Certification Authority issuing or amending it; and ()
- v. Conforms to widely-used industry standards. ()
- d.** Certification authority. A person or entity that issues a certificate, or in the case of certain certification processes, certifies amendments to an existing certificate; ()
- e.** Electronic message. An electronic representation of information intended to serve as a written communication with the Department; ()
- f.** Electronically signed communication. A message that has been processed by a computer in such a manner that ties the message to the individual that signed the message; ()
- g.** Key pair. A private key and its corresponding public key in an asymmetric cryptosystem. The keys have the property that the public key can verify an electronic signature that the private key creates; ()
- h.** Private key. The key of a key pair used to create an electronic signature; ()
- i.** Proof of identification. The document or documents presented to a Certification Authority to establish the identity of a subscriber; ()
- j.** Public key. The key of a pair used to verify an electronic signature; ()
- k.** Subscriber. A person who: ()
 - i. Is the subject listed in a certificate; ()
 - ii. Accepts the certificate; and ()
 - iii. Holds a private key which corresponds to a public key listed in that certificate. ()
- l.** Technology. The computer hardware or software-based method or process used to create electronic signatures. ()
- 02. Electronic Signature to Be Unique.** Section 67-2354, Idaho Code, requires that an electronic signature be “unique to the person using it.” A public key-based electronic signature may be considered unique to the person using it if: ()
 - a.** The private key used to create the signature on the document is known only to the signer; ()
 - b.** The electronic signature is created when a person runs a message through a one-way function, creating a message digest, then encrypting the resulting message digest using an asymmetrical cryptosystem and the signer’s private key; ()
 - c.** Although not all electronically signed communications will require the signer to obtain a certificate, the signer is capable of being issued a certificate to certify that he or she controls the key pair used to create the signature; and ()
 - d.** It is computationally infeasible to derive the private key from knowledge of the public key. ()

03. Signature Capable of Verification. Section 67-2354, Idaho Code, requires that an electronic signature be “capable of verification.” A public-key based electronic signature is capable of verification: ()

a. If the acceptor of the electronically signed document can verify the document was electronically signed by using the signer’s public key; ()

b. If a certificate is a required component of a transaction, the certificate was valid; and ()

c. If a certificate is a required component of a transaction, the issuing Certification Authority identifies which, if any, form(s) of proof of identification it required of the signer prior to issuing the certificate. ()

04. Electronic Signature Must Meet ISO X.509 Standards. The electronic signature must meet International Standards Organization ISO X.509 standards. ()

05. Approved Certification Authority. The Department shall only accept certificates from an Approved Certification Authority. ()

309. CRITERIA FOR ACCEPTING AN ELECTRONIC SIGNATURE (RULE 309).
The following criteria shall be used in determining the acceptability of electronic signatures: ()

01. Level of Security Used to Identify the Signer. Prior to accepting an electronic signature, the Department shall ensure that the level of security used to identify the signer of a document is sufficient for the transaction being conducted. ()

02. Level of Security Used to Transmit the Signature. Prior to accepting an electronic signature, the Department shall ensure that the level of security used to transmit the signature is sufficient for the transaction being conducted. ()

03. Certificate Format Used by the Signer. If a certificate is a required component of an electronic signature transaction, the Department shall ensure that the certificate format used by the signer is sufficient for the security and interoperability needs of the Department. ()

310. RETENTION OF CERTIFICATES (RULE 310).
All electronically signed messages received by the Department in accordance with this rule, as well as any information resources necessary to permit access to the message and to verify the electronic signature, shall be retained by the Department as necessary to comply with applicable law pertaining to records retention requirements for that message. ()

311. ELECTRONIC SIGNATURE REPUDIATION (RULE 311).
It is the responsibility of the rightful holder of the private key to maintain the private key’s security. Repudiation of an electronically signed and transmitted message may only occur by the determination of a court of competent jurisdiction that the private key of the rightful holder was compromised through no fault of the rightful holder and without knowledge on the part of the rightful holder. It is the legal prerequisite for a claim of repudiation that the repudiator have filed a notice of revocation with the Certification Authority prior to making the claim of repudiation. ()

312. -- 349. (RESERVED)

350. ORDER GRANTING INTERVENTION NECESSARY (RULE 350).
Persons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party, if a formal hearing is required by statute to be held in the proceeding. ()

351. FORM AND CONTENTS OF PETITIONS TO INTERVENE (RULE 351).
Petitions to intervene must comply with Rules 200, 300, and 301. The petition must set forth the name and address of

the potential intervenor and must state the direct and substantial interest of the potential intervenor in the proceeding. If affirmative relief is sought, the petition must state the relief sought and the basis for granting it. ()

352. TIMELY FILING OF PETITIONS TO INTERVENE (RULE 352).

Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Petitions not timely filed must state a substantial reason for delay. The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenors who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition. ()

353. GRANTING PETITIONS TO INTERVENE (RULE 353).

If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding. ()

354. ORDERS GRANTING INTERVENTION -- OPPOSITION (RULE 354).

No order granting a petition to intervene will be acted upon sooner than seven (7) days after its filing, except in a hearing in which any party may be heard or except where no objection to the intervention is made. Any party opposing a petition to intervene by motion must file the motion within seven (7) days after receipt of the petition to intervene and serve the motion upon all parties of record and upon the person petitioning to intervene. ()

355. PUBLIC WITNESSES (RULE 355).

Persons not parties and not called by a party who testify at hearing are called "public witnesses." Public witnesses do not have parties' rights to examine witnesses or otherwise participate in the proceedings as parties. Public witnesses' written or oral statements and exhibits are subject to examination and objection by parties. Subject to Rules 557 and 559, public witnesses have a right to introduce evidence at hearing by their written or oral statements and exhibits introduced at hearing, except that public witnesses offering expert opinions at hearing or detailed analysis or detailed exhibits must comply with Rule 528 with regard to filing and service of testimony and exhibits to the same extent as expert witnesses of parties. A person intending to present public witness testimony shall provide five (5) days notice prior to the hearing. The notice shall include the name and address of the witness and the general nature or subject matter of the testimony to be given. If the notice is not given, the public testimony will be allowed only at the discretion of the presiding officer upon a finding of good cause. ()

356. -- 399. (RESERVED)

400. FORM AND CONTENTS OF PETITION FOR DECLARATORY RULINGS (RULE 400).

Any person petitioning for a declaratory ruling on the applicability of a statute, rule or order administered by the agency must substantially comply with this rule. ()

01. Form. The petition shall: ()

a. Identify the petitioner and state the petitioner's interest in the matter; ()

b. State the declaratory ruling that the petitioner seeks; and ()

c. Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the petition. ()

02. Legal Assertions. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. ()

401. NOTICE OF PETITION FOR DECLARATORY RULING (RULE 401).

Notice of petition for declaratory ruling may be issued in a manner designed to call its attention to persons likely to be interested in the subject matter of the petition. ()

402. PETITIONS FOR DECLARATORY RULINGS TO BE DECIDED BY ORDER (RULE 402).

01. Final Agency Action. The agency’s decision on a petition for declaratory ruling on the applicability of any statute, rule or order administered by the agency is a final agency action decided by order. ()

02. Content. The order issuing the declaratory ruling shall contain or must be accompanied by a document containing the following paragraphs or substantially similar paragraphs: ()

a. This is a final agency action issuing a declaratory ruling. ()

b. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this declaratory ruling may appeal to district court by filing a petition in the District Court in the county in which: ()

i. A hearing was held; ()

ii. The declaratory ruling was issued; ()

iii. The party appealing resides; or ()

iv. The real property or personal property that was the subject of the declaratory ruling is located. ()

c. This appeal must be filed within twenty-eight (28) days of the service date of this declaratory ruling. See Section 67-5273, Idaho Code. ()

403. -- 409. (RESERVED)

410. APPOINTMENT OF HEARING OFFICERS (RULE 410).

A hearing officer is a person other than the agency head appointed to hear contested cases on behalf of the agency. Unless otherwise provided by statute or rule, hearing officers may be employees of the agency or independent contractors. Hearing officers may be (but need not be) attorneys. Hearing officers who are not attorneys should ordinarily be persons with technical expertise or experience in issues before the agency. The appointment of a hearing officer is a public record available for inspection, examination and copying. ()

411. HEARING OFFICERS CONTRASTED WITH AGENCY HEAD (RULE 411).

Agency heads are not hearing officers, even if they are presiding at contested cases. The term “hearing officer” as used in these rules refers only to officers subordinate to the agency head. ()

412. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES (RULE 412).

Pursuant to Section 67-5252, Idaho Code hearing officers are subject to disqualification for bias, prejudice, interest, substantial prior involvement in the case other than as a presiding officer, status as an employee of the agency, lack of professional knowledge in the subject matter of the contested case, or any other reason provided by law or for any cause for which a judge is or may be disqualified. Any party may promptly petition for the disqualification of a hearing officer after receiving notice that the officer will preside at a contested case or upon discovering facts establishing grounds for disqualification, whichever is later. Any party may assert a blanket disqualification for cause of all employees of the agency hearing the contested case, other than the agency head, without awaiting the designation by a presiding officer. A hearing officer whose disqualification is requested shall determine in writing whether to grant the petition for disqualification, stating facts and reasons for the hearing officer’s determination. Disqualification of agency heads, if allowed, will be pursuant to Sections 74-404 and 67-5252(4), Idaho Code. ()

413. SCOPE OF AUTHORITY OF HEARING OFFICERS (RULE 413).

The scope of hearing officers’ authority may be restricted in the appointment by the agency. ()

01. Scope of Authority. Unless the agency otherwise provides hearing, officers have the standard ()

scope of authority, which is: ()

a. Authority to schedule cases assigned to the hearing officer, including authority to issue notices of default, of prehearing conference and of hearing, or to provide for the use of informal procedure, as appropriate; ()

b. Authority to schedule and compel discovery, when discovery is authorized before the agency, and to require advance filing of expert testimony, when authorized before the agency; ()

c. Authority to preside at and conduct hearings, accept evidence into the record, rule upon objections to evidence, rule on dispositive motions upon completion of the applicant's or petitioner's case in chief, and otherwise oversee the orderly presentations of the parties at hearing; and ()

d. Authority to issue a written decision of the hearing officer, including a narrative of the proceedings before the hearing officer and findings of fact, conclusions of law, and recommended or preliminary orders by the hearing officer, following the submission of evidence through stipulation of the parties, affidavits, exhibits, or hearing testimony. ()

02. Limitation. The hearing officer's scope of authority may be limited from the standard scope, either in general, or for a specific proceeding. For example, the hearing officer's authority could be limited to scope in Rule Subsection 413.01.c. (giving the officer authority only to conduct hearing), with the agency retaining all other authority. Hearing officers can be given authority with regard to the agency's rules as provided in Rule 416. ()

414. PRESIDING OFFICER(S) (RULE 414).

One (1) or more members of the agency board, the agency director, or duly appointed hearing officers may preside at hearing as authorized by statute or rule. When more than one (1) officer sits at hearing, they may all jointly be presiding officers or may designate one (1) of them to be the presiding officer. ()

415. CHALLENGES TO STATUTES (RULE 415).

A hearing officer in a contested case has no authority to declare a statute unconstitutional. However, when a court of competent jurisdiction whose decisions are binding precedent in the state of Idaho has declared a statute unconstitutional, or when a federal authority has preempted a state statute or rule, and the hearing officer finds that the same state statute or rule or a substantively identical state statute or rule that would otherwise apply has been challenged in the proceeding before the hearing officer, then the hearing officer shall apply the precedent of the court or the preemptive action of the federal authority to the proceeding before the hearing officer and decide the proceeding before the hearing officer in accordance with the precedent of the court or the preemptive action of the federal authority. ()

416. REVIEW OF RULES (RULE 416).

When an order is issued by the agency head in a contested case, the order may consider and decide whether a rule of that agency is within the agency's substantive rulemaking authority or whether the rule has been promulgated according to proper procedure. The agency head may delegate to a hearing officer the authority to recommend a decision on issues of whether a rule is within the agency's substantive rulemaking authority or whether the rule has been promulgated according to proper procedure or may retain all such authority itself. ()

417. EX PARTE COMMUNICATIONS (RULE 417).

Unless required for the disposition of a matter specifically authorized by statute to be done ex parte, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the contested case with any party, except upon notice and opportunity for all parties to participate in the communication. The presiding officer may communicate ex parte with a party concerning procedural matters (e.g., scheduling). Ex parte communications from members of the general public not associated with any party are not required to be reported by this rule. A party to a contested agency proceeding shall not communicate directly or indirectly with the presiding officer or the agency head regarding any substantive issue in the contested case. When a presiding officer or the agency head becomes aware of an ex parte communication regarding any substantive issue from a party or representative of a party during a contested case, the presiding officer or agency head shall place a copy or written summary of the communication in the file for the case and order the party providing the communication to serve a copy of the communication or written summary upon all parties of record. Repeated violations of this rule shall be

cause for the presiding officer to dismiss an action or to dismiss a party from an action. Written communications from a party showing service upon all other parties are not ex parte communications. ()

418. -- 499. (RESERVED)

500. ALTERNATIVE RESOLUTION OF CONTESTED CASES (RULE 500).

The Idaho Legislature encourages informal means of alternative dispute resolution (ADR). For contested cases, the means of ADR include, but are not limited to, settlement negotiations, mediation, fact finding, mini-trials, and arbitration, or any combination of them. These alternatives can frequently lead to more creative, efficient and sensible outcomes than may be attained under formal contested case procedures. An agency may use ADR for the resolution of issues in controversy in a contested case if the agency finds that such a proceeding is appropriate. An agency may, for example, find that using ADR is not appropriate if it determines that an authoritative resolution of the matter is needed for precedential value, that formal resolution of the matter is of special importance to avoid variation in individual decisions, that the matter significantly affects persons who are not parties to the proceeding, or that a formal proceeding is in the public interest. ()

501. NEUTRALS (RULE 501).

When ADR is used for all or a portion of a contested case, the agency may provide a neutral to assist the parties in resolving their disputed issues. The neutral may be an employee of the agency or of another state agency or any other individual who is acceptable to the parties to the proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is disclosed in writing to all parties and all parties agree that the neutral may serve. ()

502. CONFIDENTIALITY (RULE 502).

Communications in an ADR proceeding shall not be disclosed by the neutral or by any party to the proceeding unless all parties to the proceeding consent in writing, the communication has already been made public, or is required by court order, statute or agency rule to be made public. ()

503. -- 509. (RESERVED)

510. PURPOSES OF PREHEARING CONFERENCES (RULE 510).

The presiding officer, or an authorized employee of the agency, may by order or notice issued to all parties convene a prehearing conference in a contested case for the purposes of formulating or simplifying the issues, obtaining concessions of fact or identification of documents to avoid unnecessary proof, scheduling discovery (when discovery is allowed), arranging for the exchange of proposed exhibits or prepared testimony, limiting witnesses, discussing settlement offers or making settlement offers, scheduling hearings, establishing procedure at hearings, and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. ()

511. NOTICE OF PREHEARING CONFERENCE (RULE 511).

Notice of the place, date and hour of a prehearing conference will be served at least fourteen (14) days before the time set for the prehearing conference, unless the presiding officer finds it necessary or appropriate for the conference to be held earlier. Notices for prehearing conference must contain the same information as notices of hearing with regard to an agency's obligations under the American with Disabilities Act. ()

512. RECORD OF CONFERENCE (RULE 512).

Prehearing conferences may be held formally (on the record) or informally (off the record) before or in the absence of a presiding officer, according to order or notice. Agreements by the parties to the conference may be put on the record during formal conferences or may be reduced to writing and filed with the agency after formal or informal conferences. ()

513. ORDERS RESULTING FROM PREHEARING CONFERENCE (RULE 513).

The presiding officer, or an authorized employee of the agency, may issue a prehearing order or notice based upon the results of the agreements reached at or rulings made at a prehearing conference. A prehearing order will control the course of subsequent proceedings unless modified by the presiding officer for good cause. ()

514. FACTS DISCLOSED NOT PART OF THE RECORD (RULE 514).

Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in prehearing

conferences in a contested case are not part of the record. ()

515. -- 519. (RESERVED)

520. KINDS AND SCOPE OF DISCOVERY LISTED (RULE 520).

01. Kinds of Discovery. The kinds of discovery recognized and authorized by these rules in contested cases are: ()

- a. Depositions; ()
- b. Production requests or written interrogatories; ()
- c. Requests for admission; ()
- d. Subpoenas; and ()
- e. Statutory inspection, examination (including physical or mental examination), investigation, etc. ()

02. Rules of Civil Procedure. Unless otherwise provided by statute, rule, order or notice, the scope of discovery, other than statutory inspection, examination, investigation, etc., is governed by the Idaho Rules of Civil Procedure (see Idaho Rule of Civil Procedure 26(b)). ()

521. WHEN DISCOVERY AUTHORIZED (RULE 521).

No party before the agency is entitled to engage in discovery unless the party moves for an order authorizing discovery and the agency issues an order authorizing the requested discovery, or upon agreement of all parties to the discovery that discovery may be conducted. The presiding officer shall provide a schedule for discovery in the order authorizing discovery, but the order authorizing and scheduling discovery need not conform to the timetables of the Idaho Rules of Civil Procedure. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery in a manner consistent with the provisions of Rule 37(a) of the Idaho Rules of Civil Procedure. The agency or agency staff may conduct statutory inspection, examination, investigation, etc., at any time without filing a motion to authorize discovery. ()

522. RIGHTS TO DISCOVERY RECIPROCAL (RULE 522).

All parties to a proceeding have a right of discovery of all other parties to a proceeding according to Rule 521 and to the authorizing statutes and rules. The presiding officer may by order authorize or compel necessary discovery authorized by statute or rule. ()

523. DEPOSITIONS (RULE 523).

Depositions may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency. ()

524. PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND REQUESTS FOR ADMISSION (RULE 524).

Production requests or written interrogatories and requests for admission may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency. ()

525. SUBPOENAS (RULE 525).

The agency may issue subpoenas upon a party's motion or upon its own initiative. The agency upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may quash the subpoena, or condition denial of the motion to quash upon reasonable terms. ()

526. STATUTORY INSPECTION, EXAMINATION, INVESTIGATION, ETC. -- CONTRASTED WITH OTHER DISCOVERY (RULE 526).

This rule recognizes, but does not enlarge or restrict, an agency's statutory right of inspection, examination (including

mental or physical examination), investigation, etc. This statutory right of an agency is independent of and cumulative to any right of discovery in formal proceedings and may be exercised by the agency whether or not a person is party to a formal proceeding before the agency. Information obtained from statutory inspection, examination, investigation, etc., may be used in formal proceedings or for any other purpose, except as restricted by statute or rule. The rights of deposition, production request or written interrogatory, request for admission, and subpoena, can be used by parties only in connection with formal proceedings before the agency. ()

527. ANSWERS TO PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND TO REQUESTS FOR ADMISSION (RULE 527).

Answers to production requests or written interrogatories and to requests for admission shall be filed or served as provided by the order compelling discovery. Answers must conform to the requirements of the Idaho Rules of Civil Procedure. The order compelling discovery may provide that voluminous answers to requests need not be served so long as they are made available for inspection and copying under reasonable terms. ()

528. FILING AND SERVICE OF DISCOVERY-RELATED DOCUMENTS (RULE 528).

Notices of deposition, cover letters stating that production requests, written interrogatories or requests for admission have been served, cover letters stating answers to production requests, written interrogatories, or requests for admission have been served or are available for inspection under Rule 527, and objections to discovery must be filed and served as provided in the order authorizing discovery. ()

529. EXHIBIT NUMBERS (RULE 529).

The agency assigns exhibit numbers to each party. ()

530. PREPARED TESTIMONY AND EXHIBITS (RULE 530).

Order, notice or rule may require a party or parties to file before hearing and to serve on all other parties prepared expert testimony and exhibits to be presented at hearing. Assigned exhibits numbers should be used in all prepared testimony. ()

531. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY (RULE 531).

The agency may impose all sanctions recognized by statute or rules for failure to comply with an order compelling discovery, including but not limited to the sanctions listed in paragraphs (A), (B), and (C) of Rule 37(b)(2) of the Idaho Rules of Civil Procedure. ()

532. PROTECTIVE ORDERS (RULE 532).

As authorized by statute or rule, the agency may issue protective orders limiting access to information generated during settlement negotiations, discovery, or hearing. ()

533. -- 549. (RESERVED)

550. NOTICE OF HEARING (RULE 550).

Notice of the place, date and hour of hearing will be served on all parties at least fourteen (14) days before the time set for hearing, unless the agency finds by order that it is necessary or appropriate that the hearing be held earlier. Notices must comply with the requirements of Rule 551. Notices must list the names of the parties (or the lead parties if the parties are too numerous to name), the case number or docket number, the names of the presiding officers who will hear the case, the name, address and telephone number of the person to whom inquires about scheduling, hearing facilities, etc., should be directed, and the names of persons with whom the documents, pleadings, etc., in the case should be filed if the presiding officer is not the person who should receive those documents. If no document previously issued by the agency has listed the legal authority of the agency to conduct the hearing, the notice of hearing must do so. The notice of hearing shall state that the hearing will be conducted under these rules of procedure and inform the parties where they may read or obtain a copy. ()

551. FACILITIES AT OR FOR HEARING AND A.D.A. REQUIREMENTS (RULE 551).

All hearings must be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act, and all notices of hearing must inform the parties that the hearing will be conducted in facilities meeting the accessibility requirements of the Americans with Disabilities Act. All notices of hearing must inform the parties and other persons notified that if they require assistance of the kind that the agency is required to provide under the Americans with Disabilities Act in order to participate in or understand the hearing, the agency will supply that

assistance upon request a reasonable number of days before the hearing. The notice of hearing shall explicitly state the number of days before the hearing that the request must be made. ()

552. HOW HEARINGS HELD (RULE 552).

Hearings may be held in person or by telephone or television or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place. ()

553. CONDUCT AT HEARINGS (RULE 553).

All persons attending a hearing must conduct themselves in a respectful manner. Smoking is not permitted at hearings. The presiding officer may exclude persons from the hearing who refuse to conduct themselves in a respectful manner. Disruptive conduct that is serious in nature shall be cause for dismissal of a disrupting party from the proceeding. ()

554. CONFERENCE AT HEARING (RULE 554).

In any proceeding the presiding officer may convene the parties before hearing or recess the hearing to discuss formulation or simplification of the issues, admissions of fact or identification of documents to avoid unnecessary proof, exchanges of documents, exhibits or prepared testimony, limitation of witnesses, establishment of order of procedure, and other matters that may expedite orderly conduct of the hearing. The presiding officer shall state the results of the conference on the record. ()

555. PRELIMINARY PROCEDURE AT HEARING (RULE 555).

Before taking evidence the presiding officer will call the hearing to order, take appearances of parties, and act upon any pending motions or petitions. The presiding officer may allow opening statements as necessary or appropriate to explain a party's presentation. ()

556. CONSOLIDATION OF PROCEEDINGS (RULE 556).

The agency may consolidate two (2) or more proceedings for hearing upon finding that they present issues that are related and that the rights of the parties will not be prejudiced. In consolidated hearings the presiding officer determines the order of the proceeding. ()

557. STIPULATIONS (RULE 557).

Parties may stipulate among themselves to any fact at issue in a contested case by written statement filed with the presiding officer or presented at hearing or by oral statement at hearing. A stipulation binds all parties agreeing to it only according to its terms. The agency may regard a stipulation as evidence or may require proof by evidence of the facts stipulated. The agency is not bound to adopt a stipulation of the parties, but may do so. If the agency rejects a stipulation, it will do so before issuing a final order, and it will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation. ()

558. ORDER OF PROCEDURE (RULE 558).

The presiding officer may determine the order of presentation of witnesses and examination of witnesses. ()

559. TESTIMONY UNDER OATH (RULE 559).

All testimony presented in formal hearings will be given under oath. Before testifying each witness must swear or affirm that the testimony the witness will give before the agency is the truth, the whole truth, and nothing but the truth. ()

560. PARTIES AND PERSONS WITH SIMILAR INTERESTS (RULE 560).

If two (2) or more parties or persons have substantially like interests or positions, to expedite the proceeding and avoid duplication, the presiding officer may limit the number of them who testify, examine witnesses, or make and argue motions and objections. ()

561. CONTINUANCE OF HEARING (RULE 561).

The presiding officer may continue proceedings for further hearing. ()

562. RULINGS AT HEARINGS (RULE 562).

The presiding officer rules on motions and objections presented at hearing. When the presiding officer is a hearing officer, the presiding officer's rulings may be reviewed by the agency head in determining the matter on its merits and

the presiding officer may refer or defer rulings to the agency head for determination. ()

563. ORAL ARGUMENT (RULE 563).

The presiding officer may set and hear oral argument on any matter in the contested case on reasonable notice according to the circumstances. ()

564. BRIEFS -- MEMORANDA -- PROPOSED ORDERS OF THE PARTIES -- STATEMENTS OF POSITION -- PROPOSED ORDER OF THE PRESIDING OFFICER (RULE 564).

In any contested case, any party may ask to file briefs, memoranda, proposed orders of the parties or statements of position, and the presiding officer may request briefs, proposed orders of the parties, or statements of position. The presiding officer may issue a proposed order and ask the parties for comment upon the proposed order. ()

565. PROCEDURE ON PREHEARING MOTIONS (RULE 565).

The presiding officer may consider and decide prehearing motions with or without oral argument or hearing. Unless otherwise provided by the presiding officer upon a showing of good cause by a party, when a motion has been filed, all parties joining in, answering to or responding to the motion(s) will have fourteen (14) days from the time of filing of the motion in which to respond. ()

566. JOINT HEARINGS (RULE 566).

The agency may hold joint hearings with federal agencies, with agencies of other states, and with other agencies of the state of Idaho. When joint hearings are held, the agencies may agree among themselves which agency's rules of practice and procedure will govern. ()

567. -- 599. (RESERVED)

600. RULES OF EVIDENCE -- EVALUATION OF EVIDENCE (RULE 600).

Evidence should be taken by the agency to assist the parties' development of a record, not excluded to frustrate that development. The presiding officer at hearing is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any order. The presiding officer, with or without objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. The agency's experience, technical competence and specialized knowledge may be used in evaluation of evidence. ()

601. DOCUMENTARY EVIDENCE (RULE 601).

Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original if available. ()

602. OFFICIAL NOTICE -- AGENCY STAFF MEMORANDA (RULE 602).

Official notice may be taken of any facts that could be judicially noticed in the courts of Idaho and of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified of the specific facts or material noticed and the source of the material noticed, including any agency staff memoranda and data. Notice that official notice will be taken should be provided either before or during the hearing, and must be provided before the issuance of any order that is based in whole or in part on facts or material officially noticed. Parties must be given an opportunity to contest and rebut the facts or material officially noticed. When the presiding officer proposes to notice agency staff memoranda or agency staff reports, responsible staff employees or agents shall be made available for cross-examination if any party timely requests their availability. ()

603. DEPOSITIONS (RULE 603).

Depositions may be offered into evidence. ()

604. OBJECTIONS -- OFFERS OF PROOF (RULE 604).

Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. Formal exceptions to rulings admitting or excluding evidence are unnecessary and need not be taken. An offer of proof for the record consists of a statement of the substance of the excluded evidence. When a party objects to the admission of evidence, the presiding officer will rule on the objection, or, if the presiding officer is a hearing

officer, the presiding officer may receive the evidence subject to later ruling by the agency head or refer the matter to the agency head. ()

605. PREPARED TESTIMONY (RULE 605).

The presiding officer may order a witness's prepared testimony previously distributed to all parties to be included in the record of hearing as if read. Admissibility of prepared testimony is subject to Rule 600. ()

606. EXHIBITS (RULE 606).

Exhibit numbers may be assigned to the parties before hearing. Exhibits prepared for hearing should ordinarily be typed or printed on eight and one-half inch (8 1/2") by eleven inch (11") white paper, except that maps, charts, photographs and non-documentary exhibits may be introduced on the size or kind of paper customarily used for them. A copy of each documentary exhibit must be furnished to each party present and to the presiding officer, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Copies must be of good quality. Exhibits identified at hearing are subject to appropriate and timely objection before the close of proceedings. Exhibits to which no objection is made are automatically admitted into evidence without motion of the sponsoring party. Neither motion pictures, slides, opaque projections, videotapes, audiotapes nor other materials not capable of duplication by still photograph or reproduction on paper shall be presented as exhibits without approval of the presiding officer prior to the hearing. ()

607. -- 609. (RESERVED)

610. CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS (RULE 610).

Settlement negotiations in a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in settlement negotiations in a contested case are not part of the record. ()

611. SUGGESTION FOR OR INQUIRY ABOUT SETTLEMENTS (RULE 611).

Through notice or order or on the record at prehearing conference or hearing, the presiding officer may inquire of the parties in any proceeding whether settlement negotiations are in progress or are contemplated or may invite settlement of an entire proceeding or certain issues. ()

612. CONSIDERATION OF SETTLEMENTS (RULE 612).

Settlements must be reviewed under this rule. When a settlement is presented to the presiding officer, the presiding officer will prescribe procedures appropriate to the nature of the settlement to consider the settlement. For example, the presiding officer could summarily accept settlement of essentially private disputes that have no significant implications for administration of the law for persons other than the affected parties. On the other hand, when one (1) or more parties to a proceeding is not party to the settlement or when the settlement presents issues of significant implication for other persons, the presiding officer may convene an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is consistent with the agency's charge under the law. ()

613. BURDENS OF PROOF (RULE 613).

Proponents of a proposed settlement carry the burden of showing that the settlement is in accordance with the law. The presiding officer may require the development of an appropriate record in support of or opposition to a proposed settlement as a condition of accepting or rejecting the settlement. ()

614. SETTLEMENT NOT BINDING (RULE 614).

The presiding officer is not bound by settlement agreements that are not unanimously accepted by all parties or that have significant implications for persons not parties. In these instances, the presiding officer will independently review any proposed settlement to determine whether the settlement is in accordance with the law. ()

615. -- 649. (RESERVED)

650. RECORD FOR DECISION (RULE 650).

01. Official Record. The agency shall maintain an official record for each contested case and (unless statute provides otherwise) base its decision in a contested case on the official record for the case. ()

- 02. Contents of Record.** The record for a contested case shall include: ()
- a.** All notices of proceedings; ()
 - b.** All applications or claims or appeals, petitions, complaints, protests, motions, and answers filed in the proceeding; ()
 - c.** All intermediate or interlocutory rulings of hearing officers or the agency head; ()
 - d.** All evidence received or considered (including all transcripts or recordings of hearings and all exhibits offered or identified at hearing); ()
 - e.** All offers of proof, however made; ()
 - f.** All briefs, memoranda, proposed orders of the parties or of the presiding officers, statements of position, statements of support, and exceptions filed by parties or persons not parties; ()
 - g.** All evidentiary rulings on testimony, exhibits, or offers of proof; ()
 - h.** All staff memoranda or data submitted in connection with the consideration of the proceeding; ()
 - i.** A statement of matters officially noticed; and ()
 - j.** All recommended orders, preliminary orders, final orders, and orders on reconsideration. ()

651. RECORDING OF HEARINGS (RULE 651).

All hearings shall be recorded on audiotape or videotape at the agency's expense. The agency may provide for a transcript of the proceeding at its own expense. Any party may have a transcript prepared at its own expense. If the transcript prepared at the expense of a party is deemed by the presiding officer to be the official transcript of the hearing, the party shall furnish the agency a transcript without charge. ()

652. -- 699. (RESERVED)

700. NOTICE OF PROPOSED DEFAULT AFTER FAILURE TO APPEAR OR RESPOND (RULE 700).

If an applicant or claimant or appellant, petitioner, protestant, complainant, or moving party fails to appear at the time and place set for hearing, or prehearing conference, on an application or claim or appeal, petition, complaint, or motion, or fails to respond to a written information inquiry, the presiding officer may serve upon all parties a notice of a proposed default order denying the application or claim or appeal, petition, complaint, or motion. The notice of a proposed default order shall include a statement that the default order is proposed to be issued because of a failure of the applicant or claimant or appellant, petitioner, complainant or moving party to appear at the time and place set for hearing or prehearing conference, or to respond to the information inquiry. The notice of proposed default order may be mailed to the last known mailing address of the party proposed to be defaulted. ()

701. SEVEN DAYS TO CHALLENGE PROPOSED DEFAULT ORDER (RULE 701).

Within seven (7) days after the service of the notice of proposed default order, the party against whom it was filed may file a written petition requesting that a default order not be entered. The petition must state the grounds why the petitioning party believes that default should not be entered. ()

702. ISSUANCE OF DEFAULT ORDER (RULE 702).

The agency shall promptly issue a default order or withdraw the notice of proposed default order after expiration of the seven (7) days for the party to file a petition contesting the default order or receipt of a petition. If a default order is issued, all further proceedings necessary to complete the contested case shall be conducted without participation of the party in default (if the defaulting party is not a movant) or upon the results of the denial of the motion (if the defaulting party is a movant). All issues in the contested case shall be determined, including those affecting the defaulting party. Costs may be assessed against a defaulting party. ()

703. -- 709. (RESERVED)

710. INTERLOCUTORY ORDERS (RULE 710).

Interlocutory orders are orders that do not decide all previously undecided issues presented in a proceeding, except the agency may by order decide some of the issues presented in a proceeding and provide in that order that its decision on those issues is final and subject to review by reconsideration or appeal, but is not final on other issues. Unless an order contains or is accompanied by a document containing one (1) of the paragraphs set forth in Rules 720, 730 or 740 or a paragraph substantially similar, the order is interlocutory. The following orders are always interlocutory: orders initiating complaints or investigations; orders joining, consolidating or separating issues, proceedings or parties; orders granting or denying intervention; orders scheduling prehearing conferences, discovery, hearing, oral arguments or deadlines for written submissions; and orders compelling or refusing to compel discovery. Interlocutory orders may be reviewed by the officer issuing the order pursuant to Rules 711, 760, and 770. ()

711. REVIEW OF INTERLOCUTORY ORDERS (RULE 711).

Any party or person affected by an interlocutory order may petition the officer issuing the order to review the interlocutory order. The officer issuing an interlocutory order may rescind, alter or amend any interlocutory order on the officer's own motion, but will not on the officer's own motion review any interlocutory order affecting any party's substantive rights without giving all parties notice and an opportunity for written comment. ()

712. CONTENTS OF ORDERS (RULE 712).

Pursuant to Section 67-5248, Idaho Code, an order that determines the legal rights or interests of one (1) or more parties must be in writing and shall include the following: ()

01. Findings of Fact and Conclusions of Law. An order shall contain a reasoned statement in support of the decision. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record supporting the findings. Findings of fact must be based exclusively on the evidence in the record of the contested case and on matters officially noticed in that proceeding. ()

02. Statement of Available Procedure. An order shall contain a statement of the available procedures and applicable time limits for seeking reconsideration or other administrative relief. ()

713. -- 719. (RESERVED)

720. RECOMMENDED ORDERS (RULE 720).

01. Recommended Orders -- Definition. Recommended orders are orders issued by a person other than the agency head that will become a final order of the agency only after review of the agency head (or the agency head's designee) pursuant to Section 67-5244, Idaho Code. ()

02. Contents of Recommended Orders. Every recommended order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: ()

a. This is a recommended order of the hearing officer. It will not become final without action of the agency head. Any party may file a petition for reconsideration of this recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. ()

b. Within fourteen (14) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position with the agency head or designee on any issue in the proceeding. If no party files exceptions to the recommended order with the agency head or designee, the agency head or designee will issue a final order within fifty-six (56) days after: ()

- i. The last day a timely petition for reconsideration could have been filed with the hearing officer; ()
 - ii. The service date of a denial of a petition for reconsideration by the hearing officer; or ()
 - iii. The failure within twenty-one (21) days to grant or deny a petition for reconsideration by the hearing officer. ()
- c. Written briefs in support of or taking exceptions to the recommended order shall be filed with the agency head (or designee of the agency head). Opposing parties shall have fourteen (14) days to respond. The agency head or designee may schedule oral argument in the matter before issuing a final order. The agency head or designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. ()

721. -- 729. (RESERVED)

730. PRELIMINARY ORDERS (RULE 730).

01. Preliminary Orders -- Definition. Preliminary orders are orders issued by a person other than the agency head that will become a final order of the agency unless reviewed by the agency head (or the agency head's designee) pursuant to Section 67-5245, Idaho Code. ()

02. Contents of Preliminary Order. Every preliminary order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: ()

a. This is a preliminary order of the hearing officer. It can and will become final without further action of the agency unless any party petitions for reconsideration before the hearing officer issuing it or appeals to the hearing officer's superiors in the agency. Any party may file a petition for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. ()

b. Within fourteen (14) days after: ()

i. The service date of this preliminary order; ()

ii. The service date of the denial of a petition for reconsideration from this preliminary order; or ()

iii. The failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing appeal or take exceptions to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the agency head (or designee of the agency head). Otherwise, this preliminary order will become a final order of the agency. ()

c. If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal within the agency. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the agency head (or designee). The agency head (or designee) may review the preliminary order on its own motion. ()

d. If the agency head (or designee) grants a petition to review the preliminary order, the agency head (or designee) shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. The agency head (or designee) will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency head (or designee) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. ()

e. Pursuant to Section 42-1701A(3), Idaho Code, unless the right to a hearing before the Department or the Board is otherwise provided by statute, any person aggrieved by any decision, determination, order or action of the director of the Department or any applicant for any permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, who is aggrieved by a denial or conditional approval ordered by the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the denial or conditional approval upon filing with the director, within fifteen (15) days after receipt of the denial or conditional approval, a written petition stating the grounds for contesting the action by the director and requesting a hearing. ()

f. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: ()

i. A hearing was held; ()

ii. The final agency action was taken; ()

iii. The party seeking review of the order resides; or ()

iv. The real property or personal property that was the subject of the agency action is located. ()

g. This appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See Section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. ()

731. -- 739. (RESERVED)

740. FINAL ORDERS (RULE 740).

01. Final Order -- Definition. Final orders are preliminary orders that have become final under Rule 730 pursuant to Section 67-5245, Idaho Code, or orders issued by the agency head pursuant to Section 67-5246, Idaho Code, or emergency orders, including cease and desist or show cause orders, issued by the agency head pursuant to Section 67-5247, Idaho Code. ()

02. Content of Final Order. Every final order issued by the agency head must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: ()

a. This is a final order of the agency. Any party may file a petition for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5246(4), Idaho Code. ()

b. Pursuant to Section 42-1701A(3), Idaho Code, unless the right to a hearing before the Department or the Board is otherwise provided by statute, any person aggrieved by any decision, determination, order or action of the director of the Department or any applicant for any permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, who is aggrieved by a denial or conditional approval ordered by the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the denial or conditional approval upon filing with the director, within fifteen (15) days after receipt of the denial or conditional approval, a written petition stating the grounds for contesting the action by the director and requesting a hearing. ()

c. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: ()

i. A hearing was held; ()

- ii. The final agency action was taken; ()
- iii. The party seeking review of the order resides; or ()
- iv. The real property or personal property that was the subject of the agency action is located. ()

d. An appeal must be filed within twenty-eight (28) days (a) of the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Section 67-5273, Idaho Code, and Rule 84 of the Idaho Rules of Civil Procedure. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. ()

741. -- 749. (RESERVED)

750. ORDER NOT DESIGNATED (RULE 750).

If an order does not designate itself as recommended, preliminary or final at its release, but is designated as recommended, preliminary or final after its release, its effective date for purposes of reconsideration or appeal is the date of the order of designation. If a party believes that an order not designated as a recommended order, preliminary order or final order according to the terms of these rules should be designated as a recommended order, preliminary order or final order, the party may move to designate the order as recommended, preliminary or final, as appropriate. ()

751. -- 759. (RESERVED)

760. MODIFICATION OF ORDER ON PRESIDING OFFICER'S OWN MOTION (RULE 760).

A hearing officer issuing a recommended or preliminary order may modify the recommended or preliminary order on the hearing officer's own motion within fourteen (14) days after issuance of the recommended or preliminary order by withdrawing the recommended or preliminary order and issuing a substitute recommended or preliminary order. The agency head may modify or amend a final order of the agency (be it a preliminary order that became final because no party challenged it or a final order issued by the agency head itself) at any time before notice of appeal to District Court has been filed or the expiration of the time for appeal to District Court, whichever is earlier, by withdrawing the earlier final order and substituting a new final order for it. ()

761. -- 769. (RESERVED)

770. CLARIFICATION OF ORDERS (RULE 770).

Any party or person affected by an order may petition to clarify any order, whether interlocutory, recommended, preliminary or final. Petitions for clarification from final orders do not suspend or toll the time to petition for reconsideration or appeal the order. A petition for clarification may be combined with a petition for reconsideration or stated in the alternative as a petition for clarification and/or reconsideration. ()

771. -- 779. (RESERVED)

780. STAY OF ORDERS (RULE 780).

Any party or person affected by an order may petition the agency to stay any order, whether interlocutory or final. Interlocutory or final orders may be stayed by the judiciary according to statute. The agency may stay any interlocutory or final order on its own motion. ()

781. -- 789. (RESERVED)

790. PERSONS WHO MAY APPEAL (RULE 790).

Pursuant to Section 67-5270, Idaho Code, any party aggrieved by a final order of an agency in a contested case may appeal to district court. Pursuant to Section 67-5271, Idaho Code, a person is not entitled to judicial review of an agency action in district court until that person has exhausted all administrative remedies available with the agency, but a preliminary, procedural, or intermediate agency action or ruling is immediately reviewable in district court if

review of the final agency action would not provide an adequate remedy. ()

791. NOTICE OF APPEAL (RULE 791).

The notice of appeal must be filed with the district court and served on the agency and all parties. ()

01. Filing Appeal. Pursuant to Section 67-5272, Idaho Code, appeals may be filed in the district court of the county in which: ()

a. The hearing was held; ()

b. The final agency action was taken; ()

c. The party seeking review of the agency action resides; or ()

d. The real property or personal property that was the subject of the agency is located. ()

02. Filing Deadline. Pursuant to Section 67-5273, Idaho Code, and Rule 84 of the Idaho Rules of Civil Procedure a petition for judicial review of a final order in a contested case must be filed within twenty-eight (28) days: ()

a. Of the service date of the final order; ()

b. Of the denial of the petition for reconsideration; or ()

c. The failure within twenty-one (21) days to grant or deny the petition for reconsideration. ()

792. -- 999. (RESERVED)

37.02.03 – WATER SUPPLY BANK RULES

000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted under the legal authority of Section 42-1762, Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

01. **Title.** The title of this chapter is IDAPA 37.02.03, “Water Supply Bank Rules.” ()

02. **Scope.** These rules were first adopted by the Water Resource Board in October 1980 as mandated by Section 42-1762, Idaho Code enacted in 1979. The rules govern the Board’s operation and management of a Water Supply Bank provided for in Sections 42-1761 to 42-1766, Idaho Code. The purposes of the Water Supply Bank, as defined by statute, are to encourage the highest beneficial use of water; provide a source of adequate water supplies to benefit new and supplemental water uses; and provide a source of funding for improving water user facilities and efficiencies. These rules are to be used by the Water Resource Board in considering the purchase, sale, lease or rental of natural flow or stored water, the use of any funds generated therefrom, and the appointment of local committees to facilitate the lease and rental of stored water. The purchase, sale, lease or rental of water shall be in compliance with state and federal law. The adoption of these rules is not intended to prevent any person from directly selling or leasing water by transactions outside the purview of the Water Supply Bank Rules where such transactions are otherwise allowed by law. ()

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

01. **Board.** The Idaho Water Resource Board. ()

02. **Board's Water Supply Bank.** The water exchange market operated directly by the Board to facilitate marketing of water rights. ()

03. **Director.** The Director of the Idaho Department of Water Resources. ()

04. **Department.** The Idaho Department of Water Resources. ()

05. **Lease.** To convey by contract a water right to the Board’s water supply bank or stored water to a rental pool operated by a local committee. ()

06. **Local Committee.** The committee which has been designated by action of the Board to facilitate marketing of stored water by operating a rental pool pursuant to Section 42-1765, Idaho Code. ()

07. **Natural Flow.** Water or the right to use water that exists in a spring, stream, river, or aquifer at a certain time and which is not the result of the storage of water flowing at a previous time. ()

08. **Rent.** To convey by contract a water right from the Board’s water supply bank or stored water from a rental pool. ()

09. **Rental Pool.** A market for exchange of stored water operated by a local committee. ()

10. **Stored Water.** Water made available by detention in surface reservoirs or storage space in a surface reservoir. ()

11. **Water Right.** The right to divert and beneficially use the public waters of the state of Idaho including any storage entitlement. ()

12. **Water Supply Bank.** The water exchange market operated by the Water Resource Board pursuant to Section 42-1761 through 42-1766, Idaho Code, and these rules and is a general term which includes the Board’s water supply bank and rental pools. ()

13. **Year.** A time period of twelve (12) consecutive months. ()

14. **Person.** Any company, corporation, association, firm, agency, individual, partnership, Indian tribe, government or other entity. ()

011. -- 024. (RESERVED)

025. ACQUISITION OF WATER RIGHTS FOR THE BOARD'S WATER SUPPLY BANK (RULE 25).

01. General. The Board may purchase, lease, accept as a gift or otherwise obtain rights to natural flow or stored water and credit them to the Board's water supply bank. These water rights may then be divided or combined into more marketable blocks provided that there is no injury to other right holders, or enlargement of use of the water rights, and the change is in the local public interest. Any person proposing to sell or lease water rights to the Board's water supply bank, or to otherwise make water available through the water supply bank for the purposes of Section 42-1763A, Idaho Code, shall file a completed application with the Director on a forms or in a format provided by the Department and provide such additional information as the Board or Director may require in evaluating the proposed transaction. The completed application form shall state the period of time a water right is offered for lease, or the period of time that storage water will be released for fish migration purposes in accordance with Section 42-1763A, Idaho Code, and the payment terms, if any, requested by the applicant. ()

02. Application. Submitted with the completed application shall be: ()

a. Evidence that the water right has been recorded through court decree, permit or license issued by the Department. If the right is included in an ongoing adjudication, a copy of the claim is required; ()

b. Proof of current ownership of the water right by the applicant; ()

c. Information that the water right has not been lost through abandonment, or forfeiture as defined by Section 42-222(2), Idaho Code; ()

d. Evidence to demonstrate the relative availability of water in the source to fill the water right; and ()

e. The written consent of such company, corporation or irrigation district to the proposed sale or lease must accompany the application if the right to the use of the water, or the use of the diversion works or irrigation system is represented by shares of stock in a company or corporation, or if such works or system is owned or managed by an irrigation district. ()

f. A lease application filing fee of two hundred fifty dollars (\$250) per water right up to a maximum total of five hundred dollars (\$500.00) for overlapping water rights which have a common place of use or common diversion rate or diversion volume. The lease filing fee described herein shall be deposited in the Water Administration Account and shall not apply to applications to lease stored water into rental pools described in Rule 40. ()

03. Review. Upon receipt of the completed application the Director will review it for completeness and make such further review as he deems necessary to adequately brief the Board on the proposed transaction. ()

04. Inadequate Application. If an application is not complete, the Director will correspond with the applicant to obtain the needed information. If the requested information is not returned in thirty (30) days, the application will no longer be considered a valid request to place a water right into the Board's water supply bank. ()

05. Consideration. The Board may consider an application at any regular or special meeting. ()

06. Criteria. The Board will consider the following in determining whether to accept an offered water right into the Board's water supply bank: ()

a. Whether the applicant is the current owner, title holder or contract water user of the water right proposed to be transferred to the Board's water supply bank or has authority to act on behalf of the owner; ()

b. Whether all necessary consents have been filed with the Board; ()

- c. Whether the information available to the Board indicates that the water right has been abandoned or forfeited; ()
- d. Whether the offering price or requested rental rate is reasonable; ()
- e. Whether acquisition of the water right will be contrary to the State Water Plan; ()
- f. Whether the application is in the local public interest as defined in Section 42-1763, Idaho Code; ()
- g. The probability of selling or renting the water right from the Board's water supply bank. ()
- h. Whether there are sufficient funds on hand to acquire the water right for the Board's water supply bank, provided that, if there are insufficient funds, or if in the opinion of the Board, existing funds should not immediately be expended for such acquisition, the Board may find that the water right should be acquired on a contingency basis, with payment to be made to the seller or lessor only after water is subsequently sold or rented from the Board's water supply bank, and ()
- i. Such other factors as determined to be appropriate by the Board. ()

07. Resolution of Board. The Board may by resolution accept an application to sell or lease a water right to the Board's water supply bank, or to otherwise make water available through the water supply bank for the purposes of Section 42-1763A, Idaho Code. An application to lease together with the resolution accepting it becomes a lease and the water right is placed into the Board's water supply bank upon adoption of the resolution. A resolution accepting an application to sell a right to the Board's water supply bank will provide authority for the chairman of the Board to enter an agreement to purchase the water right. The resolution may include conditions of approval, including but not limited to, the following: ()

- a. A condition providing the length of time the water right will be retained in the Board's water supply bank. ()
- b. A condition describing the terms for payment to the owner of the water right and the sale or rental price from the Board's water supply bank. ()
- c. Other conditions as the Board determines appropriate, including a condition recognizing that water is being made available through the water supply bank pursuant to the provisions of Section 42-1763A, Idaho Code, for purposes of fish migration. ()

08. Placement of Water Right. Effect of placement of a water right into the Board's water supply bank. ()

- a. Upon acceptance of a water right into the Board's water supply bank, the owner of the right may withdraw the right within thirty (30) days of acceptance into the bank if the owner does not agree with the conditions of acceptance. ()
- b. Upon acceptance of a water right into the Board's water supply bank, the owner of the water right is not authorized to continue the diversion and use of the right while it is in the Board's water supply bank, unless the water right is for hydropower and is placed in the Board's water supply bank to be released for salmon migration and power production purposes. ()
- c. A water right which has been accepted shall remain in the Board's water supply bank for the period designated by the Board unless removed by resolution of the Board. ()
- d. The owner of the water right shall remain responsible to take actions required to claim the water right in an adjudication or other legal action concerning the water right and to pay taxes, fees, or assessments related to the water right. ()

e. The forfeiture provisions of Section 42-222(2), Idaho Code are tolled during the time period the water right is in the Board's water supply bank, pursuant to the provisions of Section 42-1764, Idaho Code. ()

026. -- 029. (RESERVED)

030. SALE OR RENTAL OF WATER RIGHTS FROM THE BOARD'S WATER SUPPLY BANK (RULE 30).

01. General. The Board may in its discretion initiate the process to sell or rent water rights from the Board's water supply bank to achieve the purposes stated in Rule 1. The Board may from time to time, as water rights are available, authorize the Director to announce the availability of the rights from the Board's water supply bank, establishing a time and date for receiving applications in the office of the Director to purchase or rent the water rights. An application shall be on a form or in a format provided by the Director. The sale or rental price shall be the price, if any, as determined by the Board. The Director will evaluate applications with respect to the purposes of Rule 1, as to whether there will be injury to other water rights, whether the proposal would constitute an enlargement of the water right, whether the water will be put to a beneficial use, whether the water supply available from applicable rights in the Board's water supply bank is sufficient for the use intended, and whether the proposal is in the local public interest. For applications submitted pursuant to the interim authority provided by Section 42-1763A, Idaho Code, the Director will only make an evaluation as to whether the proposed use of water will cause injury to other water rights. The Director may defer the evaluation of potential injury to other water rights conditioned upon the right of any affected water right holder to petition the Director pursuant to Section 42-1766, Idaho Code, to revoke or modify the rental approval upon a showing of injury. ()

02. Notice. The Director may give notice of an intended rental as he deems necessary, provided that prior to approving any application for purchase, or for rental for a period of more than five (5) years, he shall give notice as required in Section 42-222(1), Idaho Code. ()

03. Approval. Sale or rental shall be approved only for use of water within the state of Idaho. The Director shall consider in determining whether to approve a rental of water for use outside of the state of Idaho those factors enumerated in Section 42-401(3), Idaho Code, except that this evaluation shall not be required for applications submitted pursuant to the interim authority provided by Section 42-1763A, Idaho Code. ()

04. Consideration. All applications received on or prior to the announced date for receiving applications shall be considered as having been received at the same time. Applications received after the close of the application date may be considered only if sufficient available water remains in the Board's water supply bank after all acceptable, timely applications have been filed. ()

05. Authorized to Rent. The Director is authorized to rent water rights offered by the Board from the Board's water supply bank for a period up to five (5) years, but shall submit applications for purchase, or rental for a period of more than five (5) years to the Board for action. The Director will advise the Board on applications which require Board approval under Rule Subsection 025.06 whether he can approve the application in whole or in part or with conditions to comply with Section 42-1763, Idaho Code. ()

06. Board Review. The Board will review applications for purchase or which propose the rental of water rights for a duration of more than five (5) years, and may approve, approve with conditions or may reject the applications as the Board determines to best meet the purposes of Rule 1 and promote the interest of the people of the state of Idaho. ()

07. Order of Consideration. When renting water from the bank, the Director and the Board shall consider rental of water rights in the order the rights were leased to the bank, with first consideration for the rights which have continuously been in the bank the longest period of time provided the rights are suitable for the purpose of the renter. ()

031. -- 034. (RESERVED)

035. HANDLING OF MONEY ASSOCIATED WITH THE BOARD'S WATER SUPPLY BANK (RULE 35).

Payments received by the Department from the sale or rental of water rights from the Board's water supply bank shall be handled as follows: ()

01. Credited Amount. Ten percent (10%) of the gross amount received from the sale or rental of a water right from the Board's water supply bank and the entire lease application fee received pursuant to Rule 025 shall be credited to the Water Administration Account created by Section 42-238a, Idaho Code, or to the federal grant fund if the payment is received from a federal agency, for administrative costs of operating the Water Supply Bank. The ten percent (10%) charge described herein shall not apply to stored water rented from the rental pools described in Rule 040. ()

02. Excess Funds. Any funds in excess of the amount needed to compensate the owner of the water right in accordance with the resolution accepting the water right into the Board's water supply bank and the administrative charge of Rule Subsection 035.01 shall be credited to the Water Management Account created by Section 42-1760, Idaho Code, for use by the Board for the purposes of Rule 1. ()

036. -- 039. (RESERVED)

040. APPOINTMENT OF LOCAL RENTAL POOL COMMITTEES (RULE 40).

01. Board Meetings for Committee Appointments. The Board may at any regular or special meeting to consider appointing an entity to serve as a local committee to facilitate the lease and rental of stored water. At least ten (10) days prior to the meeting, the entity seeking appointment shall provide to the Director information concerning the organization of the entity, a listing of its officers, a copy of its bylaws and procedures, if applicable, a copy of the proposed local committee procedures, pursuant to which the local committee would facilitate the lease and rental of stored water, together with a copy of each general lease and rental form proposed to be used by the local committee. The local committee procedures must be approved by the Board and must provide for the following: ()

a. Determination of priority among competing applicants to lease stored water to the rental pool and to rent stored water from the rental pool; ()

b. Determination of the reimbursement schedule for those leasing stored water into the rental pool; ()

c. Determination of the rental price charge to those renting stored water from the rental pool; ()

d. Determination of the administrative charge to be assessed by the local committee; ()

e. Allocation of stored water leased to the bank but not rented; ()

f. Notification of the Department and the watermaster of any rentals where stored water will be moved from the place of use authorized by the permit, license, or decree establishing the stored water right; ()

g. Submittal of applications to rent water from the rental pool for more than five (5) years to the Board for review and approval as a condition of approval by the local committee; ()

h. Prevention of injury to other water rights; ()

i. Protection of the local public interest, except for applications submitted pursuant to the interim authority provided by Section 42-1763A, Idaho Code; ()

j. Consistency with the conservation of water resources within the state of Idaho, except for applications submitted pursuant to the interim authority provided by Section 42-1763A, Idaho Code; ()

k. Management of rental pool funds as public funds pursuant to the Public Depository Law, Chapter 1, Title 57, Idaho Code. ()

02. Local Committee Procedures. The local committee procedures shall provide that a surcharge of ten percent (10%) of the rental fee charged per acre foot of stored water rented from the rental pool shall be assessed and credited to the revolving development account and the water management account established in Sections 42-1752 and 42-1760, Idaho Code, in such proportion as the Board in its discretion shall determine. Such moneys, together with moneys accruing to or earned thereon, shall be set aside, and made available until expended, to be used by the Board for the purposes of Rule 1 unless the surcharge is prohibited by statute, compact or inter-governmental agreement. ()

03. Review by Director. The Director will review the local committee procedures and submit them along with the Director's recommendation to the Board. The lease and rental form must receive the Director's approval. The Board may designate the applying entity as the local committee for a period not to exceed five (5) years. A Certificate of Appointment will be issued by the Board. The Board may extend the appointment for additional periods up to five (5) years, upon written request of the local committee. The Board may revoke a designation upon request of the local committee, or after a hearing pursuant to the promulgated Rules of Practice and Procedure of the Board, if the Board determines that the local committee is no longer serving a necessary purpose or is not abiding by its own approved procedures, these rules or applicable statutes. ()

04. Annual Report. The local committee shall report annually on the activity of the rental pool on forms provided by the Board. ()

05. Submission of Amendments to Procedures to Board. Amendments to the approved procedures of an appointed local committee which change the amount charged for the rental of stored water shall be submitted to the Board by April 1st of any year. The amendment will be considered approved by the Board unless specifically disapproved at the first regular Board meeting following the amendment action of the local committee. The Board may, upon good cause being determined by the Board, specifically approve of amendments submitted after April 1 of any year. ()

041. -- 999. (RESERVED)

37.03.01 – ADJUDICATION RULES

000. LEGAL AUTHORITY.

These rules are adopted under the legal authorities of Section 42-1414, and 42-1805(8), Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 37.03.01, “Adjudication Rules.” ()

02. Scope. These rules implement statutes governing the filing of notices of claims to water rights acquired under state law and the collection of fees for filing notices of claims to water rights acquired under state law in general adjudications, as provided in Sections 41-1409, 42-1414 and 42-1415, Idaho Code. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Amendment Fee. The additional fee payable at the time of filing an amendment to a claim, as provided in Section 42-1414(2), Idaho Code. ()

02. Aquaculture. The use of water for propagation of fish, shell fish, and any other animal or plant product naturally occurring in an underwater environment. ()

03. Aquaculture Fee. The variable fee payable for aquaculture use, as provided in Section 42-1414(1)(b)(iii), Idaho Code, which shall be calculated for each cfs and fraction thereof to the nearest dollar. ()

04. Claim. A notice of claim to a water right acquired under state law, as provided in Section 42-1409(4), Idaho Code. ()

05. Department. The Idaho Department of Water Resources. ()

06. Director. The Director of the Idaho Department of Water Resources. ()

07. Domestic Use. Domestic use as defined in Section 42-1401A(4), Idaho Code. ()

08. Flat Fee. The per claim fee for filing claims, as provided in Section 42-1414(1)(a), Idaho Code. ()

09. Late Fee. The additional fee payable for the filing of late claims, as provided in Section 42-1414(3), Idaho Code. ()

10. Per Acre Fee. The variable fee for irrigation use, as provided in Section 42-1414(1)(b)(i), Idaho Code, which shall be calculated for each acre and fraction thereof rounded to the next whole acre. ()

11. Per Cfs Fee. The variable fee payable for other uses, as provided in Section 42-1414(1)(b)(iii), (iv) and (v), Idaho Code, which shall be calculated for each cfs and fraction thereof to the nearest dollar. ()

12. Per Kilowatt Fee. The variable fee payable for power generation use, as provided in Section 42-1414(1)(b)(ii), Idaho Code, which shall be calculated for each kilowatt and fraction thereof. ()

13. State Law Claim Form. The department’s form entitled “Notice of Claim to a Water Right Acquired Under State Law as provided in Section 42-1409(4), Idaho Code. ()

14. Stock Watering Use. Stock watering use as defined in Section 42-1401A(11), Idaho Code. ()

15. Total Fee. The fee payable for filing a claim, which consists of the flat fee plus any applicable variable fee and late fee. ()

16. Variable Fee. The fee payable for filing claims in addition to the flat fee, as provided in Section 42-1414(1)(b), Idaho Code. ()

17. Water Delivery System. All structures and equipment used for diversion, storage, transportation,

and use of water from the water source to and including each place of use. ()

18. Water Delivery Organization. An irrigation district, a water utility, a municipality, or any similar claimant of a water right who diverts water pursuant to the water right claimed and delivers the water to others who make beneficial use of the water diverted by the water delivery organization pursuant to the water right claimed by the water delivery organization. ()

011. ABBREVIATIONS.

01. AF. An acre foot (feet). ()

02. CFS. Cubic foot (feet) per second. ()

03. NA. Not applicable. ()

04. PIN. Parcel identification number. ()

012. -- 024. (RESERVED)

025. GENERAL.

01. Requirement to Pay. All persons filing claims to water rights acquired under state law or amendments to claims to water rights acquired under state law shall be required to pay filing fees as set forth by statute and these rules. ()

02. Method of Payment. Fees shall be paid in legal tender of the United States; or by money order, certified check, cashier's check, personal check, or by electronic payment on-line payable to the department in legal tender of the United States. Two-party checks will not be accepted. ()

03. Personal Check. If a personal check in payment of a flat fee, a variable fee, or a late fee, is returned unpaid to the department or the debit or credit card payment is rejected by the financial institution, the claims covered by the returned check or the rejected debit or credit card will be rejected and returned to the claimant. If a personal check in payment of an amendment fee is returned unpaid to the department or the debit or credit card payment is rejected by the financial institution, the amended claim will be rejected and returned to the claimant, but the original claim will still be in effect. ()

04. Time of Payment. Flat fees and variable fees shall be payable to the department at the time of filing a claim. Amendment fees shall be payable to the department at the time of filing the amended claim. Late fees shall be payable at the time of filing the late claim. ()

05. Government Voucher. Fees payable by government agencies (other than agencies of foreign governments) may be paid when due by government voucher. If full payment of the voucher is not received within forty-five (45) days of the date the voucher is received, the unpaid voucher will be treated as a returned check as provided in Subsection 025.03. ()

06. Rejection of Claim. Claims submitted without the correct filing fee shall be rejected and returned to the claimant. ()

07. Fire-Fighting. A claim is not required to be filed for water used solely to extinguish an existing fire on private or public lands, structures, or equipment, or to prevent an existing fire from spreading to private or public lands, structures, or equipment endangered by an existing fire pursuant to Section 42-201(3), Idaho Code. A claim is required for the use of water for domestic purposes in regularly maintained firefighting stations and for the storage of water for fighting future fires. ()

026. -- 029. (RESERVED)

030. FLAT FEES.

01. Small Domestic and Stock Water. A flat fee of twenty-five dollars (\$25) shall be payable for each claim for domestic use and/or stock watering use meeting the definition of domestic use and/or stock watering use in Rule 010. ()

02. Other Claims. A flat fee of fifty dollars (\$50) shall be payable for each claim that does not meet the criteria of Subsection 030.01. ()

031. -- 034. (RESERVED)

035. VARIABLE FEES.

01. General. For each claim not meeting the criteria of Subsection 030.01, there may be a variable fee in addition to the flat fee. ()

02. Per Acre Fee. ()

a. A fee of one dollar (\$1.00) per acre shall be required for claims for irrigation use. ()

b. The per acre fee shall only be charged once against a particular acre, regardless of the number of claims filed for the irrigation of that acre or the number of claimants filing claims for the irrigation of that acre. ()

c. The per acre fee shall be payable by the first person to file a claim for the irrigation of a particular acre. ()

d. The per acre fee for an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or irrigation districts organized and existing as such under the laws of the state of Idaho, or for beneficial use by more than five (5) water users in an area of less than twenty-five thousand (25,000) acres shall be determined based upon the acreage claimed to be irrigated by the project or irrigation district within the boundaries of the project or irrigation district. ()

03. Per Kilowatt Fee. ()

a. A per kilowatt of capacity (manufacturer's nameplate rating) fee of three dollars and fifty cents (\$3.50) per kilowatt, or two hundred fifty thousand dollars (\$250,000.00), whichever is less, shall be required for claims for power use. ()

b. The per kilowatt fee shall be determined based upon the total generating capacity of all generators in which the water right claimed is used. ()

c. The total per kilowatt fee for all claims filed for a single hydropower facility shall not exceed the per kilowatt fee for the total generating capacity of all generators in the hydropower facility. ()

04. Per CFS Fee. ()

a. A fee of ten dollars (\$10) per cfs for aquaculture shall be required. A fee of one hundred dollars (\$100) per cfs for all other uses shall be required except for irrigation, power, and domestic and stock watering uses meeting the definition of domestic and stock watering use in Section 010. ()

b. For a claim to water for more than one (1) public purpose, the per cfs fee shall only be charged once per cfs claimed. Public purposes shall include public in-stream flows, lake level maintenance, wildlife, aesthetic beauty, and recreation. ()

c. If there is a seasonal variation in the number of cfs claimed, the per cfs fee shall be based upon the maximum number of cfs claimed for any period during a single calendar year. ()

d. The per cfs fee shall apply to claims for water quality improvement, recreation, aesthetic purposes, and any other purpose not expressly listed at Section 42-1414(1), Idaho Code, except as otherwise provided by these rules. ()

05. Claims Including Storage. ()

a. The variable fee for a claim that includes storage shall be based upon the ultimate use of the water stored. If the claim states purposes other than diversion to storage, storage, and diversion from storage, the total variable fee will be determined as provided in Subsection 035.06. ()

b. No variable fee shall be payable for water claimed for ground water recharge purposes. ()

c. For purposes of determining the per cfs fee for amounts of water claimed in af, one (1) cfs equals one and ninety-eight one-hundredths (1.98) af per day of diversion to storage. ()

d. No variable fee shall be payable for minimum by-pass flows. ()

06. Multiple Purpose Claims. If a claimant claims more than one (1) purpose of use on a single claim, the variable fee will be the total of the variable fees payable for each purpose of use. ()

07. Exceptions. No variable fee shall be payable for claims or portions of claims for fire-fighting purposes if a claim is required under Subsection 025.07 or for domestic use and/or stock watering use meeting the definitions of domestic use and stock watering use in Section 010. ()

036. -- 044. (RESERVED)

045. AMENDMENT FEES.

When a claimant files an amendment to a claim, the total fee shall be recalculated as if the amended claim were the original claim. If the total fee as recalculated is greater than the total fee paid at the time the claim was filed, the amendment fee shall be the difference between the two (2) amounts. No refund shall be made if the total fee as recalculated is less than the total fee paid at the time the claim was filed. ()

046. -- 049. (RESERVED)

050. LATE FEES.

01. Late Fee Payable. A late fee shall be payable when a claim is filed after the date set forth in the first commencement notice mailed to the claimant or the claimant's predecessor in interest pursuant to Sections 42-1414(3), Idaho Code. ()

02. Waiver. The late fee may be waived by the director for good cause shown. ()

051. -- 054. (RESERVED)

055. REFUNDS.

Fees shall not be refunded or returned except where the fee was miscalculated at the time the claim was filed or as expressly provided in these rules. ()

056. -- 059. (RESERVED)

060. SUFFICIENCY OF CLAIMS.

01. Single Claim. Except for claims based on both state law and federal law, a single claim may describe only one (1) water right. A claim that describes more than one (1) water right will be rejected and returned along with any fees paid, and must be refiled as multiple claims. ()

02. State Law Claim Form -- Minimum Requirements. Claims filed on the state law claim form

shall contain the following information: ()

a. Name, Address and Phone Number of Claimant. The name, address, and phone number of the claimant and all co-claimants claiming the water right jointly with the claimant shall be listed at item one (1) of the form. ()

b. Date of Priority. The date of priority shall be listed at item two (2) of the form, and shall include month, day and year. Only one (1) priority may be stated unless the claim is based upon both state and federal law as provided in Subsection 060.01. If more than one (1) priority date is stated, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. ()

i. Within thirty (30) days, unless an extension by the director or his designee is approved, the claimant shall provide evidence of the priority date to support the water right claimed. If the claimant fails to provide evidence of priority, the form may be rejected and returned with no refund of the fees paid. ()

c. Source of Water Supply. The source of water supply shall be stated at item three (3) of the form. ()

i. For surface water sources, the source of water shall be identified by the official name listed on the U.S. Geological Survey Quadrangle map. If no official name has been given, the name in local common usage should be listed. If there is no official or common name, the source should be described as “unnamed stream” or “spring.” The first named downstream water source to which the source is tributary shall also be listed. For ground water sources, the source shall be listed as “ground water.” ()

ii. Only one (1) source shall be listed unless the claim is for a single water delivery system that has more than one (1) source, or the claim is for a single licensed or decreed right that covers more than one (1) water delivery system. If more than one (1) source is listed and the claim is not for a single water delivery system that has more than one (1) source, and the claim is not for a single licensed or decreed water right that covers more than one (1) water delivery system, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. ()

d. Location of Point of Diversion. For claims other than in-stream flows, the location of the point(s) of diversion shall be listed at item four (4) part (a) of the form. For claims to in-stream flows, the beginning and ending points of the claimed in-stream flow shall be listed at item four (4) part (b) of the form. ()

i. The location of the point of diversion shall be described to nearest forty (40) acre tract (quarter-quarter section) or government lot number, and shall include township number (including north or south designations), range number (including east or west designations), section number, and county. ()

ii. The claimant shall also list the Parcel Number or Parcel Identification Number (PIN) as assigned by the county assessor’s office for the parcel where the water is diverted unless no Parcel Number or PIN is recorded for the property at the point of diversion. ()

iii. If the point of diversion is located in a platted subdivision, a plat of which has been recorded in the county recorder’s office for the county in which the subdivision is located, the claimant shall also list the subdivision name, block number and lot number in item thirteen (13) of the form (remarks section). ()

iv. A claim to a water right that includes storage shall state the point at which water is impounded (applicable only to on-stream reservoirs) or the point at which water is diverted to storage (applicable only to off-stream reservoirs), the point at which water is released from storage into a natural stream channel (applicable only where a natural stream channel is used to convey stored water), and the point at which water is rediverted (applicable only where a natural channel is used to convey stored water). ()

v. Only one (1) point of diversion shall be listed unless the claim is for a single water delivery system that has more than one (1) point of diversion, or the claim is for a single licensed or decreed water right that covers more than one (1) water delivery system. If more than one (1) point of diversion is listed and the claim is not for a single water delivery system that has more than one (1) point of diversion, and the claim is not for a single licensed or

decreed water right that covers more than one (1) water delivery system, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. ()

e. Description of Diversion Works. The diversion works shall be described at item five (5) of the form. ()

i. The description shall include all major components of the water delivery system, such as dams, reservoirs, ditches, pipelines, pumps, wells, headgates, etc. The description shall also include those dimensions of major components which affect the diversion capacity of the water delivery system. The description shall also state whether the ditches are lined and/or covered, the depth of wells, the horsepower capacity of pumps, and whether headgates are automatic or equipped with locks and/or measuring devices. ()

ii. The description shall include the dates and a description of any changes in use (including change in point of diversion, place of use, purpose of use, and period of use) or enlargements in use (including an increase in the amount of water diverted, the number of acres irrigated, or additional uses of water), and as to those dimensions required to be described above, the dimensions as originally constructed and as enlarged. ()

iii. Water delivery organizations shall describe the water delivery system up to and including the point where responsibility for water distribution is assumed by entities other than the water delivery organization. ()

f. Purpose of Use and Period of Use. Each purpose for which water is claimed, the period of use for each purpose for which water is claimed, and the amount of water claimed for each purpose for which water is claimed shall be listed at item six (6) of the form. Period of use shall include the month and day of the first and last day of use. For example, the period of use for domestic use is often January 1st through December 31st. ()

i. The purpose may be described in general terms such as irrigation, industrial, municipal, mining, power generation, fish propagation, domestic, stock watering, etc. ()

ii. A claim to a water right that includes storage shall be broken down into component purposes with the ultimate use(s) of the stored water indicated. The component purposes of a storage right are diversion to storage (not applicable to on-stream reservoirs), storage, and diversion from storage (not applicable where the ultimate use is an in-reservoir public purpose). Detention of water in a holding pond that can be filled in less than twenty-four (24) hours at the claimed diversion rate is not required to be claimed as storage. The amount of water claimed shall be limited to the active storage capacity of the reservoir unless a past practice of refilling the reservoir during the water year (October 1 to September 30) is shown or the claim is for a licensed or decreed right that includes refill. If a past practice of refilling the reservoir is shown or if the claim is for a licensed or decreed right that includes refill, the total amount of water claimed for the calendar year and the entire period during which diversion to storage or impoundment occurs shall be indicated. ()

iii. The amount of water claimed for each purpose for which water is claimed shall not exceed the amount of water beneficially used for the purpose claimed, and the period of use for each purpose claimed shall not exceed the period in which water is beneficially used for the purpose claimed. ()

iv. The amount of water diverted shall be listed in cfs, and the amount of water stored shall be listed in af per annum. ()

g. Amount of Water Claimed. The total amount of water claimed shall be listed at item seven (7) of the form. The total amount of water claimed shall not exceed the total of the amounts listed at item six (6) of the form, or the total diversion capacity of the diversion system, whichever is less. ()

h. Description of Non-Irrigation Uses. Non-irrigation uses shall be fully described at item eight (8) of the form. For domestic uses, the number of households served shall be described; for stock watering uses, the type of stock and number of each type of stock shall be described. ()

i. If the claimant's domestic use does not meet the definition of domestic use in Subsection 010.07, the form will be rejected and returned unless the appropriate variable fee is paid. ()

ii. The claimant shall also state whether the stock watering use is in-stream, or whether water is diverted from the source for stock watering. Both types of stock watering cannot be filed on the same claim form; each type requires a separate claim. ()

iii. Domestic use for organization camps and public campgrounds shall be fully described, including but not limited to the number of camp units, water faucets, flush toilets, showers, and sewer connections. Description of domestic use for organization camps and public campgrounds shall also include the average and peak number of individuals using the facility, and the periods when peak or average rates of usage occur. ()

i. Place of Use. The place of use for each purpose for which water is claimed shall be listed at item nine (9) of the form, except that the place of use for in-stream flows for public purposes need not be listed if the place of use is fully described as the stream between the beginning and ending points listed as the points of diversion. ()

i. Except claims for irrigation projects and irrigation districts meeting the criteria described in Subsection 060.i.ii. below, the number of acres irrigated shall be described by entering the appropriate numbers in the appropriate boxes for each forty (40) acre tract or government lot on the form. For other uses, a symbol or letter corresponding to the purpose for which water is claimed shall be placed in the appropriate box for each forty (40) acre tract or government lot on the form. ()

ii. Claims for an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or irrigation districts organized and existing as such under the laws of the state of Idaho, or for beneficial use by more than five (5) water users in an area of less than twenty-five thousand (25,000) acres shall be accompanied by a map showing the boundaries of the project or irrigation district, and shall state the total number of acres irrigated within the boundaries of the project or irrigations district. The project or district shall submit a map of the boundary of the place of use and, when available, a digital boundary defined in Section 42-202(B)(2), Idaho Code. ()

iii. The claimant shall also list the Parcel Number or Parcel Identification Number (PIN) as assigned by the county assessor's office for the parcel where the water is used unless no Parcel Number or PIN is recorded for the property at the place of use or the PIN is the same as the PIN shown in item four (4) for the point of diversion. ()

j. County of Place of Use. The county(ies) in which the place(s) of use is (are) located shall be listed at item ten (10) of the form. ()

k. Authority to Assert Claim. The claimant shall indicate at item eleven (11) of the form whether the claimant is the owner of the place(s) of use. If the claimant is not the owner of the place(s) of use, the claimant shall describe in the remarks section of the form the claimant's authority to assert the claim. Unless the claimant is a water delivery organization, the claimant shall also state the name, address, and phone number of the owner(s) of the place of use in item thirteen (13) (remarks section) of the form. ()

l. Other Water Rights. The claimant shall describe at item twelve (12) of the form any other water rights used at the same place and for the same purpose as the right claimed. If there are no other water rights used at the same place and for the same purpose as the right claimed, the claimant shall state "NA" or "none." ()

m. Remarks. At item thirteen (13) of the form, the claimant may submit any additional, relevant information not specifically requested. If the space provided is not sufficient, remarks shall be set forth on a separate piece of paper and attached to the form. All separate attachments must be specifically referenced in the remarks section of the form. ()

n. Maps. An aerial photograph or USGS quadrangle map shall be included with the claim, unless the claim meets the definition of domestic use and stock watering use as defined in Section 010 or unless the claim is submitted electronically through the department's online claim filing website. The point(s) of diversion, place(s) of use, and the water delivery system shall be identified on the aerial photograph or USGS quadrangle map. ()

o. Basis of Claim. The basis of the claim shall be indicated at item fourteen (14) of the form. If a water

right number has been assigned by the department to the right claimed, the water right number shall also be indicated. If a water right number has not been assigned and the water right is based upon a decree, the claimant shall list the title and date of the decree, the case number, and the court that issued the decree. If the basis of claim is a beneficial use (also known as the constitutional method of appropriation), the claimant shall provide a short description of events or history of the development of the water right. ()

p. Signature. Each claim must be signed by the claimant at item fifteen (15) of the form, unless the claim is submitted electronically through the department's online claim filing website. Each claimant, through submission of a signed claim or through submission of a claim by means of the department's online claim filing website, solemnly swears or affirms under penalty of perjury that the statements contained in the notice of claim are true and correct. ()

i. For claims submitted through the department's online claim filing website, the form shall be submitted by a person listed as the claimant at item one (1) of the form unless the person submitting the form has authority to submit the form for the claimant or claimants. Claims by corporations, municipalities or other organizations shall be submitted by an officer of the corporation or an elected official of the municipality or an individual authorized by the organization to submit the form. ()

ii. For claims that are not submitted by means of the internet, the form must be signed by each of the persons listed as claimants at item one (1) of the form unless the signatory has authority to sign for the claimant or claimants. Claims by corporations, municipalities or other organizations shall be signed by an officer of the corporation or an elected official of the municipality or an individual authorized by the organization to sign the form. The signatory's title shall be indicated with the signature. ()

q. Notice of Appearance. If notices to be sent by the director to the claimant are to be sent to the claimant's attorney, the claimant's attorney shall list the attorney's name and address and sign and date the form at item sixteen (16) of the form. ()

03. State Law Claim Form -- Insufficient Claims, Waivers. ()

a. Claims filed on the state law claim form that do not contain the information required by Subsection 060.02 shall be rejected and returned along with any fees paid, unless otherwise provided by these rules. ()

b. The director may waive the minimum information requirements of Subsection 060.02 and accept the claim for good cause shown. ()

04. Further Information. This Rule 060 sets forth minimum requirements for the filing of claims. The director may request further information in support of the assertions contained in a claim as part of the investigation of the water system and the claims pursuant to Section 42-1410, Idaho Code. ()

061. -- 064. (RESERVED)

065. REJECTED AND RETURNED CLAIMS.

01. Rejected Claims. Rejected claims shall be returned to the claimant by ordinary mail at the most recent address shown by department records. The rejected claim shall be accompanied by a notice of rejection that states generally the reason(s) for rejection. ()

02. Refiled Claims. Claims that have been rejected and returned to the claimant may be refiled with the appropriate fees and appropriate information at any time prior to the deadline for filing the original claim. Claims refiled after the deadline for filing the original claim will be subject to the late fee, unless the claim is refiled within thirty (30) days from the date of mailing the rejected claim by the department. ()

066. -- 999. (RESERVED)

37.03.02 – BENEFICIAL USE EXAMINATION RULES

000. LEGAL AUTHORITY (RULE 0).

The director of the Department of Water Resources adopts these rules under the authority provided by Section 42-1805(8), Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

Sections 42-217 and 42-221, Idaho Code, requires a license examination fee be submitted together with the written proof of beneficial use or that a field examination report prepared by a certified water right examiner be submitted together with the written proof of beneficial use. The statutes also provided that field examinations could be conducted by certified water right examiners appointed by the director. ()

01. Examination Requirements. The examination requirements listed are intended as a guide to establish acceptable standards to determine the extent of application of water to beneficial use. The requirements are not intended to restrict the application of other sound examination principles by water right examiners. The director will evaluate any deviation from the standards hereinafter stated as they pertain to the review of any given examination. Water right examiners are encouraged to submit new ideas which will advance the art and provide for the public benefit. ()

02. Rules. These rules shall not be construed to deprive or limit the director of the Department of Water Resources of any exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount or character of data, or information which may be required by the director from any owner of a water right permit or authorized representative for the proper administration of the law. ()

002. -- 008. (RESERVED)

009. APPLICABILITY (RULE 9).

01. Proof of Beneficial Use. These rules apply to all permits for which proof of beneficial use is not yet due and has not been submitted to the department. ()

02. Examination. These rules apply to all permits for which an examination has not been conducted. ()

03. Re-Examination. These rules apply to all permits that have been examined but the license has not been issued due to a request for a re-examination by the permit holder. ()

04. Examination Fee. The examination fee requirements of these rules do not apply to a permit for single family domestic use, stockwatering, or other small uses for which the use does not exceed four one-hundredths (0.04) cfs or four (4) AF/year. The examination fee is required for multiple use permits which exceed four one-hundredths (0.04) cfs or four (4) AF/year even though single family domestic use or stockwater use is included as one (1) of the uses on the permit. ()

010. DEFINITIONS (RULE 10).

Unless the context otherwise requires, the following definitions govern these rules. ()

01. Acre-Foot (AF). A volume of water sufficient to cover one (1) acre of land one (1) foot deep and is equal to forty-three thousand, five hundred sixty (43,560) cubic feet. ()

02. Acre-Foot/Annum. An annual volume of water that may be diverted under a given use or right. ()

03. Amendment. A change in point of diversion, place, period or nature of use or other substantial change in the method of diversion or use of a permitted water right. ()

04. Capacity Measurement. The maximum volume of water impounded in the case of reservoirs or the maximum rate of diversion from the source as determined by actual measurement of the system during normal operation. ()

05. Certified Water Right Examiner. A professional engineer or professional geologist, qualified and registered in the state of Idaho who has the knowledge and experience necessary to satisfactorily complete water right field examinations as determined by the Director, and who has been appointed by the Director, Idaho Department of Water Resources as a certified water right examiner. A certified water right examiner is commonly termed a field

examiner, water right examiner or examiner. A certified water right examiner is an impartial investigator and reporter of the information required by the Director to determine the extent of beneficial use established in compliance with a permit. Department employees are authorized to conduct water right examinations at the discretion of the Director.

()

06. Conveyance Works. The ditches, pipes, conduits or other means by which water is carried or moved from the point of diversion to the place of use. Storage works, if any, such as a dam can be considered part of the conveyance works.

()

07. Cubic Foot Per Second (CFS). A rate of flow approximately equal to four hundred forty-eight and eight tenths (448.8) gallons per minute and also equals fifty (50) miner's inches.

()

08. Department. The Idaho Department of Water Resources.

()

09. Director. The Director of the Idaho Department of Water Resources.

()

10. Duty of Water. The quantity of water necessary when economically conducted and applied to land without unnecessary loss as will result in the successful growing of crops.

()

11. Examination or Field Examination. An on-site inspection or investigation to determine the extent of application of water to beneficial use and to determine compliance with terms and conditions of the water right permit.

()

12. Field Report. The form provided by the Department upon which the examiner records the data gathered and describes the extent of diversion of water and application to beneficial use. The report is fully termed beneficial use field report and is also termed a field examination report.

()

13. Headworks or Diversion Works. The constructed barriers or devices on the source of water (surface water or ground water) by which water can be diverted from its natural course of flow and/or measured.

()

14. License. The certificate issued by the Director in accordance with Section 42-219, Idaho Code confirming the extent of diversion and beneficial use of the water that has been made in conformance with the permit conditions.

()

15. License Examination Fee. The fee required in Section 42-221K, Idaho Code, and is also termed an examination fee.

()

16. Legal Subdivision. A tract of land described by the government land survey and usually is described by government lot or quarter-quarter, section, township and range. A lot and block of a subdivision plat recorded with the county recorder may be used in addition to the government lot, quarter-quarter, section, township and range description.

()

17. Measuring Device. A generally accepted structure or apparatus used to determine a rate of flow or volume of water. Examples are weirs, meters, and flumes. Less typical devices may be accepted by the Director on a case-by-case basis.

()

18. Nature of Use. The characteristic use for which water is applied. Examples are domestic, irrigation, mining, industrial, fish propagation, power generation, municipal, etc.

()

19. Period of Use. The time period during which water under a given right can be beneficially used.

()

20. Permit Holder or Owner. The person, association, or corporation to whom a permit has been issued or assigned as shown by the records of the Department.

()

21. Permit or Water Right Permit. The water right document issued by the Director authorizing the

diversion and use of unappropriated public water of the state or water held in trust by the state. ()

22. Place of Use (P.U. or POU). The location where the beneficial use is made of the diverted water. ()

23. Point of Diversion (P.D. or POD). The location on the public source of water from which water is diverted. Examples are pump intake, headgate, well locations, and dam locations. ()

24. Project Works. A general term which includes diversion works, conveyance works, and any devices which may be used to measure the water or to apply the water to the intended use. Improvements which have been made as a result of application of water, such as land preparation for cultivation, are not a part of the project works. ()

25. Proof of Beneficial Use. The submittal required in Section 42-217, Idaho Code. This submittal is commonly termed proof. ()

26. Source. The name of the natural water body at the point of diversion. Examples are Snake River, Smith Creek, ground water, spring, etc. ()

011. ABBREVIATIONS.

01. AF. Acre-Foot or Acre-Feet. ()

02. CFS. Cubic Foot Per Second. ()

03. P.D. or POD. Point of Diversion. ()

04. P.U. or POU. Place of Use. ()

05. USGS. United States Geological Survey. ()

012. -- 024. (RESERVED)

025. AUTHORITY OF REPRESENTATIVE (RULE 25).

01. Proof of Beneficial Use. When the proof of beneficial use, field report, and drawings are filed by the water right examiner on behalf of an owner, written evidence of authority to represent the owner shall be filed with the proof, field report, and drawings. ()

02. Responsibility. It is the responsibility of the permit holder or authorized representative to submit proof of beneficial use and provide for the timely submission of a completed field report by the due date in acceptable form to the director by either paying the required examination fee to the department or by employing a certified water right examiner. ()

026. -- 029. (RESERVED)

030. QUALIFICATION, EXAMINATION AND APPOINTMENT OF CERTIFIED WATER RIGHT EXAMINER (RULE 30).

01. Consideration. Any professional engineer or geologist qualified and registered in the state of Idaho who has the knowledge and experience necessary to satisfactorily complete water right field examinations as determined by the Director shall be considered for appointment as a water right examiner upon application to the Director. The application shall be in the form prescribed by the Director and shall be accompanied by a non-refundable fee in the amount provided by statute. ()

02. Information. The Director may require an applicant for appointment to the position of water right examiner to provide detailed information of past experience, provide references, and to satisfactorily complete a

written or oral examination. ()

03. Denial. If the Director determines an applicant is not qualified, the application will be denied. If the Director determines an applicant is qualified, a certificate of appointment will be issued. ()

04. Expiration. Every water right examiner certificate of appointment shall expire March 31 of each year unless renewed by application in the manner prescribed by the Director. A non-refundable fee in the amount provided by statute shall accompany an application for renewal. ()

05. Refusal or Revocation. An appointment or renewal may be refused or revoked by the Director at any time upon a showing of reasonable cause. A party aggrieved by an action of the Director may request an administrative hearing pursuant to Section 42-1701A (3), Idaho Code. ()

06. Reconsideration. An application for appointment or renewal which has been refused or revoked by the Director may not be reconsidered for six (6) months. ()

07. Liability. The state of Idaho shall not be liable for the compensation of any water right examiner other than department employees. The permit holder shall be responsible for costs associated with proof submittal including examination and field report preparation. ()

08. Examinations. The Director may authorize sufficiently knowledgeable and experienced department employees to conduct water right examinations during the course and scope of their employment with the department. Upon termination of employment with the department, such examiners, unless reappointed as a non-department certified examiner under provisions of these rules, are not authorized to conduct field examinations. The fee provisions of these rules do not apply to department employees. ()

09. Ingress or Egress Authority. Appointment as a water right examiner does not grant ingress or egress authority to non-department examiners and does not convey authority unless explicitly prescribed in these rules. ()

10. Reports. The Director will not accept a field examination report prepared by a certified water right examiner or a department employee who has any past or present interest, direct or indirect, in either the water right permit, the land or any enterprise benefiting, or likely to benefit, from the water right. Among those that the Director will presume to have an actual or potential conflict of interest and from whom he will not accept a field examination report are the following: ()

a. The person or persons owning the water right permit or the land or enterprise benefiting from the water right permit, members of their families (spouse, parents, grandparents, lineal descendants including those that are adopted, lineal descendants of parents; and spouse of lineal descendants), and their employees. ()

b. The person or persons, who sold or installed the diversion works or distribution system. ()

11. Money Received. All moneys received by the department under the provisions of these rules shall be deposited in the water administration fund created under Section 42-238a, Idaho Code. ()

031. -- 034. (RESERVED)

035. EXAMINATION FOR BENEFICIAL USE (RULE 35).

01. Field Report. ()

a. All items of the field report must be completed and must provide sufficient information for the Director to determine the extent of the water right developed in order for the report to be acceptable to the Director. ()

b. Permitted uses partially developed by the permit holder shall be described in detail. Permitted uses which were not developed by the permit holder shall be noted. Uses determined to exist which are not authorized by

the permit being examined shall also be described in detail. ()

c. A concise description of the diversion works and a general description of the distribution works shall be given. This description must trace the water from the point of diversion to the place of use and the return to a public water source, if any. Any reservoir, diversion dam, headgate, well, canal, flume, pump and other related structure shall be included. If water is stored, the timing and method of storage, release, redirection and conveyance to the place of use shall be described. The make, capacity, serial number and model number of all pumps, boosters or measuring devices associated with the point of diversion at the source of the water supply shall be described on the field examination report. Schematic diagrams, photographs, and maps sufficient to locate and describe the diversion, conveyance and usage systems shall also be provided in the examination report. ()

d. Any interconnection of the water use being examined with other water rights or with other conveyance systems shall be described on the field report. Interconnection includes, but is not limited to, sharing the same point of diversion, distribution system, place of use, or beneficial use. The examination report shall also include an evaluation of how the water use being examined is distinct from prior existing water rights and provides an alternate source of water or increment of beneficial use not authorized by prior existing water rights. ()

e. If water is returned to a public water source after use, a legal description of the point where the water is returned and source to which discharge is made shall be provided. Examples of uses which generally have an effluent discharge include fish propagation and power facilities. ()

f. The method of compliance with each condition of approval of a permit shall be shown on the field report by the examiner. ()

g. If the water is used for irrigation, the boundaries of the irrigated areas and the location of the project works providing water to each shall be platted on the maps submitted with the report and the full or partial acreage in each legal subdivision of forty (40) acres or government lot shall be shown. ()

h. Irrigated acreage shall be shown on the field report to the nearest whole acre in a legal subdivision except the acreage shall be shown to the nearest one-tenth (0.10) acre for permits covering land of less than ten (10) acres. ()

i. Where a permit has been developed as separate distribution systems from more than one point of diversion, the separate areas irrigated from each point of diversion shall be shown on the maps submitted with the report and the legal subdivisions embracing the irrigated areas for each such respective point of diversion together with the total irrigated area shall be described. ()

j. For each use of water the examiner shall report an annual diversion volume based on actual beneficial use during the development period for the permit. The method of determining the annual diversion volume shall be shown. The annual diversion volume shall account for seasonal variations in factors affecting water use, including seasonal variations in water availability. For irrigation, the volume shall be based on the field headgate requirements in the map titled Irrigation Field Headgate Requirement appended to these rules (see Appendix A located at the end of this chapter). Annual diversion volumes for heating and cooling uses may be adjusted to account for documented weather conditions during any single heating or cooling season from among the fifty (50) years immediately prior to submitting proof of beneficial use for the permit. For storage uses that include filling the reservoir and periodically replenishing evaporation and seepage losses throughout the year, the annual diversion volume shall be the sum of the amounts used for filling and for replenishment. Volumes may include reasonable conveyance losses actually incurred by the water user. The following water uses are exempt from the volume reporting requirement: ()

- i. Diversion to storage. (Volume should be reported for the storage use, such as irrigation storage.) ()
- ii. Domestic uses as defined in Section 42-111, Idaho Code. ()
- iii. In-stream watering of livestock. ()

- iv. Fire protection. (Volume is required for fire protection storage.) ()
- v. On-stream, run-of-the-river, non-consumptive power generation uses. ()
- vi. Minimum stream flows established pursuant to Chapter 15, Title 42, Idaho Code. ()
- vii. Municipal use by an incorporated city or other entity serving users throughout an incorporated city, except the following situations that do require a volume to be reported: ()
 - (1) The permit or amended permit was approved with a volume limitation; or ()
 - (2) The permit was not approved for municipal use but can be amended and licensed for a municipal use established during the authorized development period for the permit. ()
- viii. Irrigation using natural stream flow diverted from a stream or spring. (Volumes must be reported for irrigation uses from ponds, lakes and ground water and for irrigation storage and irrigation from storage.) ()
- k. The total number of holding/rearing ponds and the dimensions and volume of the ponds shall be shown on the field report for fish rearing or fish propagation use. The annual volume shall be calculated based on the changes of water per hour. ()
- l. Information shall be submitted concerning the beneficial use that has been made of the water unless the purpose of use is for irrigation. For example, for stockwater use, the number and type of stock watered shall be provided. Similar indications of the extent of beneficial use shall be provided for all other non-irrigation uses. ()
- m. The period during each year that the water is used shall be described for each use. ()
- n. For permits having more than one (1) use, the diversion rate measured for each use, the annual diversion volume determined for each use (unless specifically exempted by rule or statute), and the place of use for each use shall be described. ()
- o. The amount (rate and/or volume) of water shall be limited by the smaller of the permitted amount, the amount upon which the license examination fee is paid, the capacity of the diversion works or the amount beneficially used prior to submitting proof of beneficial use, including any statutory limitation of the duty of water. ()
- p. Suggested amendments shall be noted on the field report when the place of use, point of diversion, period or nature of use is different from the permit. Suggested amendments shall be based on actual use, not on potential use. ()
- q. An aerial photo marked to depict the point(s) of diversion and place(s) of use for each use must accompany each field report unless waived by the Director. If existing photos are not available, the Director will accept a USGS Quadrangle map at the largest scale available. ()
- r. Unless required as a condition of permit approval, an on-site examination and direct measurement of the diversion rate are not required for the following water uses if the beneficial use, place of use, season of use, and point of diversion can be confirmed by documentary means such as well driller reports, property tax records, receipts and other records of the permit holder, or photographs, including aerial photographs: ()
 - i. Irrigation up to five (5) acres. ()
 - ii. Storage of up to fourteen point six (14.6) acre-feet of water solely for stock watering purposes. ()
 - iii. Any uses other than irrigation or storage if the total combined diversion rate for all the uses established in connection with the permit does not exceed twenty-four one hundredths (0.24) cubic feet per second.

()

02. Field Report Acceptability.

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a. All field reports shall be prepared by or under the supervision of certified water right examiners or authorized department employees. Reports submitted by certified water right examiners must be properly endorsed with an engineer or geologist seal and signature. Field reports received from certified water right examiners will be accepted if the report includes all the information required to complete the report and provides the information required by Rule Subsection 035.01. ()

b. Field reports not completed as required by these rules will be returned to the certified water right examiner for completion. If the date for submitting proof of beneficial use has passed, the penalty provisions of Rule 055 shall apply. ()

c. If the Director determines that a field report prepared by a certified water right examiner is acceptable but that additional information is needed to clarify the field report, he will notify the examiner in writing of the information required. If the additional information is not submitted within thirty (30) days or within the time specified in the written notice, the priority date of the permit will be advanced one (1) day for each day the information submittal is late. Failure to submit the required information within one (1) year of the date of the department's request is cause for the Director to take action to cancel the permit. ()

d. Field reports which indicate that a measuring device or lockable controlling works, required as a condition of approval of the permit, has not been installed, are not acceptable and will be returned to the examiner unless the measuring device requirement or lockable controlling works requirement has been formally waived or modified by the Director. ()

03. General.

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a. For irrigation purposes, the duty of water shall not exceed five (5) acre feet of stored water for each acre of land to be irrigated or more than one (1) cubic foot per second for each fifty (50) acres of land to be irrigated unless it can be shown to the satisfaction of the Director that a greater amount is necessary. ()

b. For irrigated acreage of five (5) acres or less, a diversion rate up to three one-hundredths (0.03) cfs per acre may be allowed on the license to be issued by the Director. ()

c. Conveyance losses of water from the point of diversion to the place of use which are determined by actual measurement may be allowed by the Director if the loss is determined by the Director to be reasonable. ()

d. The duty of water described in Subsections 035.03.a. or 035.03.b. may be exceeded if the department has authorized a greater diversion rate per acre when the permit was issued and good cause acceptable to the Director has been demonstrated. ()

e. For irrigation systems which cover twenty-five thousand (25,000) acres or more, within irrigation districts organized and existing under the laws of the state of Idaho, and for irrigation projects developed under a permit held by an association, company, corporation, or the United States to deliver surface water to more than five (5) water users under an annual charge or rental, the field report does not need to describe the irrigated land by legal subdivision, but may describe generally the lands under the project works if the total irrigated acres has been accurately determined and is shown on the field report. The amount of water beneficially used under such projects must be shown on the field report. ()

036. -- 039. (RESERVED)

040. WATER MEASUREMENT (RULE 40).

01. Measurement Terminology.

()

a. Rate of flow measurements shall be shown in units of cubic feet per second (cfs) with three (3) significant figures and no more precision than hundredths. ()

b. Volume measurements shall be shown in units of acre-feet (AF) with three (3) significant figures, and no more precision than tenths. ()

02. Rate of Diversion. The rate of diversion measurement shall be conducted as close as reasonably possible to the source of supply and shall be measured with the project works fully in place operating at normal capacity. For example, if a sprinkler system is used for irrigation purposes, discharge from the pump must be measured with the sprinkler system connected. ()

03. Measurements. Water measurements may be made by vessel, weir, meter, rated flume, reservoir capacity table or other standard method of measurement acceptable to the Director. The field report shall describe the method used in making the measurement, the date when made, the name of the person making the measurement, the legal description of the location where the measurement was taken and shall include sufficient information, including current meter notes, rating tables, and/or calibration information to enable the Director to check the quantity of water measured in each case. ()

04. Unacceptable Measurements. Theoretical diversion rates or theoretical carrying capacities are not acceptable as a measure of the rate of diversion except as indicated in these rules and for some diversion systems where the flow rate cannot be measured accurately due to the physical characteristics of the diversion and distribution system. ()

05. Method. Rate of flow measurements shall be determined using equipment and methods capable of obtaining an accuracy of plus or minus ten percent (10%). ()

041. -- 044. (RESERVED)

045. DRAWINGS, MAP, AND SCHEMATIC DIAGRAM (RULE 45).

The following provisions shall apply to the submittal of drawings, maps, photos and the schematic diagrams. ()

01. Submittal of Drawings, Maps, Photos and Schematic Diagrams. Drawings, maps, photos and schematic diagrams used as an attachment to the field report shall be on eight and one-half by eleven (8 1/2 x 11) inch paper whenever possible. ()

02. Attachment Sheets. Attachment sheets shall depict information on one (1) side only. ()

03. Scale of Map. The map depicting the point of diversion and place of use shall be of a reasonable scale but not less than two (2) inches equals one (1) mile. The map shall show the location of the point(s) of diversion to the nearest forty (40) acre tract or to a ten (10) acre tract for springs. The location of ditches, canals, mainlines, distribution systems and the place of use by forty (40) acre tract must be shown. ()

04. Drawings. Drawings need to generally depict the size and type of diversion works, measuring device, conveyance system, water application method, and the location of any measurements taken. ()

05. Photographs. Photographs of the diversion works, the typical distribution works and other prominent features of the system shall be provided with the field report. ()

046. -- 049. (RESERVED)

050. LICENSE EXAMINATION FEE (RULE 50).

01. Examinations Conducted by Department Staff. ()

a. The examination fee shall be payable to the Department of Water Resources unless the field examination is conducted by a certified water right examiner. ()

b. The department will not conduct an examination for which the fee has not been paid to the department unless exempted in Rule Subsection 009.04, except that for any prior examination, whether conducted by a certified water right examiner or by department staff, the department may conduct a supplemental examination on its own initiative at any time. No examination fee shall be charged for a supplemental examination conducted by the department on its own initiative. ()

c. A license shall not be issued for an amount of water in excess of the amount covered by the examination fee. Subsequent to the examination and prior to a license being issued, the Director will notify the permit holder that the licensed amount will be limited because an insufficient examination fee was paid. The permit holder will be allowed thirty (30) days after the notice is mailed to pay the additional examination fee, along with a late payment penalty of twenty-five dollars (\$25) or twenty percent (20%) of the amount of the additional required fee whichever is more. If payment is received within the thirty (30) day period, the rate or volume licensed shall not be reduced by reason of the examination fee. If payment is not received within the thirty (30) day period, the rate or volume licensed shall be limited by the original examination fee paid. For the purpose of determining advancement of priority for late fee as provided in Section 42-217, Idaho Code, fees shall not be considered as having been paid until paid in full, including any subsequent fee. ()

d. Excess examination fees are non-refundable. ()

e. An examination fee equal to the initial examination fee paid to the department shall be paid for a re-examination made at the request for the permit holder except upon a showing of error by the department on the initial examination. ()

02. Examinations Conducted by Non-Department Certified Water Right Examiners. ()

a. The examination fee required by Section 42-217, Idaho Code is not applicable for examination conducted by or under the supervision of certified water right examiners. ()

b. A permit holder may not choose to have the examination conducted by the department after selecting a certified water right examiner. ()

c. After submitting proof of beneficial use and paying an examination fee to the department, but before the department's actual examination, a permit holder may submit an examination report completed by a certified water right examiner. Because the examination fee is an essential component of timely proof submittal, the department will not refund the examination fee. ()

051. -- 054. (RESERVED)

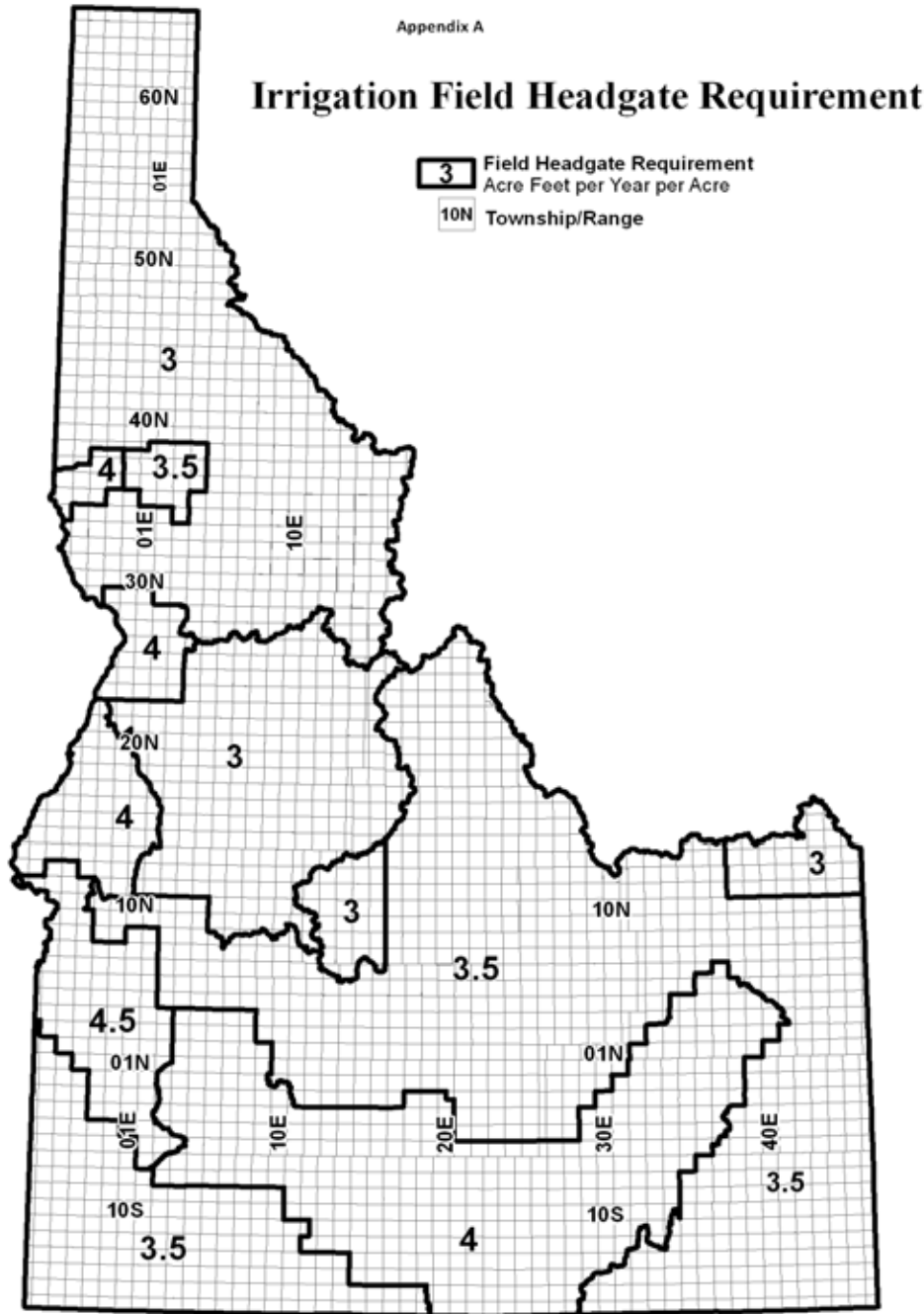
055. PENALTY (RULE 55).

01. Permits for Which Proof Has Not Been Submitted. The submittal required is the proof and the examination fee or the proof and a completed field report. ()

02. Failure to Submit. Failure to submit either the license examination fee or an acceptable field examination report prepared by or under the supervision of a certified water right examiner by the proof due date is cause to lapse the permit pursuant to Section 42-218a, Idaho Code, unless an extension of time pursuant to Section 42-204, Idaho Code, extending the proof of beneficial use due date has been approved. ()

056. -- 999. (RESERVED)

Appendix A



**37.03.03 – RULES AND MINIMUM STANDARDS FOR THE CONSTRUCTION
AND USE OF INJECTION WELLS**

000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authority of Sections 42-3913, 42-3914, and 42-3915, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 37.03.03 “Rules and Minimum Standards for the Construction and Use of Injection Wells.” ()

02. Scope. These rules and minimum standards are for construction and use of injection wells in the state of Idaho. Upon promulgation, these rules apply to all injection wells (see Rule Subsection 035.01). The construction and use of Class I, III, IV, or VI injection wells are prohibited by these rules. Class IV wells are also prohibited by federal law. These rules and minimum standards for construction and use of injection wells apply to all injection wells in the state of Idaho, except in Indian lands. All injection wells shall be permitted and constructed in accordance with the “Well Construction Standards Rules” found in IDAPA 37.03.09 which are authorized under Section 42-238, Idaho Code. ()

03. Rule Coverage. In the event that a portion of these rules is less stringent than the minimum requirements for injection wells as established by Federal regulations, the correlative Federal requirement will be used to regulate the injection well. ()

04. Variance of Methods. The Director may approve the use of a different testing method or technology if it is no less protective of human health and the environment, will not allow the migration of injected fluids into a USDW, meets the intent of the rule, and yields information or data consistent with the original method or technology required. A request for review by the Director must be submitted in writing by the applicant, permit holder, or operator and be included with all pertinent information necessary for the Director to evaluate the proposed testing method or technology. ()

002. INCORPORATION BY REFERENCE.

01. Incorporated Document. IDAPA 37.03.03 adopts and incorporates by reference those ground water quality standards found in Section 200 of IDAPA 58.01.11, “Ground Water Quality Rule,” of the Department of Environmental Quality. ()

02. Document Availability. Copies of the incorporated document may be found at the central office of the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho, 83720-0098 or online through the department or state websites. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Abandonment. See “permanent decommission. ()

02. Abandoned Well. See “permanent decommission”. ()

03. Agricultural Runoff Waste. Excess surface water from agricultural fields generated during any agricultural operation, including runoff of irrigation tail water, as well as natural drainage resulting from precipitation, snowmelt, and floodwaters, and is identical to the statutory phrase “irrigation waste water” found in Idaho Code 42-3902. ()

04. Applicant. Any owner or operator submitting an application for permit to construct, modify or maintain an injection well to the Director of the Department of Water Resources. ()

05. Application. The standard Department forms for applying for a permit, including any additions, revisions or modifications to the forms. ()

06. Aquifer. Any formation that will yield water to a well in sufficient quantities to make production of water from the formation reasonable for a beneficial use, except when the water in such formation results solely from fluids deposited through an injection well. ()

- 07. Beneficial Use.** One (1) or more of the recognized beneficial uses of water including but not limited to, domestic, municipal, irrigation, hydropower generation, industrial, commercial, recreation, aquifer recharge and storage, stockwatering and fish propagation uses, as well as other uses which provide a benefit to the user of the water as determined by the Director. Industrial use as used for purposes of these rules includes, but is not limited to, manufacturing, mining and processing uses of water. ()
- 08. Best Management Practice (BMP).** A practice or combination of practices that are more effective than other techniques at preventing or reducing contamination of ground water and surface water by injection well operation. ()
- 09. Casing.** A pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling fluid into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole. ()
- 10. Cementing.** The operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing. ()
- 11. Cesspool.** An injection well that receives sanitary waste without benefit of a treatment system or treatment device such as a septic tank. Cesspools sometimes have open bottom and/or perforated sides. ()
- 12. Coliform Bacteria.** All of the aerobic and facultative anaerobic, gram-negative, non-spore forming, rod-shaped bacteria that either ferment lactose broth with gas formation within forty-eight (48) hours at thirty-five degrees Celsius (35C), or produce a dark colony with a metallic sheen within twenty-four (24) hours on an Endo-type medium containing lactose. ()
- 13. Confining Bed.** A body of impermeable or distinctly less permeable material stratigraphically adjacent to one (1) or more aquifers. ()
- 14. Construct.** To create a new injection well or to convert any structure into an injection well. ()
- 15. Contaminant.** Any physical, chemical, biological, or radiological substance or matter. ()
- 16. Contamination.** The introduction into the natural ground water of any physical, chemical, biological, or radioactive material that may: ()
- a.** Cause a violation of Idaho Ground Water Quality Standards found in IDAPA 58.01.11 “Ground Water Quality Rule” or the federal drinking water quality standards, whichever is more stringent; or ()
 - b.** Adversely affect the health of the public; or ()
 - c.** Adversely affect a designated or beneficial use of the State’s ground water. Contamination includes the introduction of heated or cooled water into the subsurface that will alter the ground water temperature and render the local ground water less suitable for beneficial use. ()
- 17. Conventional Mine.** An open pit or underground excavation for the production of minerals. ()
- 18. Decommission.** To remove a well from operation such that injection through the well is not possible. See “permanent decommission” and “unauthorized decommission”. ()
- 19. DEQ.** The Idaho Department of Environmental Quality. ()
- 20. Deep Injection Well.** An injection well which is more than eighteen (18) feet in vertical depth below land surface. ()

21. **Department.** The Idaho Department of Water Resources. ()
22. **Director.** The Director of the Idaho Department of Water Resources. ()
23. **Disposal Well.** A well used for the disposal of waste into a subsurface stratum. ()
24. **Draft Permit.** A prepared document indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." Permit conditions, compliance schedules, and monitoring requirements are typically included in a "draft permit". A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination is not a "draft permit." ()
25. **Drilling Fluid.** Any number of liquid or gaseous fluids and mixtures of fluids and solids (such as solid suspensions, mixtures and emulsions of liquids, gases, and solids) used in operations to drill boreholes into the earth. ()
26. **Drywell.** An injection well completed above the water table so that its bottom and sides are typically dry except when receiving fluids. ()
27. **Endangerment.** Injection of any fluid which exceeds Idaho ground water quality standards, or federal drinking water quality standards, whichever is more stringent, that may result in the presence of any contaminant in ground water which supplies or can reasonably be expected to supply any public or non-public water system, and if the presence of such contaminant may result in such a system not complying with any ground water quality standard or may otherwise adversely affect the health of persons or result in a violation of ground water quality standards that would adversely affect beneficial uses. ()
28. **Exempted Aquifer.** An "aquifer" or its portion that meets the criteria in the definition of USDW but which has been recategorized as "other" according to the procedures in IDAPA 58.01.11 "Ground Water Quality Rule". ()
29. **Existing Injection Well.** An "injection well" other than a "new injection well." ()
30. **Experimental Technology.** A technology which has not been proven feasible under the conditions in which it is being tested. ()
31. **Facility or Activity.** Any UIC "injection well," or another facility or activity that is subject to regulation under the UIC program. ()
32. **Fault.** A surface or zone of rock fracture along which there has been displacement. ()
33. **Flow Rate.** The volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel. ()
34. **Fluid.** Any material or substance which flows or moves, whether in a semisolid, liquid, sludge, gaseous or any other form or state. ()
35. **Formation.** A body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailing, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface. ()
36. **Generator.** Any person, by site location, whose act or process produces hazardous waste identified or listed in 40 CFR part 261. ()
37. **Ground Water.** Any water that occurs beneath the surface of the earth in a saturated formation of rock or soil. ()
38. **Ground Water Quality Standards.** Standards found in IDAPA 58.01.11, "Ground Water Quality

Rule,” Section 200. ()

39. Hazardous Waste. Any substance defined by IDAPA 58.01.05, “Rules and Standards for Hazardous Waste.” ()

40. Indian Lands. “Indian Country” as defined in 18 U.S.C. 1151. That section defines Indian Country as: ()

a. All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; ()

b. All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and ()

c. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. ()

41. Individual Subsurface Sewage Disposal System. For the purpose of these rules, any standard or alternative disposal system which injects sanitary waste from single family residential septic systems, or non-residential septic systems which are used solely for the disposal of sanitary waste and have the capacity to serve fewer than twenty (20) people a day. ()

42. Improved Sinkhole. A naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface. ()

43. Injection. The subsurface emplacement of fluids through an injection well. ()

44. Injection Well. Any feature that is operated to allow injection which also meets at least one (1) of the following criteria: ()

a. A bored, or driven shaft whose depth is greater than the largest surface dimension; ()

b. A dug hole whose depth is greater than the largest surface dimension; ()

c. An improved sinkhole; or ()

d. A subsurface fluid distribution system. ()

45. Injection Zone. A geological “formation”, or those sections of a formation receiving fluids through an “injection well.” ()

46. IWRB. Idaho Water Resource Board. ()

47. Large Capacity Cesspools. Any cesspool used by a multiple dwelling, community or regional system for the disposal of sanitary wastes (for example: a duplex or an apartment building) or any cesspool used by or intended to be used by twenty (20) or more people per day (for example: a rest stop, campground, restaurant or church). ()

48. Large Capacity Septic System. Class V wells that are used to inject sanitary waste through a septic tank and do not meet the criteria of an individual subsurface sewage disposal system. ()

49. Maintain. To allow, either expressly or by implication, an injection well to exist in such condition as to accept or be able to accept fluids. Unless a well has been permanently decommissioned pursuant to the criteria contained in these rules it is considered to be capable of accepting fluids. ()

- 50. Modify.** To alter the construction of an injection well, but does not include cleaning or redrilling operations which neither deepen nor increase the dimensions of the well. ()
- 51. Motor Vehicle Waste Disposal Wells.** Injection wells that receive or have received fluids from vehicle repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (transmission and muffler repair shop), or any facility that does any vehicular repair work. ()
- 52. New Injection Well.** An “injection well” which began to be used for injection after a UIC program for the State applicable to the well is approved or prescribed. ()
- 53. Open-Loop Heat Pump Return Wells.** Injection wells that receive surface water or ground water that has been passed through a heat exchange system for cooling or heating purposes. ()
- 54. Operate.** To allow fluids to enter an injection well by action or inaction of the operator. ()
- 55. Operator.** Any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, federal agency or other entity that operates or proposes to operate any injection well. ()
- 56. Owner.** Any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, federal agency or other entity owning land on which any injection well exists or is proposed to be constructed. ()
- 57. Packer.** A device lowered into a well to produce a fluid-tight seal. ()
- 58. Perched Aquifer.** Ground water separated from an underlying main body of ground water by an unsaturated zone. ()
- 59. Permanent Decommission.** The discontinuance of use of an injection well in a method approved by the Director such that the injection well no longer has the capacity to inject fluids and the upward or downward migration of fluid is prevented. This also includes the disposal and proper management of any soil, gravel, sludge, liquids, or other materials removed from or adjacent to the injection well in accordance with all applicable Federal, State, and local regulations and requirements. ()
- 60. Permit.** An authorization, license, or equivalent control document issued by the Department. ()
- 61. Person.** Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law. ()
- 62. Point of Beneficial Use.** The top or surface of a USDW, directly below an injection well, where water is available for a beneficial use. ()
- 63. Point of Diversion for Beneficial Use.** A location such as a producing well or spring where ground water is taken under control and diverted for a beneficial use. ()
- 64. Point of Injection.** The last accessible sampling point prior to waste being released into the subsurface environment through an injection well. For example, the point of injection for a Class V septic system might be the distribution box. For a drywell, it is likely to be the well bore itself. ()
- 65. Pressure.** The total load or force per unit area acting on a surface. ()
- 66. Radioactive Material.** Any material, solid, liquid or gas which emits radiation spontaneously. Radioactive geologic materials occurring in their natural state are not included. ()

67. **Radioactive Waste.** Any fluid which contains radioactive material in concentrations which exceed those established for discharges to water in an unrestricted area by 10 CFR 20.1302.(b)(2)(i) and Table 2 in Appendix B of 10 CFR 20. ()
68. **RCRA.** The Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976. ()
69. **Remediation Project.** Use of an injection well for the removal, treatment or isolation of a contaminant from ground water through actions or the removal or treatment of a contaminant in ground water as approved by the Director. ()
70. **Residential (Domestic) Activities.** Human activities that generate liquid or solid waste in any public, private, industrial, commercial, municipal, or other facility. ()
71. **Sanitary Waste.** Any fluid generated through residential (domestic) activities, such as food preparation, cleaning and personal hygiene. This term does not include industrial, municipal, commercial, or other non-residential process fluids. ()
72. **Schedule of Compliance.** A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with the standards. ()
73. **Septic System.** An injection well that is used to inject sanitary waste below the surface. A septic system is typically comprised of a septic tank and subsurface fluid distribution system or disposal system. ()
74. **Shallow Injection Well.** An injection well which is less than or equal to eighteen (18) feet in vertical depth below land surface. ()
75. **Site.** The land or water area where any “facility or activity” is physically located or conducted, including adjacent land used in connection with the facility or activity. ()
76. **State.** The state of Idaho. ()
77. **Stratum (plural strata).** A single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material. ()
78. **Subsidence.** The lowering of the natural land surface in response to: Earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (Hydrocompaction); oxidation of organic matter in soils; or added load on the land surface. ()
79. **Subsurface Fluid Distribution System.** An assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground. ()
80. **UIC.** The Underground Injection Control program under Part C of the Safe Drinking Water Act, including an “approved State program.” ()
81. **Unauthorized Decommission.** The decommissioning of any injection well that has not received the approval of the Department prior to decommissioning, or was not decommissioned in a method approved by the Director. These wells may have to be properly decommissioned when discovered by the Director to ensure that the well prevents commingling of aquifers or is no longer capable of injection. ()
82. **Underground Injection.** See “injection.” ()
83. **Underground Source of Drinking Water (USDW).** An aquifer or its portion: ()
- a. Which: ()

- i. Supplies any public water system; or ()
- ii. Contains a sufficient quantity of ground water to supply a public water system; or ()
- (1) Currently supplies drinking water for human consumption; or ()
- (2) Contains fewer than ten thousand (10,000) mg/l total dissolved solids; and ()
- b. Which is not an exempted aquifer. ()

84. Unreasonable Contamination. Endangerment of a USDW or the health of persons or other beneficial uses by injection. See “endangerment.” ()

85. Water Quality Standards. Refers to those standards found in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, “Water Quality Standards” and IDAPA 58.01.11, “Ground Water Quality Rule.” ()

86. Well. For the purposes of these rules, “well” means “injection well.” ()

011. -- 014. (RESERVED)

015. VIOLATIONS, FORMAL NOTIFICATION AND ENFORCEMENT.

- 01. Violations.** It shall be a violation of these rules for any owner or operator to: ()
- a. Fail to comply with a permit or authorization, or terms or conditions thereof; ()
 - b. Fail to comply with applicable standards for water quality; ()
 - c. Fail to comply with any permit application notification or filing requirement; ()
 - d. Knowingly make any false statement, representation or certification in any application, report, document or record filed pursuant to these rules, or terms and conditions of an issued permit; ()
 - e. Falsify, tamper with or knowingly render inaccurate any monitoring device or method required to be maintained or utilized by the terms and conditions of an issued permit; ()
 - f. Fail to respond to any formal notification of a violation when a response is required; or ()
 - g. Decommission a well in an unauthorized manner. ()

02. Additional. It shall be a violation of these rules for any person to construct, operate, maintain, convert, plug, decommission or conduct any other activity in a manner which results or may result in the unauthorized injection of a hazardous waste or of a radioactive waste by an injection well. ()

03. Formal Notification. Formal notification of violations may be communicated to the owner or operator with a letter, a notice of violation, a compliance or enforcement order or other appropriate means. ()

04. Enforcement. Violation of any of the provisions of the Injection Well Act (Chapter 39, Title 42, Idaho Code) or of any rule, regulation, standard or criteria pertaining to the Injection Well Act may result in the Director initiating an enforcement action as provided under Chapters 17 and 39, Title 42, Idaho Code. ()

016. -- 019. (RESERVED)

020. HEARING BEFORE THE WATER RESOURCE BOARD.

- 01. General.** All hearings before the IWRB will be conducted in accordance with Chapter 52, Title 67,

Idaho Code, at a place convenient to the owner and/or operator. For purposes of such hearings, the IWRB or its designated hearing officer shall have power to administer oaths, examine witnesses, and issue in the name of the said Board subpoenas requiring testimony of witnesses and the production of evidence relevant to any matter in the hearing. Judicial review of the final determination by the IWRB may be secured by the owner by filing a petition for review as prescribed by Chapter 52, Title 67, Idaho Code, in the District Court of the county where the injection well is situated or proposed to be located. The petition for review shall be served upon the Chairman of the IWRB and upon the Attorney General. ()

02. Hearings on Conditional Permits, Disapproved Applications, or Petitions for Exemption. Any owner or operator aggrieved by the approval or disapproval of an application, or by conditions imposed upon a permit, or any person aggrieved by the Director's decision on a petition for exemption under Section 025 of these rules, shall be afforded an opportunity for a hearing before the IWRB or its designated hearing officer. Written notice of such grievance shall be transmitted to the Director within thirty (30) days after receipt of notice of such approval, disapproval or conditional approval. Such hearing shall be held for the purpose of determining whether the permit shall be issued, whether the conditions imposed in a permit are reasonable, whether a change in circumstances warrants a change in conditions imposed in a valid permit, or whether the Director's decision on a petition for exemption should not be changed. ()

03. Hearings on Permit Cancellations. When the Director has reason to believe the operation of an injection well for which a permit has been issued is interfering with the right of the public to withdraw water for beneficial uses, or is causing unreasonable contamination of a drinking or other ground water source as provided for in Title 42, Chapter 39, Idaho Code, the permit may be canceled by the Director. Prior to the cancellation of such permit there shall be a hearing before the IWRB for the purpose of determining whether or not the permit should be canceled. At such hearing, the Director shall be the complaining party. At least thirty (30) days prior to the hearing, a notice, which shall be in accordance with Chapter 52, Title 67, Idaho Code, shall be sent by certified mail to the owner or operator whose permit is proposed to be canceled. The Board shall affirm, modify, or reject the Director's decision and make its decision in the form of an order to the Director. ()

021. -- 034. (RESERVED)

035. CLASSIFICATION OF INJECTION WELLS.

01. Classification of Injection Wells. For the purposes of these rules, injection wells are classified as follows: ()

a. Class I: ()

i. Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one-quarter (1/4) mile of the well bore, an underground source of drinking water. ()

ii. Other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one-quarter (1/4) mile of the well bore, an underground source of drinking water. ()

iii. Radioactive waste disposal wells which inject fluids below the lowermost formation containing an underground source of drinking water within one-quarter (1/4) mile of the well bore. ()

b. Class II. Wells used to inject fluids: ()

i. Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants, dehydration stations, or compressor stations which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection. ()

ii. For enhanced recovery of oil or natural gas; and ()

iii. For storage of hydrocarbons which are liquid at standard temperature and pressure. ()

- c. Class III. Wells used to inject fluids for extraction of minerals including: ()
 - i. Mining of sulfur by the Frasch process; ()
 - ii. In situ production of uranium or other metals; this category includes only in-situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V. ()
 - iii. Solution mining of salts or potash. ()
- d. Class IV: ()
 - i. Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste into a formation which within one-quarter (1/4) mile of the well contains an underground source of drinking water. ()
 - ii. Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste above a formation which within one-quarter (1/4) mile of the well contains an underground source of drinking water. ()
 - iii. Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to dispose of hazardous waste, which cannot be classified under Subparagraphs 035.01.a.i. or 035.01.d.i. or 035.01.d.ii. of this rule (e.g., wells used to dispose of hazardous waste into or above a formation which contains an aquifer which has been exempted pursuant to Section 025 of these rules). ()
- e. Class V -- All injection wells not included in Classes I, II, III, IV, or VI. ()
- f. Class VI. ()
 - i. Wells that are not experimental in nature that are used for geologic sequestration of carbon dioxide beneath the lowermost formation containing a USDW; or ()
 - ii. Wells used for geologic sequestration of carbon dioxide that have been granted a waiver of the injection depth requirements pursuant to requirements at 40 CFR Section 146.95; or ()
 - iii. Wells used for geologic sequestration of carbon dioxide that have received an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to Section 025 of these rules. ()
- 02. Subclassification.** Class V wells are subclassified as follows: ()
 - a. 5A5-Electric Power Generation. ()
 - b. 5A6-Geothermal Heat. ()
 - c. 5A7-Heat Pump Return. ()
 - d. 5A8-Aquaculture Return Flow. ()
 - e. 5A19-Cooling Water Return. ()
 - f. 5B22-Saline Water Intrusion Barrier. ()
 - g. 5D2-Storm Runoff. ()

- h.** 5D3-Improved Sinkholes. ()
- i.** 5D4-Industrial Storm Runoff. ()
- j.** 5F1-Agricultural Runoff Waste. ()
- k.** 5G30-Special Drainage Water. ()
- l.** 5N24¹-Radioactive Waste Disposal. ()
- m.** 5R21-Aquifer Recharge. ()
- n.** 5S23-Subsidence Control. ()
- o.** 5W9-Untreated Sewage. ()
- p.** 5W10-Cesspools. ()
- q.** 5W11-Septic Systems (General). ()
- r.** 5W12-Waste Water Treatment Plant Effluent. ()
- s.** 5W20-Industrial Process Water. ()
- t.** 5W31-Septic Systems (Well Disposal). ()
- u.** 5W32-Septic System (Drainfield). ()
- v.** 5X13-Mine Tailings Backfill. ()
- w.** 5X14-Solution Mining. ()
- x.** 5X15-In-Situ Fossil Fuel Recovery. ()
- y.** 5X16-Spent Brine Return Flow. ()
- z.** 5X25-Experimental Technology. ()
- aa.** 5X26-Aquifer Remediation. ()
- bb.** 5X27-Other Wells. ()
- cc.** 5X28¹-Motor Vehicle Waste Disposal Wells. ()
- dd.** 5X29-Abandoned Water Wells. ()

¹ The construction and operation of wells in these subclasses is currently illegal in Idaho.

036. -- 039. (RESERVED)

040. AUTHORIZATIONS, PROHIBITIONS AND EXEMPTIONS.

01. Authorizations. Construction and use of Class V deep injection wells may be authorized by permit as approved by the Director in accordance with these rules. ()

02. Prohibitions. ()

- a. These rules prohibit the permitting, construction, or use of any Class I, III IV, or VI injection well. ()
- b. No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows or causes the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary or secondary drinking water regulation, under IDAPA 58.01.11, “Ground Water Quality Rule,” Section 200 or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of Paragraph 040.02.c. are met. ()
- c. Notwithstanding any other provision of this section, the Director may take emergency action upon receipt of information that a contaminant which is present in or likely to enter a public water system or underground source of drinking water may present an imminent and substantial endangerment to the health of persons. ()
- d. Construction of large capacity cesspools, motor vehicle waste disposal wells, radioactive waste disposal wells, and untreated sewage disposal wells is prohibited. Construction and use of other Class V shallow injection wells are authorized by these rules without permit provided that: ()
- i. Required inventory information is submitted to the Director pursuant to Subsection 070.01 of this rule. ()
- ii. Use of the shallow injection well shall not result in unreasonable contamination of a USDW or cause a violation of surface or ground water quality standards that would affect a beneficial use. ()
- e. Class IV injection wells used to inject contaminated ground water that has been treated and is being reinjected into the same formation from which it was drawn are not prohibited by these rules if such injection is approved by EPA, or Idaho, pursuant to provisions for cleanup of releases under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601–9657, or pursuant to requirements and provisions under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 through 6987. ()
- f. All large capacity cesspools must be properly decommissioned by January 1, 2005. A cease and desist order may be issued to the owner or the operator when a large capacity cesspool is found to be a threat to the ground water resources as described in Paragraph 070.01.c. ()
- g. All motor vehicle waste disposal wells must be properly decommissioned by January 1, 2005. A cease and desist order may be issued to the owner or the operator when a motor vehicle waste disposal well is found to be a threat to the ground water resources as described in Paragraph 070.01.c. ()
- h. The Construction, operation or maintenance of any non-experimental Class V geologic sequestration well is prohibited. ()
- i. Owners or operators of shallow injection wells are prohibited from injecting into the well upon failure to submit inventory information in a timely manner pursuant to Paragraph 070.01.a. of these rules. ()
- 03. Exemptions.** ()
- a. The UIC inventory and fee requirements of these rules do not apply to individual subsurface sewage disposal system wells. These systems are, however, subject to the permitting and fee requirements of IDAPA 58.01.03 “Individual/Subsurface Sewage Disposal Rules,” Title 39, Chapter 1 and Title 39, Chapter 36, Idaho Code. ()
- b. State or local government entities are exempt from the permit requirements of these rules for wells associated with highway and street construction and maintenance projects, but shall submit shallow injection well inventory information for said wells and shall comply with all other requirements of these rules. ()
- c. Mine tailings backfill (5X13) wells are authorized by rule as part of mining operations. They are

therefore exempt from the ground water quality standards and permitting requirements of these rules provided that their use is limited to the injection of mine tailings only. The use of any 5X13 well(s) shall not result in water quality standards at points of diversion for beneficial use being exceeded or otherwise affect a beneficial use. Should water quality standards be exceeded or beneficial uses be affected, the Director may order the wells to be put under the permit requirements of these rules, or the wells may be required to be remediated or closed. As a condition of their use, the Director may require the construction and sampling of monitoring wells by the owner/operator. 5X13 wells are subject to the inventory requirements of Subsection 070.01. ()

041. -- 069. (RESERVED)

070. CLASS V: CRITERIA AND STANDARDS.

01. Class V Shallow Injection Well Requirements. ()

a. Authorization. As a condition of authorization, all owners or operators of shallow Class V injection wells, including improved sinkholes used for aquifer recharge, that dispose of nonhazardous and nonradioactive wastes are required to submit a Shallow Injection Well Inventory Form to the Department no later than thirty (30) days prior to commencement of construction for each new well or no later than thirty (30) days after the discovery of an existing injection well that has not previously been inventoried with the Department. Forms are available from any Department office or at the Department website at <http://www.idwr.idaho.gov>. State or local government entities shall submit the following inventory information for wells associated with highway and street construction and maintenance projects. ()

- i. Facility name and location; and ()
- ii. County in which the injection well(s) is (are) located; and ()
- iii. Ownership of the well(s); and ()
- iv. Name, address and phone number of legal contact; and ()
- v. Type or function of the well(s); and ()
- vi. Number of wells of each type; and ()
- vii. Operational status of the well(s). ()

b. Inventory Fees. For shallow injection wells constructed after July 1, 1997, the Shallow Injection Well Inventory Form shall be accompanied by a fee as specified in Section 42-3905, Idaho Code, payable to the Department of Water Resources. State or local government entities are exempt from Shallow Injection Well Inventory Form filing fees for wells associated with highway and street construction and maintenance, but shall comply with all other requirements of these rules. ()

c. Permit Requirements. If operation of a shallow Class V injection well is causing or may cause unreasonable contamination of a USDW, or cause a violation of the ground water quality standards at a place of beneficial use, the Director shall require immediate cessation of the injection activity. Where a Class V injection well is owned or operated by an entity other than a state or local entity involved in highway and street construction and maintenance, the Director may authorize continued operation of the well through a permit that specifies the terms and conditions of acceptable operation. ()

d. Permanent Decommission. Owners or operators of shallow injection wells shall notify the Director not less than thirty (30) days prior to permanent decommissioning of any shallow injection well. Permanent decommissioning shall be accomplished in accordance with procedures approved by the Director. ()

e. Inter-Agency Cooperation. The Department may seek the assistance of other government agencies, including cities and counties, health districts, highway districts, and other departments of state government to inventory, monitor and inspect shallow injection wells, where local assistance is needed to prevent deterioration of

ground water quality, and where injection well operation overlaps with water quality concerns of other agencies or local governing entities. Assistance is to be negotiated through a memorandum of understanding between the Department and the local entity, agency, or department, and is subject to the approval of the Director. ()

02. Class V Deep Injection Well Requirements. ()

a. Application Requirements. ()

i. No person shall continue to maintain or use an unauthorized injection well after the effective date given in Section 42-3903, Idaho Code, unless a permit therefor has been issued by the Director. No injection well requiring a permit under Subsection 070.02 shall be constructed, modified or maintained after the effective date given in Section 42-3903, Idaho Code, unless a permit therefor has been issued by the Director. No injection well requiring a permit shall continue to be used after the expiration of the permit issued for such well unless another application for permit shall have been received by the Director. All applications for permit shall be on forms furnished by the Director. ()

ii. Each application for permit to construct, modify or maintain an injection well, as required by these rules, shall be accompanied by a filing fee as specified in Section 42-3905, Idaho Code, payable to the Department of Water Resources. For the purposes of these rules, all wells or groups of wells associated with a “Remediation Project” may be administered as one (1) “well” at the discretion of the Director. ()

b. Application Information Required. An applicant shall submit the following information to the Director for all injection wells to be authorized by permit, unless the Director determines that it is not needed in whole or in part, and issues a written waiver to the applicant: ()

- i. Facility name and location; ()
- ii. Name, address and phone number of the well operator; ()
- iii. Class, subclass and function of the injection well (see Section 035); ()
- iv. Latitude/longitude or legal description of the well location to the nearest ten (10) acre tract; ()
- v. Ownership of the well; ()
- vi. County in which the injection well is located; ()
- vii. Construction information for the well; ()
- viii. Quantity and general character of the injected fluids; ()
- ix. Status of the well; ()
- x. A topographic map or aerial photograph extending one (1) mile beyond property boundaries, depicting:
 - (1) Location of the injection well and associated facilities described in the application; ()
 - (2) Locations of other injection wells; ()
 - (3) Approximate drainage area, if applicable; ()
 - (4) Hazardous waste facilities, if applicable; ()
 - (5) All wells used to withdraw drinking water; ()

- (6) All other wells, springs and surface waters. ()
- xi. Distance and direction to nearest domestic well; ()
- xii. Depth to ground water; and ()
- xiii. Alternative methods of waste disposal. ()
- c. Additional Information. The Director may require the following additional information for Class V injection wells to assess potential effects of injection: ()
 - i. A topographic map showing locations of the following within a two (2) mile radius of the injection well: ()
 - (1) All wells producing water; ()
 - (2) All exploratory and test wells; ()
 - (3) All other injection wells; ()
 - (4) Surface waters (including man-made impoundments, canals and ditches); ()
 - (5) Mines and quarries; ()
 - (6) Residences; ()
 - (7) Roads; ()
 - (8) Bedrock outcrops; and ()
 - (9) Faults and fractures. ()
 - ii. Additional maps or aerial photographs of suitable scale to accurately depict the following: ()
 - (1) Location and surface elevation of the injection well described in this permit; ()
 - (2) Location and identification of all facilities within the property boundaries; ()
 - (3) Locations of all wells penetrating the proposed injection zone or within a one-quarter (1/4) mile radius of the injection well; ()
 - (4) Maps and cross sections depicting all underground sources of drinking water to include vertical and lateral limits within a one-quarter (1/4) mile radius of the injection well, their position relative to the injection zone and the direction of water movement: local geologic structures; regional geologic setting. ()
 - iii. A comprehensive report of the following information: ()
 - (1) A tabulation of all wells penetrating the proposed injection zone, listing owner, lease holder and operator; well identification (permit) number; size, weight, depth and cementing data for all strings of casing; ()
 - (2) Description of the quality and quantity of fluids to be injected; ()
 - (3) Geologic, hydrogeologic, and physical characteristics of the injection zone and confining beds; ()
 - (4) Engineering data for the proposed injection well; ()

- (5) Proposed operating pressure; ()
- (6) A detailed evaluation of alternative disposal practices; ()
- (7) A plan of corrective action for wells penetrating the zone of injection, but not properly sealed or decommissioned; and ()
- (8) Contingency plans to cope with all shut-ins or well failures to prevent the migration of unacceptable fluids into underground sources of drinking waters. ()
- iv. Name, address and phone number of person(s) or firm(s) supplying the technical information and/or designing the injection well; ()
- v. Proof that the applicant is financially responsible, through a performance bond or other appropriate means, to decommission the injection well in a manner approved by the Director. ()
- d. Other Information. The Director may require of any applicant such additional information as may be necessary to demonstrate that the proposed or existing injection well will not endanger a USDW. The Director will not complete the processing of an application for which additional information has been requested until such time as the additional information is supplied. The Director may return any incomplete application and will not process such application until such time as the application is received in complete form. ()

03. Application Processing. ()

- a. Draft Permit. After all application information is received and evaluated, the Director will prepare a draft permit or denial, which will include the application for permit, permit conditions or reasons for denial, and any compliance schedules or monitoring requirements. In preparing the draft permit or denial, the Director shall consider the following factors: ()
 - i. The availability of economic and practical alternative means of disposal; ()
 - ii. The application of best management practices to the facilities and/or area draining into the well; ()
 - iii. The availability of economical, practical means of treating or otherwise reducing the amount of contaminants in the injected fluids; ()
 - iv. The quality of the receiving ground water, its category, its present and future beneficial uses or interconnected surface water; ()
 - v. The location of the injection well with respect to drinking water supply wells; and ()
 - vi. Compliance with the IDAPA 58.01.11, “Ground Water Quality Rule.” ()
- b. Public Notice. The Director will provide public notice of any draft permit to construct, maintain or modify a Class V injection well by means of a legal notice in a newspaper of general circulation in the county in which the well is located. The Director may give additional notice as necessary to adequately inform the interested public and governmental agencies. There shall be a period of at least thirty (30) days following publication for any interested person to submit written comments and to request a fact-finding hearing. The hearing will be held by the Director if deemed necessary. ()
- c. Review by the Directors of Other State Agencies. The Directors of other state agencies, as determined by the Director, shall be provided the opportunity to review and comment on draft permits. Comments shall be submitted to the Director within thirty (30) days of the public or legal notice. ()
- d. Open-Loop Heat Pump Return Wells (Subclass 5A7). ()

i. An open-loop heat pump return well greater than eighteen (18) feet in depth to be used solely for disposal of heat pump water at a rate not exceeding fifty (50) gpm does not require a draft permit and is not subject to a recurring permit cycle, however, registration of the well with the Department and submittal of a filing fee as specified in Section 42-3905, Idaho Code is required. The Director reserves the right to override the exemptions from the draft permit and permit cycle requirements. ()

ii. An open-loop heat pump return well greater than eighteen (18) feet in depth to be used solely for disposal of heat pump return water at a rate exceeding fifty (50) gpm is subject to the requirements of Subsections 070.02 and 070.03 of these rules. ()

e. **Fact-Finding Hearings.** At the Director's discretion, or upon motion of any interested individual, the Director may elect to hold a fact-finding hearing. Said hearing will be held at a location in the geographical area of the injection well. Notice of said hearing will be provided at least thirty (30) days in advance of the hearing by regular mail to the applicant and to the person or persons requesting the hearing. Public notice of the fact-finding hearing will be made by means of press release to a newspaper of general circulation in the county of the application. ()

04. The Director's Action On Draft Permits and Duration Of Approved Permits. The role of the Director is to determine whether or not the injection wells and their respective owners or operators are in compliance with the intent of these rules, thus protecting the ground waters of the state against unreasonable contamination or deterioration of quality and preserving them for diversion to beneficial uses. ()

a. **Consideration.** The Director will consider the following factors in taking final action on draft permits: ()

i. The likelihood and consequences of the injection well system failing; ()

ii. The long term effects of such disposal or storage; ()

iii. The recommendations and related justifications of the Directors of other state agencies and the public; ()

iv. The potential for violation of ground water quality standards at the point of injection or the point of beneficial use; and ()

v. Compliance with the Idaho Ground Water Quality Plan. ()

b. **Issuance of Permit.** After considering the draft permit for construction, modification, or maintenance, and all matters relating thereto, the Director shall issue a permit if the standards and criteria of Subsection 070.05 will be met and USDW's will not otherwise be unreasonably affected. If the Director finds that the standards and criteria cannot be met or that ground water sources cannot otherwise be protected from unreasonable contamination at all times, the draft permit may be denied or a permit may be issued with conditions designed to protect ground water sources. The Director's decision shall be in writing and a copy shall be mailed by regular mail to the applicant and to all persons who commented in writing on the draft permit or appeared at a hearing held to consider the draft permit. ()

c. **Permit Conditions and Requirements.** Any permit issued by the Director shall contain conditions to insure that ground water sources will be protected from waste, unreasonable contamination, or deterioration of ground water quality that could result in violations of the ground water quality standards. In addition to specific construction, operation, maintenance and monitoring requirements that the Director finds necessary, each permit shall be subject to the standard conditions and requirements of this rule. ()

d. **Construction Requirements.** ()

i. Well drillers or other persons involved with the construction of any injection well requiring a permit shall not commence construction on the facility until a certified copy of the approved permit is obtained from

the Director. ()

ii. Deep injection wells shall be constructed by a licensed water well driller to conform with the current Minimum Well Construction Standards and the conditions of the permit, except that a driller's license is not required for the construction of a driven mine shaft or a dug hole. ()

iii. Shallow injection wells authorized by permit shall be constructed in accordance with the conditions of the permit. Rule-authorized shallow injection wells shall be constructed as shown or described in the inventory submittal. ()

iv. Injection wells shall be constructed to prevent the entrance of any fluids other than specified in the permit. ()

v. Injection wells shall be constructed to prevent waste of artesian fluids or movement of fluids from one aquifer into another. ()

vi. When construction or modification of an injection well has been completed, the owner or operator shall inform the Director of completion on a form provided by the Department. ()

vii. A sampling port shall be provided if the injection well system is enclosed. ()

viii. All new injection wells constructed into alluvial formations shall have a minimum ten (10) foot separation from the bottom of the well and seasonal high ground water. ()

(1) Injection wells installed into fractured basalt are exempt from separation distances. ()

(2) The Director may reduce separation distance requirements if the quality of injected fluids are improved through additional treatment or BMPs. ()

(3) Heat pump return wells (sub-class 5A7) are exempt from the separation distance requirement of this section. ()

e. Operational Conditions. ()

i. The injection well shall not be used until the construction, operation and maintenance requirements of the permit are met and provisions are made for any required inspection, monitoring and record keeping. ()

ii. Injection of any contaminant at concentrations exceeding the standards set in Paragraph 070.05.c. into a present or future drinking or other ground water source that may cause a health hazard or adversely affect a designated and protected use is prohibited. ()

iii. The injection well owner or operator shall develop approved procedures to detect constructional or operational failure in a timely fashion, and shall have contingency plans to cope with the well failure. ()

iv. Authorized representatives of the Department shall be allowed to enter, inspect and/or sample: ()

(1) The injection well and related facilities; ()

(2) The owner or operator's records of the injection operation; ()

(3) Monitoring instrumentation associated with the injection operation; and ()

(4) The injected fluids. ()

v. The injection facilities shall be operated and maintained to achieve compliance with all terms and conditions of this permit. ()

(1) Proper operation and maintenance includes effective performance, adequate funding, operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures; ()

(2) If compliance cannot be met, the owner shall take corrective action as determined by the Director or terminate injection. ()

vi. The owner shall mitigate any adverse effects resulting from non-compliance with the terms and conditions of the permit. ()

vii. If the injection well was constructed prior to issuance of the permit, the well shall be brought into compliance with the terms and conditions of the permit in accordance with the schedule of compliance issued by the Director. ()

viii. The permit shall not convey any property rights. ()

f. Conditions of Permanent Decommissioning. ()

i. Notice of intent to permanently decommission a well shall be submitted to the Director not less than thirty (30) days prior to commencement of the decommissioning activity. ()

ii. The method of permanent decommissioning for all injection wells shall be approved by the Director prior to commencement of the decommissioning activity. ()

iii. Notice of completion of permanent decommission shall be submitted to the Director within thirty (30) days of completion. ()

iv. All deep injection wells that are to be permanently decommissioned shall be plugged in accordance with current Well Construction Standards. ()

v. Following permanent cessation of use, or where an injection well is not completed, the Director shall be notified. Decommissioning procedures or other action, as prescribed by the Director, shall be conducted. ()

vi. The injection well owner or operator has the responsibility to insure that the injection operation is decommissioned as prescribed. ()

g. Duration of Approved Permits. The length of time that a permit may be in effect for Class V wells requiring permits shall not exceed ten (10) years. ()

05. Standards For The Quality of Injected Fluids and Criteria For Location and Use. ()

a. General. These standards, which are minimum standards that are to be adhered to for all deep injection wells and shallow injection wells requiring permits and rule-authorized wells not requiring permits, are based on the premise that if the injected fluids meet ground water quality standards for physical, chemical and radiological contaminants, and if ground water produced from adjacent points of diversion for beneficial use meets the water quality standards as defined in Section 010 of these rules, then that aquifer will be protected from unreasonable contamination and will be preserved for diversion to beneficial uses. The Director may, however, when it is deemed necessary, require specific injection wells to be constructed and operated in compliance with additional requirements, such as best management practices (BMPs), so as to protect the ground water resource from deterioration and preserve it for diversion to beneficial use. ()

b. Waivers. A waiver of one (1) or more standards may be granted by the Director if it can be demonstrated by the applicant that the contaminants in injected fluid will not endanger a ground water source for any present or future beneficial use. ()

- c. Standards for Quality of Fluids Injected into Class V Wells. ()
- i. Ground water quality standards for chemical and radiological contaminants in injected fluids. After the effective date of these standards, the following limits shall not be exceeded in injected fluids from a well when such fluids will or are likely to reach a USDW: ()
- (1) Chemical contaminants. The concentration of each chemical contaminant in the injected fluids shall not exceed the ground water quality standard for that chemical contaminant, or the concentration of each contaminant in the receiving water, whichever requirement is less stringent; and ()
- (2) Radiological contaminants. Radiological levels of the injected fluids shall not exceed those levels specified by the ground water quality standards. ()
- ii. Restrictions on injection of fluids containing biological contaminants. The following restrictions apply to biological contaminants included in the ground water quality standard in injected fluids. Coliform bacteria: injected fluids containing coliform bacteria are subject to the following restrictions: ()
- (1) Contamination of ground water produced at any existing point of diversion for beneficial use, or any point of diversion for beneficial use developed in the future, by injected fluids is prohibited; ()
- (2) The Director may require the use of best management practices (BMPs) to reduce the concentration of coliform bacteria in the injected fluids; ()
- (3) The Director may require the use of water treatment technology, including ozonation and chlorination devices, sand filters, and settling pond specifications to reduce the concentration of coliform bacteria in injected fluids; ()
- (4) Ground water produced from points of diversion for beneficial use adjacent to injection wells that dispose of fluids containing coliform bacteria in concentrations greater than the current ground water quality standard shall be subject to monitoring for bacteria by the owner/operator of the injection well. A waiver of the monitoring requirement may be granted by the Director when it can be demonstrated that injection will not result in unreasonable contamination of ground water produced from these adjacent points; ()
- (5) Construction of new Subclass 5F1 injection wells, and other shallow and deep injection wells, as specified by the Director, that are likely to exceed the current ground water quality standard for coliform bacteria at the point of beneficial use is prohibited; and ()
- (6) At no time shall any fluid containing or suspected of containing fecal contaminants of human origin be injected into any Class V injection well authorized under these rules. ()
- iii. Physical, visual and olfactory characteristics. The following restrictions apply to physical, visual and olfactory characteristics of injected fluids. Temperature, color, odor, turbidity, conductivity and pH: the temperature, color, odor, conductivity, turbidity, pH or other characteristics of the injected fluid may not result in the receiving ground water becoming less suitable for diversion to beneficial uses, as determined by the Director. ()
- iv. Contamination by an injection well of ground water produced at an existing point of diversion for beneficial use, or a point of diversion for beneficial use developed in the future, shall not exceed water quality standards defined in Section 010 of these rules. ()
- d. Criteria for Location and Use of Class V Wells Requiring Permits. ()
- i. A Class V well requiring a permit may be required to be located a minimum distance, as determined from Table 1, from any point of diversion for beneficial use that could be harmed by bacterial contaminants. This requirement is not applicable to injection wells injecting wastes of quality equal to or better than adopted ground water quality standards in all respects. In addition, Class V wells may be required to be located at such a distance from a point of diversion for beneficial use as to minimize or prevent ground water contamination

resulting from unauthorized or accidental injection, as determined by the Director. ()

ii. These location requirements in Table 1 may be waived, as per Paragraph 070.05.b., when the applicant can demonstrate that any springs or wells within the calculated perimeter of the generated perched water zone will not be contaminated by the applicant’s waste disposal or injection well. Monitoring by the applicant of the production wells or springs in question may be required to demonstrate that they are not being contaminated.

Determined Radii of Perched Water Zones Based on Maximum Average Weekly Injection Rates (cfs) of Class V Injection Wells *	
Injection (cfs)	Radius of Generated Perched Water Zone (ft)
0 - 0.20	800
0.20 - 0.60	1,400
0.61 - 1.00	1,800
1.01 - 2.00	2,500
2.01 - 3.00	3,000
3.01 - 4.00	3,500
4.01 - 5.00	4,000
Greater than 5.00	As determined by the Director

* Injection rates shall be based on the average volume of wastes injected by the well during the week of greatest injection in an average water year. ()

e. Standards for the Quality of Fluids Injected by Subclass 5A7 Wells (Open-Loop Heat Pump Return). ()

i. The quality of fluids injected by a Subclass 5A7 injection well shall comply with ground water quality standards or shall be equal to the quality of the ground water source to the heat pump, whichever is less stringent. ()

ii. If the quality of the ground water source does not meet ground water quality standards, the injected fluids must be returned to the formation containing the ground water source. ()

iii. The temperature of the injected fluids shall not impair the designated beneficial uses of the receiving ground water. ()

iv. All Rule-authorized Injection Wells shall conform to the ground water quality standards at the point of injection and not cause any water quality standards to be violated at any point of beneficial use. ()

06. Monitoring, Record Keeping and Reporting Requirements. The Director may require monitoring, record keeping and reporting by any owner or operator if the Director finds that the well may adversely affect a ground water source or is injecting a contaminant that could have an unacceptable effect upon the quality of the ground waters of the state. ()

a. Monitoring. ()

i. Any injection authorized by the Director shall be subject to monitoring and record keeping requirements as conditions of the permit. Such conditions may require the installation, use and maintenance of monitoring equipment or methods. The Director may require where appropriate, but is not limited to, the following: ()

- (1) Monitoring of injection pressures and pressures in the annular space between casings; ()
- (2) Flow rate and volumes; ()
- (3) Analysis of quality of the injected fluids for contaminants that are subject to limitation or reduction under the conditions of the permit; or contaminants which the Director determines could have an unacceptable effect on the quality of the ground waters of the state, and which the Director has reason to believe are in the injected fluids; ()
- (4) Monitoring of ground water through special monitoring wells or existing points of diversion for beneficial use in the zone of influence as determined by the Director; ()
- (5) A demonstration of the integrity of the casing, tubing or seal of the injection well. ()
 - ii. The frequency of required monitoring shall be specified in the permit when issued, except that the Director at any time may, in writing, require additional monitoring and reporting. ()
 - iii. All monitoring tests and analysis required by permit conditions shall be performed in a state certified laboratory or other laboratory approved by the Director. ()
 - iv. Any field instrumentation used to gather data, when specified as a condition of the permit, shall be required by the Director to be tested and maintained in such a manner as to ensure the accuracy of the data. ()
 - v. All samples and measurements taken for the purpose of monitoring shall be representative of the monitoring activity and fluids injected. ()
- b. Record Keeping.** The permittee shall maintain records of all monitoring activities to include: ()
 - i. Date, time and exact place of sampling; ()
 - ii. Person or firm performing analysis; ()
 - iii. Date of analysis, analytical methods used and results of analysis; ()
 - iv. Calibration and maintenance of all monitoring instruments; and ()
 - v. All original tapes, strip charts or other data from continuous or automated monitoring instruments. ()
- c. Reporting.** ()
 - i. Monitoring results obtained by the permittee pursuant to the monitoring requirements prescribed by the Director shall be reported to the Director as required by permit conditions. ()
 - ii. The Director shall be notified in writing by the permittee within five (5) days after the discovery of violation of the terms and conditions of the permit. If the injection activity endangers human health or a public or domestic water supply, use of the injection well shall be immediately discontinued and the owner or operator shall immediately notify the Director. Notification shall contain the following information: ()
 - (1) A description of the violation and its cause; ()
 - (2) The duration of the violation, including dates and times; if not corrected or use of the well discontinued, the anticipated time of correction; and ()
 - (3) Steps being taken to reduce, eliminate and prevent recurrence of the injection. ()

iii. Where the owner or operator becomes aware of failure to submit any relevant facts in any permit application or report to the Director, that person shall promptly submit such facts or information. ()

iv. The permittee shall furnish the Director, within a time specified by the Director, any information which the Director may request to determine compliance with the permit. ()

v. All applications for permits, notices and reports submitted to the Director shall be signed and certified. ()

vi. The Director shall be notified in writing of planned physical alterations or additions to any facility related to the permitted injection well operation. ()

vii. Additional information to be reported to the Director in writing: ()

(1) Transfer of ownership; ()

(2) Any change in operational status not previously reported; ()

(3) Any anticipated noncompliance; and ()

(4) Reports of progress toward meeting the requirements of any compliance schedule attached or assigned to this permit. ()

07. Permit Assignable. Permits may be assignable to a new owner or operator of an injection well if the new owner or operator, within thirty (30) days of the change, notifies the Director of such change. The new owner or operator shall be responsible for complying with the terms and conditions of the permit from the time that such change takes place. ()

071. -- 999. (RESERVED)

37.03.04 – DRILLING FOR GEOTHERMAL RESOURCES RULES

000. LEGAL AUTHORITY (RULE 0).

The Idaho Department of Water Resources, through authority granted by Section 42-4001 through Section 42-4015, Idaho Code, is the regulatory agency for the drilling, operation, maintenance, and abandonment of all geothermal wells in the state. The Department's authority also includes regulatory jurisdiction over other related operations and environmental hazards pertaining to the exploration and development of geothermal resources. ()

001. TITLE AND SCOPE (RULE 1).

The geothermal policy of the state of Idaho as stated in Section 42-4001, Idaho Code, is as follows: "It is the policy and purpose of this state to maximize the benefits to the entire state which may be derived from the utilization of our geothermal resources, while minimizing the detriments and costs of all kinds which could result from their utilization. This policy and purpose is embodied in this act which provides for the immediate regulation of geothermal resource exploration and development in the public interest." ()

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

For the purpose of these rules, the following definitions apply. ()

01. Applicant. Any person submitting an application to the Department of Water Resources for a permit for the construction and operation of any well or injection well. ()

02. Board. The Idaho Water Resource Board. ()

03. BOPE. An abbreviation for Blow Out Prevention Equipment which is designed to be attached to the casing in a geothermal well in order to prevent a blow out of the drilling mud. ()

04. Completion. A well is considered to be completed thirty (30) days after drilling operations have ceased unless a suspension of operation is approved by the Director, or thirty (30) days after it has commenced producing a geothermal resource, whichever occurs first, unless drilling operations are resumed before the end of the thirty (30) day period or at the end of the suspension. ()

05. Conductor Pipe. The first and largest diameter string of casing to be installed in the well. This casing extends from land surface to a depth great enough to keep surface waters from entering and loose earth from falling in the hole and to provide anchorage for blow out prevention equipment prior to setting surface casing. ()

06. Department. The Idaho Department of Water Resources. ()

07. Director. The Director of the Idaho Department of Water Resources. ()

08. Drilling Logs. The recorded description of the lithologic sequence encountered in drilling a well. ()

09. Drilling Operations. The actual drilling, re-drilling, or recompletion of the well for production or injection including the running and cementing of casing and the installation of well head equipment. Drilling operations do not include perforating, logging, and related operations after the casing has been cemented. ()

10. Exploratory Well. A well drilled for the discovery and/or evaluation of geothermal resources either in an established geothermal field or in unexplored areas. Exploratory well does not include holes six (6) inches in diameter or less if they are used for gathering geotechnical data such as, but not limited to, heat flow, earth temperature, temperature gradient and/or seismic measurements, provided said holes are not greater than one thousand (1000) feet in depth below land surface and provided the material medium is not intended to be encountered. ()

11. Geothermal Area. The same general land area which in its subsurface is underlain or reasonably appears to be underlain by geothermal resources from or in a single reservoir, pool, or other source or interrelated sources, as such area or areas may be designated from time to time by the Director. ()

12. Geothermal Field. An area designated by the Director which contains a well or wells capable of commercial production of geothermal resources. ()

13. Geothermal Resource. The natural heat energy of the earth, the energy in whatever form which may be found in any position and at any depth below the surface of the earth, present in, resulting from, or created by, or which may be extracted from such natural heat and all minerals in solution or other products obtained from the material medium of any geothermal resource. Geothermal resources are found and hereby declared to be sui generis, being neither a mineral resource nor a water resource but they are also found and hereby declared closely related to and possibly affecting and affected by water and mineral resources in many instances. ()

14. Injection Well. Any special well, converted producing well, or reactivated or converted abandoned well employed for injecting material into a geothermal area or adjacent area to maintain pressures in a geothermal reservoir, pool, or other source, or to provide new material or to serve as a material medium therein, or for reinjecting any material medium or the residue thereof, or any by-product of geothermal resource exploration or development into the earth. ()

15. Intermediate String or Casing. The casing installed within the well to seal out brackish water, caving zones, etc., below the bottom of the surface casing. Such strings may either be lapped into the surface casing or extend to land surface. ()

16. Material Medium. Any substance including, but not limited to, naturally heated fluids, brines, associated gasses and steam in whatever form, found at any depth and in any position below the surface of the earth, which contains or transmits the natural heat energy of the earth, but excluding petroleum, oil, hydrocarbon gas, or other hydrocarbon substances. ()

17. Notice of Intent or Notice. A written statement to the Director that the applicant intends to do work. ()

18. Observation Well. A small diameter well drilled strictly for monitoring purposes. In no case shall an observation well be completed for production of geothermal resources or for use as an injection well. ()

19. Operator. Any person drilling, maintaining, operating, pumping, or in control of any well. The term operator also includes owner when any well is or has been or is about to be operated by or under the direction of the owner. ()

20. Owner. The owner of the geothermal lease or well and includes operator when any well is operated or has been operated or is about to be operated by any person other than the owner. ()

21. Permit. A permit issued pursuant to these rules for the construction and operation of any well or injection well. ()

22. Person. Any individual natural person, general or limited partnership, joint venture, association, cooperative organization, corporation, whether domestic or foreign, agency or subdivision of this or any other state or municipal or quasi-municipal entity whether or not it is incorporated. ()

23. Production String. The casing or tubing through which a geothermal resource is produced. This string extends from the producing zone to land surface. ()

24. Production Well. Any well which is commercially producing or is intended for commercial production of a geothermal resource. ()

25. Surface Casing. The first string of casing which is run after the conductor pipe to anchor blow out prevention equipment and to seal out all existing groundwater zones. ()

26. Suspension of Operations. The cessation of drilling, redrilling, or alteration of casing before the well is officially abandoned or completed. All suspensions must be authorized by the Director. ()

27. Waste. Any physical waste including, but not limited to: ()

a. Underground waste resulting from inefficient, excessive, or improper use, or dissipation of

geothermal energy, or of any geothermal resource pool, reservoir, or other source; or the locating, spacing, constructing, equipping, operating, or producing of any well in a manner which results, or tends to result in reducing the quantity of geothermal energy to be recovered from any geothermal area in the state; ()

b. The inefficient above-ground transporting and storage of geothermal energy; and the locating, spacing, equipping, operating, or producing of any well or injection well in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of geothermal energy; the escape into the open air from a well of steam or hot water in excess of what is reasonably necessary in the efficient development or production of a well. ()

28. Well. Any excavation or other alteration in the earth's surface or crust by means of which the energy of any geothermal resource and/or its material medium is sought or obtained. ()

011. -- 024. (RESERVED)

025. DRILLING (RULE 25).

01. General. All wells shall be drilled in such a manner as to protect or minimize damage to the environment, waters usable for all beneficial purposes, geothermal resources, life, health, or property. ()

02. Permits and Notices. ()

a. Permit to Drill for Geothermal Resources. Any person, owner, or operator who proposes to construct a well for the production of or exploration for geothermal resources or to construct an injection well shall first apply to the Director for permit. Application for permit shall be on department form 4003-1. Any person, owner, or operator who proposes to construct a hole for the gathering of geotechnical data shall file a notice of intent with the Director twenty (20) days prior to construction. Written approval of the Director is required before construction may begin. The notice of intent shall show the hole location, proposed depth, hole size, construction methods, intended use and abandonment plan together with other information as required by the Director. ()

b. Permit to Deepen or Modify an Existing Well. If the owner or operator plans to deepen, redrill, plug, or perform any operation that will in any manner modify the well, an application shall be filed with the Director and written approval must be received prior to beginning work. Application for permit to alter a geothermal well shall be on department form 4003-2. ()

c. Application for Permit to Convert to Injection. If the owner or operator plans to convert an existing geothermal well into an injection well with no change of mechanical condition, an application for permit shall be filed with the Director and written approval must be received prior to beginning injection. Application for permit shall be made on department form 4003-3. ()

d. Amendment of Permit. No well may be owned or operated by any person whose name does not appear on the permit or permit application and no changes in departure from the procedures, location, data, or persons specified on the face of a permit shall be allowed until an amendment to such permit is approved by the Director. Application for amendment shall be made on department form 4003-1. ()

e. Notice to Other Agencies. Notice of applications, permits, orders, or other actions received or issued by the Director may be given to any other agency or entity which may have information, comments, or jurisdiction over the activity involved. The Director may enter into a memorandum of understanding with other agencies to eliminate duplication of applications or other efforts. ()

f. No filing fee shall be charged for filing a notice of intent to construct a hole for gathering geotechnical data, for abandonment, or for the drilling of an observation well. ()

g. No application shall be accepted and filed by the Director until such filing fee has been deposited with the Director. ()

03. Bonds. ()

a. The Director shall require as a condition of every permit every operator or owner who engages in the construction, alteration, testing, or operation of the well to file with the Director on a form prescribed by the Director a bond indemnifying the state of Idaho providing good and sufficient security conditioned upon the performance of the duties required by these regulations and the Geothermal Resource Act and the proper abandonment of any well covered by such permit. Such bond shall be in an amount which is not less than ten thousand dollars (\$10,000) for each individual well. ()

b. Bonds remain in force for the life of the well or wells and may not be released until the well or wells are properly abandoned or another valid bond is substituted therefor. Any person who acquires the ownership or operation of any well or wells shall within five (5) days after acquisition file with the Director an indemnity bond in the sum of ten thousand dollars (\$10,000) for each well acquired. The Director reserves the right to request additional bonding prior to abandonment if deemed necessary. ()

04. Well Spacing. ()

a. Any well drilled for the discovery and production of geothermal resources or as an injection well shall be located more than one hundred (100) feet from and within the outer boundary of the parcel of land on which the well is situated, or more than one hundred (100) feet from a public road, street, or highway dedicated prior to the commencement of drilling. This requirement may be modified or waived by the Director upon written request. ()

b. For several contiguous parcels of land in one or different ownerships that are operated as a single geothermal field, the term outer boundary line means the outer boundary line of the land included in the field. In determining the contiguity of any such parcels of land, no street, road, or alley lying within the lease or field shall be determined to interrupt such contiguity. ()

c. The Director shall approve the proposed well spacing programs or prescribe such modifications to the programs as he deems necessary for proper development giving consideration to such factors as, but not limited to, topographic characteristics of the area, hydrologic, geologic, and reservoir characteristics of the area, the number of wells that can be economically drilled to provide the necessary volume of geothermal resources for the intended use, minimizing well interference, unreasonable interference with multiple use of lands, and protection of the environment. ()

d. Directional Drilling. Where the surface of the parcel of land containing one acre or more is unavailable for drilling, the surface well location may be located upon property which may or may not be contiguous. Such surface well locations shall not be less than twenty five (25) feet from the outer boundary of the parcel on which it is located, nor less than twenty-five (25) feet from an existing street or road. The production or injection interval of the well shall not be less than one hundred (100) feet from the outer boundary of the parcel into which it is drilled. Directional surveys must be filed with the Director for all wells directionally drilled. ()

05. Casing. ()

a. General. All wells shall be cased in such a manner as to protect or minimize damage to the environment, usable ground waters, geothermal resources, life, health, and property. The permanent well head completion equipment shall be attached to the production casing or to the intermediate casing if production casing does not reach the surface. No permanent well head equipment may be attached to any conductor or surface casing alone. The specification for casing strength shall be determined by the Director on a well-to-well basis. All casing reaching the surface shall provide adequate anchorage for blow out prevention equipment, hole pressure control, and protection for natural resources. Sufficient casing shall be run to reach a depth below all known or reasonably estimated groundwater levels to prevent blow outs or uncontrolled flows. The following casing requirements are general but should be used as guidelines in submitting applications for permit to drill. ()

b. Conductor Pipe. A minimum of forty (40) feet of conductor pipe shall be installed. The annular space is to be cemented solid to the surface. A twenty-four (24) hour cure period for the grout must be allowed prior to drilling out the shoe unless additives sufficient, as determined by the Director, are used to obtain early strength. An annular blow out preventer shall be installed on all exploratory wells and on development wells when deemed

necessary by the Department. ()

c. **Surface Casing.** The surface casing hole shall be logged with an induction electrical log or equivalent or gamma-neutron log before running casing. This requirement may be waived by the Director. Permission to waive this requirement must be granted by the Director in writing prior to running surface casing. This casing shall provide for control of formation fluids, protection of shallow usable groundwater, and for adequate anchorage for blow out prevention equipment. All surface casing shall be cemented solid to the surface. A twenty-four (24) hour cure period shall be allowed prior to drilling out the shoe of the surface casing unless additives sufficient, as determined by the Director, are used to obtain early strength. ()

i. A minimum of two hundred (200) feet of surface casing shall be set in areas where pressures and formations are unknown. In no case may surface casing be set at a depth less than ten percent (10%) of the proposed total depth of the well. ()

ii. In areas of known high formation pressure, surface casing shall be set at the depth determined by the Director after a study of geologic conditions in the area. ()

iii. In areas where subsurface geological conditions are variable or unknown, surface casing shall be in accordance with specifications as outlined in a. above. The casing must be seated through a sufficient series of low permeability, competent lithologic units such as claystone, siltstone, basalt, etc., to insure a solid anchor for blow out prevention equipment and to protect usable groundwater from contamination. Additional casing may be required if the first string has not been cemented through a sufficient series of such beds, or a rapidly increasing thermal gradient or formation pressures are encountered. ()

iv. The temperature of the return drilling mud shall be monitored continuously during the drilling of the surface casing hole. Either a continuous temperature-monitoring device shall be installed and maintained in a working condition or the temperature shall be read manually. In either case, the return temperature shall be entered into the log book for each thirty (30) feet of depth drilled. ()

v. Blow out prevention equipment capable of shutting in the well during any operation shall be installed on the surface casing and maintained ready for use at all times. BOPE pressure tests shall be performed by the operator for department personnel on all exploratory wells prior to drilling out the shoe of the surface casing. The decision to perform BOPE pressure tests on other types of wells shall be made on a well-to-well basis by the Director. The Director must be notified five (5) days in advance of a scheduled pressure test. Permission to proceed with the test sooner may be given orally by the Director upon request by the operator. ()

d. **Intermediate Casing.** Intermediate casing shall be required for protection against anomalous pressure zones, cave-ins, washouts, abnormal temperature zones, uncontrollable lost circulation zones or other drilling hazards. Intermediate casing strings when installed shall be cemented solidly to the surface or to the top of the casing. ()

e. **Production Casing.** Production casing may be set above or through the producing or injection zone and cemented either below or just above the objective zones. Sufficient cement shall be used to exclude overlying formation fluids from the geothermal zone, to segregate zones, and to prevent movement of fluids behind the casing into possible fresh groundwater zones. Production casing shall either be cemented solid to the surface or lapped into the intermediate casing if run. If the production casing is lapped into an intermediate string, the casing overlap shall be at least fifty (50) feet, the lap shall be cemented solid, and the lap shall be pressure tested to insure its integrity. ()

06. Electric Logging. All wells except observation wells shall be logged with an induction electrical log or equivalent or gamma-neutron log from the bottom of the hole to the bottom of the conductor pipe. This requirement may be modified or waived by the Director upon written request. ()

026. -- 029. (RESERVED)

030. RECORDS (RULE 30).

01. General. The owner or operator of any well shall keep or cause to be kept a careful and accurate log, core record, temperature logs, and history of the drilling of the well. These records shall be kept in the nearest office of the owner or operator or at the well site and together with all other reports of the owner and operator regarding the well shall be subject to inspection by the Director during business hours. All records unless otherwise specified must be filed with the Director within thirty (30) days of completion of the well. ()

02. Records to Be Filed with the Director. ()

a. Drilling Logs and Core Record. The drilling log shall include the lithologic characteristics and depths of formations encountered, the depth and temperatures of water-bearing and steam-bearing strata, the temperatures, chemical compositions and other chemical and physical characteristics of fluids encountered from time to time so far as ascertained. The core record shall show the depth, lithologic character, and fluid content of cores obtained so far as determined. ()

b. Well History. The history shall describe in detail in chronological order on a daily basis all significant operations carried out and equipment used during all phases of drilling, testing, completion, and abandonment of any well. ()

c. Well Summary Report. The well summary report shall accompany the core record and well history reports. It is designed to show data pertinent to the condition of a well at the time of completion of work done. ()

d. Production Records. The owner or operator of any well producing geothermal resources shall file with the Director on or before the 20th day of each month for the preceding month a statement of production utilized in such a form as the Director may designate. Copies of monthly geothermal energy report forms are available from the Director; however, production data can be submitted on non-department forms such as computer print-outs if they have been approved by the Director. ()

e. Injection Records. The owner or operator of any well injecting geothermal fluids or waste water for any purpose shall file with the Director on or before the twentieth day of each month for the preceding month a report of the injection in such form as the Director may designate. Copies of monthly injection report forms are available from the Director. Injection data may be submitted on non-department forms if they have been approved by the Director. ()

f. Electric Logs and Directional Surveys, If Conducted. Electric logs and directional surveys shall be filed with the Director within sixty (60) days of completion, cessation of drilling operations, excluding any approved suspension of operations, or abandonment of any well. Like copies shall be filed upon recompletion of any well. Upon a showing of hardship, the Director may extend the time within which to comply for a period not to exceed six (6) additional months. ()

03. Confidential Status. Information on file with the Director is open to public inspection except any reports, logs, records, or histories derived from the drilling of a well and filed with the Director shall not be available for public inspection and shall be kept confidential by the Director for a period of one year from receipt provided, however, that the Director may use any such reports, logs, records, or histories in any action in any court to enforce the provisions of the Geothermal Act or any order or regulation adopted hereunder. ()

04. Inspection of Records. The records filed by an operator with the Director which relates to the data gathered from the drilling operation shall be open to inspection only to those authorized in writing by the operator and designated personnel. The records of any operator filed for a completed or producing well that has been transferred by sale, lease, or otherwise shall be available to the new owner or lessee for his inspection or copying and shall be available for inspection or copying by others upon written authorization of such new owner or lessee. ()

031. -- 034. (RESERVED)

035. BLOW OUT PREVENTION (RULE 35).

01. Unexplored Areas. ()

a. A department employee may be present at the well at any time during the initial phases of drilling until the surface casing has been cemented and the BOPE has been satisfactorily pressure tested. The Department employee may be present during any drilling operations at the well and if in his opinion conditions warrant he may order additional casing to be run. ()

b. A logging unit equipped to continuously record the following data shall be installed and operated continuously by a technician approved by the Director after drilling out the shoe of the conductor pipe until the well has been drilled to the total depth. ()

i. Drilling mud temperature (in and out). ()

ii. Drilling mud pit level. ()

iii. Drilling mud pump volume. ()

iv. Drilling mud weight. ()

v. Drilling rate. ()

vi. Hydrocarbon and hydrogen sulfide gas volume (with alarm). ()

c. An annular BOPE with a minimum working pressure of one thousand (1,000) PSI shall be installed on the surface casing. If unusual conditions are anticipated, a BOPE may be required on the conductor pipe. ()

d. If drilling mud temperature out, reaches one hundred twenty-five (125) Degrees C (Celsius), drilling operations shall cease, drilling mud circulation will continue and the Director must be notified immediately. The operator must obtain the Director's approval of his proposed course of action prior to resuming drilling operations. ()

e. The above requirements for BOPE may be modified by the Director and any proposed modification by the applicant must be approved by the Director in writing. ()

02. Explored Areas. ()

a. A gate valve with a minimum working pressure rating of three hundred (300) PSI must be installed on the well head. ()

b. The temperature of the return mud shall be monitored continuously. Either a continuous temperature monitoring device shall be installed and maintained in working condition or the temperature shall be read manually. In either case, return mud temperatures shall be entered into the log book for each thirty (30) feet of depth drilled. ()

c. An annular BOPE with a minimum working pressure of one thousand (1,000) PSI shall be installed on the surface casing. ()

d. Additional requirements may be set forth by the Director depending upon the knowledge of the area. Such requirements will be set forth on the approved application for permit to drill a geothermal well. Modification of said requirements may be made in the field by Department personnel monitoring construction of the well. ()

036. -- 039. (RESERVED)

040. INJECTION WELLS (RULE 40).

01. Construction. The owner or operator of a proposed injection well or series of injection wells shall provide the Director with such information he deems necessary for evaluation of the impact of such injection on the

geothermal reservoir and other natural resources. Such information shall include existing reservoir conditions, method of injection, source of injection fluid, estimates of daily amount of material medium to be injected, zones or formations affected, and analysis of fluid to be injected and of the fluid from the intended zone of the injection. Such information shall be on department form 4003-3. ()

02. Surveillance. ()

a. When an operator or owner proposes to drill or modify an injection well or convert a producing or idle well to an injection well, he shall be required to demonstrate to the Director by means of a test that the casing has complete integrity. This test shall be conducted in a method approved by the Director. ()

b. To establish the integrity of the annular cement above the shoe of the casing, the owner or operator shall make sufficient surveys within thirty (30) days after injection is started into a well to prove that all the injected fluid is confined to the intended zone of injection. Thereafter, such surveys shall be made at least every two (2) years or more often if necessary. The Director shall be notified forty-eight (48) hours in advance of such surveys in order that a representative may be present if deemed necessary. If in the Director's opinion such tests are not necessary, he may grant a waiver excepting the operator from such tests. ()

c. After the well has been placed on injection, the injection well site will be visited periodically by Department personnel. The operator or owner will be notified of any necessary remedial work. Unless modified by the Director, this work must be performed within ninety (90) days or approval for the injection well issued by the Director will be rescinded. ()

041. -- 044. (RESERVED)

045. ABANDONMENT (RULE 45).

01. Objectives. The objectives of abandonment are to block interzonal migration of fluids so as to: ()

a. Prevent contamination of fresh water or other natural resources; ()

b. Prevent damage to geothermal reservoirs; ()

c. Prevent loss of reservoir energy; ()

d. Protect life, health, environment and property. ()

02. General Requirements. The following are general requirements which are subject to review and modification for individual wells or field conditions. ()

a. A notice of intent to abandon geothermal resource wells is required to be filed with the Director five (5) days prior to beginning abandonment procedures. A permit to abandon may be given orally by the Director provided the operator submits a written request for said abandonment on a form approved by the Director within twenty-four (24) hours of the oral request. ()

b. A history of geothermal resource wells shall be filed within sixty (60) days after completion of abandonment procedures. ()

c. All wells abandoned shall be monumented and the description of the monument shall be included in the history of well report. Such monument shall consist of a four (4) inch diameter pipe ten (10) feet in length of which four (4) feet shall be above ground. The remainder shall be embedded in concrete. The name, number, and location of the well shall be shown on the monument. Alternate methods of monumentation may be approved by the Director where land surface use indicates the above described method is not satisfactory. ()

d. Good quality heavy drilling fluid shall be used to replace any water in the hole and to fill all portions of the hole not plugged with cement. ()

- e. All cement plugs with a possible exception of the surface plug shall be pumped into the hole through drill pipe or tubing. ()
- f. All open annuli shall be filled solid with cement to the surface. ()
- g. A minimum of one hundred (100) feet of cement shall be emplaced straddling the interface or transition zone at the base of groundwater aquifers. ()
- h. One hundred (100) feet of cement shall straddle the placement of the shoe plug on all casings including conductor pipe. ()
- i. A surface plug of either neat cement or concrete mix shall be in place from the top of the casing to at least fifty (50) feet below the top of the casing. ()
- j. All casing shall be cut off at least five (5) feet below land surface. ()
- k. Cement plugs shall extend at least fifty (50) feet over the top of any liner installed in the well. ()
- l. Abandonment. Injection wells are required to be abandoned in the same manner as other wells. ()
- m. Other abandonment procedures may be approved by the Director if the owner or operator can demonstrate that the geothermal resource, groundwaters, and other natural resources will be protected. Such approval must be given in writing by the Director prior to the beginning of any abandonment procedures. ()
- n. Within five (5) days after the completion of the abandonment of any well or injection well, the owner or operator of the abandoned well or injection well shall report in writing to the Director on such form as may be prescribed by the Director on all work done with respect to the abandonment. ()

046. -- 049. (RESERVED)

050. MAINTENANCE (RULE 50).

01. General. All well heads, separators, pumps, mufflers, manifolds, valves, pipelines, and other equipment used for the production of geothermal resources shall be maintained in good condition in order to prevent loss of or damage to life, health, property, and natural resources. ()

02. Corrosion. All surface well head equipment and pipelines and subsurface casing and tubing will be subject to periodic corrosion surveillance in order to safeguard health, life, property, and natural resources. ()

03. Tests. The Director may require such tests or remedial work as in his judgment are necessary to prevent damage to life, health, property, and natural resources, to protect geothermal reservoirs from damage or to prevent the infiltration of detrimental substances into underground or surface water suitable for irrigation or other beneficial uses to the best interest of the neighboring property owners and the public. Such tests may include, but are not limited to, casing tests, cementing tests, and equipment tests. ()

051. -- 054. (RESERVED)

055. HEARINGS, NOTICE, PROCEDURE (RULE 55).

Any applicant or the Director shall have the right to a hearing concerning the propriety of issuing a permit for which an application has been filed. Any applicant who desires a hearing pursuant to Section 42-4004, Idaho Code, must file a written request therefor with the Director of the Department of Water Resources. Any person may file a petition with the Director requesting that the Director hold a hearing concerning the propriety of issuing a permit for which an application has been filed. The petitioner must serve a copy of the petition upon the applicant and set forth in the petition all reasons for requesting the hearing. The applicant may respond to the petition within ten (10) days of its

service. However, failure of the applicant to respond shall not be prejudicial to his right to appear at the hearing and present such evidence as he deems proper, if the Director grants the petition for such hearing. The hearing shall be set by the Director at any location deemed appropriate. Notice of the time and location shall be served on the applicant and/or the petitioner by the Director at least twenty (20) days before said date by certified mail addressed to applicant's address as stated in the application and to the petitioner at the address given in the petition. The hearing shall be conducted in the manner prescribed in the general rules and procedures of the Department. ()

056. -- 059. (RESERVED)

060. HEARINGS ON REFUSED, LIMITED, OR CONDITIONED PERMIT (RULE 60).

Any applicant who is granted a limited or conditioned permit, or who is denied a permit or any person aggrieved by a decision of the Director may seek a hearing on said action of the Director by serving on the Director written notice and request for a hearing before the Board within thirty (30) days of service of the Director's decision. Said hearing will be set, conducted, and notice given as set forth in Rule 055 above. Any applicant may appeal the decision of the Board to the District Court within thirty (30) days of service of the decision. All hearings under this rule shall be conducted in the manner prescribed in the general rules and procedures of the Department. ()

061. -- 064. (RESERVED)

065. PENALTIES (RULE 65).

01. Order by Director. If the Director finds that any person is constructing, operating, or maintaining any hole, well or injection well not in accordance with any applicable permit or in a fashion so as to involve an unreasonable risk of, or so as to cause, damage to life or property or subsurface, surface, or atmospheric resources, the Director may issue an order to such person to correct or to stop such practices as are found to be improper and to mitigate any injury of any sort caused by such practices. ()

02. Enforcement by Director. The Director may enforce any provision of this act or any order or regulation issued or adopted pursuant thereto by an appropriate action in the District Court. The Director may bring action in the District Court to have enjoined any threatened noncompliance with any provision of this act or any order or regulation adopted pursuant hereto or any threatened harm to life, property, or surface, subsurface or atmospheric resources which would be caused by such noncompliance. ()

03. Willful Violations or Failure to Comply. Any willful violations of or failure to comply with any provision of these rules, or if such order or regulation has been served on such person or is otherwise known to him, any valid order or regulation issued or adopted hereto shall be a misdemeanor punishable by fine of up to five thousand dollars (\$5,000) for each offense or a sentence of up to six (6) months in a county jail or both; each day of a continuing violation shall be a separate offense under this subdivision. A responsible or principal executive officer or any corporate person may be liable under this subdivision if such corporate person is not in compliance with any provision of this act or with any valid order or regulation adopted pursuant hereto. ()

066. -- 069. (RESERVED)

070. FORMS (RULE 70).

Forms required by these rules. ()

01. Samples of Forms. Samples of all forms required by these rules are available from the Department to interested parties upon request. ()

02. Forms. The forms include the following: ()

a. Form 4003-1, Application for Permit to Drill for Geothermal Resources; ()

b. Form 4003-2, Application for Permit to Alter a Geothermal Well; ()

c. Form 4003-3, Application for Permit to Convert a Well to a Geothermal Injection Well; ()

- d.** Form 4005, Geothermal Resources Surety Bond; ()
 - e.** Form 4007, Notice of Intent to Abandon a Well; ()
 - f.** Form 4009, Report of Abandonment of a Well; ()
 - g.** Form 4010-1, Monthly Injection Report for Geothermal Wells; and ()
 - h.** Form 4010-2, Monthly Energy Report for Geothermal Wells. ()
- 071. -- 999. (RESERVED)**

37.03.05 – MINE TAILINGS IMPOUNDMENT STRUCTURES RULES

000. LEGAL AUTHORITY (RULE 0).

These rules are adopted pursuant to Section 42-1714, Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

01. Title. These rules are titled IDAPA 37.03.05, “Mine Tailings Impoundment Structures Rules.” ()

02. Scope. ()

a. These rules and standards will only apply to structures upon which construction, lift construction, enlargement, or alteration is underway on or after July 1, 1978. Under no circumstances shall these rules be construed to deprive or limit the Director of the Department of Water Resources of any exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount or character of data, or information which may be required by the Director from any owner of a mine tailings impoundment structure for the proper administration of the law. ()

b. The design requirements listed are intended as a guide to establish acceptable standards of construction. They are not intended to restrict the application of other sound design principles by engineers. The Director will evaluate any deviation from the standards hereinafter stated as they pertain to the safety of any given mine tailings impoundment structure. Engineers are encouraged to submit new ideas which will advance the art and provide for the public safety. ()

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

Unless the context otherwise requires, the following definitions govern these rules. ()

01. Board. The Idaho Water Resource Board. ()

02. Director. The Director of the Idaho Department of Water Resources. ()

03. Department. The Idaho Department of Water Resources. ()

04. Mine Tailings Impoundment Structure. Any artificial embankment which is or will be more than thirty (30) feet in height measured from the lowest elevation of the toe to the maximum crest elevation constructed for the purpose of storing mine tailings slurry. ()

05. Mine Tailings Slurry. All slurry wastes from a mineral processing or mining operation. ()

06. Mine Tailings Storage Capacity. The total storage volume of the impoundment when filled with tailings to the maximum approved design storage elevation. ()

07. Borrowed Fill Embankment. Any embankment constructed of borrowed earth materials and which is designed for construction by conventional earth moving equipment. ()

08. Reservoir. Any basin which contains or will contain the material impounded by the mine tailings impoundment structure. ()

09. Owner. Includes any of the following who own, control, operate, maintain, manage, or propose to construct a mine tailings impoundment structure or reservoir. ()

a. The state of Idaho and any of its departments, agencies, institutions and political subdivisions; ()

b. The United States of America and any of its departments, bureaus, agencies and institutions; provided that the United States of America are not required to pay any of the fees required by Section 42-1713, Idaho Code, and shall submit plans, drawings and specifications as required by Section 42-1721, Idaho Code, for information purposes only; ()

c. Every municipal or quasi-municipal corporation; ()

- d. Every public utility; ()
- e. Every person, firm, association, organization, partnership, business, trust, corporation or company; ()
- f. The duly authorized agents, lessees, or trustees of any of the foregoing; ()
- g. Receivers or trustees appointed by any court for any of the foregoing. ()
- 10. Alterations, Repairs or Either of Them.** Only such alterations or repairs as may directly affect the safety of the mine tailings impoundment structure or reservoir, as determined by the Director. ()
- 11. Enlargement.** Any change in or addition to an existing mine tailings impoundment structure or reservoir, which raises or may raise the storage capacity of the structure, as defined in Rule Subsection 010.06. ()
- 12. Days Used in Establishing Deadlines.** Calendar days including Sundays and holidays. ()
- 13. Certificate of Approval.** A certificate issued by the Director for the mine tailings impoundment structure listing restrictions imposed by the Director, and without which no new mine tailings impoundment structures shall be allowed to impound mine tailings slurry or water and no existing impoundment shall be allowed to impound water or continue deposition of mine tailings slurry. The structure will be recertified every two (2) years, unless the Director determines that the structure is unsafe. ()
- 14. Engineer.** A registered professional engineer, licensed as such by the state of Idaho. ()
- 011. -- 024. (RESERVED)**
- 025. AUTHORITY OF REPRESENTATIVE (RULE 25).**
When plans, drawings and specifications are filed by another person in behalf of an owner, written evidence of authority to represent the owners shall be filed with the plans, drawings and specifications. ()
- 026. -- 029. (RESERVED)**
- 030. FORMS (RULE 30).**
Forms required by these rules. ()
- 01. Samples of Forms.** Samples of all forms required by these rules are available from the Department to interested parties upon request. ()
- 02. Form 1721.** Construction of a mine tailings impoundment structure requires the filing of Form 1721. ()
- 031. -- 034. (RESERVED)**
- 035. PLANS, DRAWINGS, AND SPECIFICATIONS (RULE 35).**
The following provisions apply in submitting plans, drawings, and specifications. ()
- 01. Submission of Plans, Drawings, and Specification.** Any owner who shall desire to construct, or enlarge, or alter or repair any mine tailings impoundment structure shall submit duplicate copies of plans, drawings, and specifications prepared by an engineer for the proposed work to the Director with required fees. An owner who desires to construct a continuously raised tailings impoundment structure shall submit duplicate copies of plans, drawings, and specifications prepared by an engineer, showing the stages of lift height, by periods of time, and ultimate design height. ()
- 02. Application for and Receipt of Written Approval.** Construction of a new mine tailings

impoundment structure or enlargement, or non-emergency alteration or repairs on existing mine tailings impoundment structures shall not be commenced until the owner has applied and obtained written approval of the plans, drawings, and specifications covering the work. In emergency situations, the owner shall make the required alterations or repairs necessary to relieve the emergency, and notify the Director. ()

03. Preparation and Submission of Plans. Plans must be prepared on a good grade of tracing linen or a good quality vellum or mylar. Transparent copies reproducible by standard duplicating processes, if accurate, legible and permanent, will be accepted. Plans may initially be submitted in the form of nonreproducible paper prints. After reviewing the plans, the Director will notify the owner of any required changes. ()

04. Scale of Plans and Drawings. Plans and drawings shall be of sufficiently large scale with an adequate number of views and proper dimensions, so that drawings may be readily interpreted and studied. ()

05. Dimensions of Plans. All sheets for a set of plans shall have an outside dimension of twenty-four by thirty-six (24 x 36) inches. A margin of two (2) inches on the left-hand end and a margin of one-half (1/2) inch on the other three sides must be provided, making the available work space twenty-three (23) x thirty-three and one-half (33 1/2) inches. ()

06. Plans. The plans shall include the following: ()

a. A topographic map of the mine tailings impoundment structure site showing the location of the proposed mine tailings impoundment structure by section, township and range, and location of spillway or diversion structures, outlet works, and all borings, test pits, borrow pits; ()

b. A profile along the mine tailings impoundment structure axis showing the locations, elevations, and depths of borings or test pits, including logs of bore hole and/or test pits; ()

c. A maximum cross-section of the mine tailings impoundment structure showing elevation and width of crest, slopes of upstream and downstream faces, thickness of any proposed riprap, zoning of the earth embankment (if any), location of cutoff and bonding trenches, elevations, size and type of decant systems, valves, operating mechanism, and dimensions of all other essential structural elements such as cutoff walls, filters, embankment zones, etc.; ()

d. Detailed drawings describing the outlet system, i.e., decant line, barge pump system, siphon system; ()

e. If a spillway is used, a curve showing the discharge capacity in cubic feet per second of the spillway vs. gage height of the storage pool level above the spillway crest up to the maximum high water level, and the formula used in making such determinations; ()

f. If a stream diversion is created, a tabulation of the discharge capacity in cubic feet per second of any diversion works and of the diversion channel vs. flow depth through the diversion works or channel up to maximum capacity of the system, and the formulas used in making such determinations; ()

g. Where staged construction will take place and no spillway exists, a curve showing maximum safe operating level for the tailings as a function of embankment height and the design criteria used to arrive at this; ()

h. Detailed plans, including cross-sections and profile, of the spillway or diversion works and any associated channels; ()

i. Plans for monitoring and/or recovering seepage from the reservoir in those instances where safety of the impoundment may be affected; ()

j. An operation plan; ()

k. An emergency procedure plan for protection of life and property; ()

l. An abandonment plan that assures the Director to his satisfaction that, upon completion of the mining operation, the site will be in a safe maintenance-free condition. ()

07. Specifications. Specifications shall include provisions acceptable to the Director for adequate observation, inspection and control of the work by a registered professional engineer during the period of construction. ()

08. Provision Included with Plans. The specifications shall provide that the plans and specifications may not be materially changed without prior written consent of the Director. ()

09. Provisions Included with Specifications. The specifications shall provide that certain stages of construction shall not proceed without the approval of the Director. Those stages requiring approval are as follows: ()

a. After clearing and excavation of foundation and prior to placing any fill material; ()

b. After installation of the decant conduit and any proposed collars and before placing any backfill material around conduit; ()

c. After construction is completed (first stage starter dike if staged construction) and before any water or mine tailings slurry is stored in the reservoir; ()

d. Before each successive enlargement of the impoundment structure; ()

e. After each stage of enlargement of the impoundment structure is completed and before storage is allowed to exceed the level approved for the previous approved stage; ()

f. At such other times as determined necessary by the Director. The Director will, within seven (7) days after notification by the engineer, inspect and if satisfactory, approve the completed stage of construction. Owners are encouraged to give prior notice to the Department, so that the inspection can be scheduled to prevent delays. ()

10. Inspections, Examinations, and Tests. All materials and workmanship may be subject to inspection, examination and test by the Director at any and all reasonable times during manufacture and/or construction and at any and all places where such manufacture and/or construction are carried on. ()

11. Rejection of Defective Material. The Director shall have the right to require the owner or engineer to reject defective material and workmanship or require its correction. Rejected workmanship shall be corrected and rejected material shall be replaced with proper material. ()

12. Suspension of Work. The Director may order the engineer to suspend any work that may be subject to damage by climatic conditions. ()

13. Responsibility of Engineer. These provisions shall not relieve the engineer of his responsibility to assure that construction is accomplished in accordance to approved plans and specifications or to suspend work on his own motion. ()

14. Detailing Provisions of Specifications. The specifications shall state in sufficient detail, all provisions necessary to ensure that construction is accomplished in an acceptable manner and provide needed control for construction to ensure that a safe structure is constructed. ()

15. Required Information. The following information shall be submitted with the plans and specifications. ()

16. Engineer's Report. An engineer's report giving details necessary for analysis of the structure and appurtenances. Included as a part of the report where applicable shall be the following: ()

- a. Formulas and assumptions used in designs; ()
- b. Hydrologic data used in determining runoff from the drainage areas; ()
- c. Engineering properties of each type of material to be used in the embankment and of the foundation areas; ()
- d. Stability analysis, including an evaluation of overturning, sliding, upstream and downstream slopes and foundation stability; ()
- e. Geologic description of reservoir area, including evaluation of landslide potential; ()
- f. Chemical analysis of all materials composing the slurry; ()
- g. Earthquake design loads must be evaluated at all sites located east of Range 22 E., Boise Meridian. This area corresponds to Seismic Zone 3 as designated by the Recommended Guidelines of the National Dam Safety Program. Earthquake analysis may be required at other impoundment structure sites if deemed necessary by the Director; ()
- h. A seepage analysis of the embankment and reservoir bottom; ()
- i. A hydraulic analysis of the outlet system and spillway, diversion work or diversion channel; ()
- j. Engineering properties and the weathering characteristics of the proposed tailings to be stored in the impoundment; ()
- k. Other information which would aid in evaluating the safety of the design. ()

17. Filing of Additional Information. The Director may require the filing of such additional information which in his opinion is necessary to assess safety or waive any requirement herein cited if in his opinion it is unnecessary. ()

036. -- 039. (RESERVED)

040. BONDING (RULE 40).

An active surety bond or other means of acceptable surety payable to the Director of the Department of Water Resources shall be on file with the Director throughout the active life of the tailings disposal site. The purpose of this bond is to provide a means by which the tailings impoundment can be placed in a safe maintenance-free condition if abandoned by the owner without conforming to an abandonment plan approved by the Director. ()

01. Filing of Bond. The bond shall be filed prior to any issuance by the Director of a certificate of approval for use of the mine tailings impoundment structure to impound mine tailings slurry and shall run for the two (2) year approval period covered on the certificate of approval. ()

02. Provisions of Bond. Bond provisions shall provide that the surety may be held liable for a period of up to five (5) years following notice of default on the bond. ()

03. Amount of Bond. The bond amount will be set by the Director and is subject to revision each time it is renewed. The owner must obtain approval for the amount of his surety bond prior to each renewal. ()

04. Cost Estimate Submitted by Engineer. In order to provide a basis for setting the bond amount, the engineer shall submit a cost estimate acceptable to the Director, together with conceptual details needed to arrive at the estimate, for abandonment of the facility at each proposed stage of its construction. ()

05. Current Costs for Abandonment. Bond amount will be based on current costs for abandonment

of the facility based on the approved cost estimate for abandonment at the present construction condition or the next approved proposed stage, whichever represents the larger bond amount. ()

06. Determination of Bond Amount. If the final abandonment is determined to be the most costly condition, the owner may elect to use this as a basis for bonding throughout the life of the project. The Director may, however, revise the bonding amount to reflect updated costs when he feels it is necessary in order to maintain a realistic bond. ()

07. Filing Initial Bond. The initial bond shall be filed upon completion of the first stage of construction and before the required certificate of approval is issued to allow storage of mine tailings slurry in the impoundment. No certificate of approval shall be renewed prior to filing by the owner of a bond renewal in an amount approved by the Director. ()

08. Filing Copy of Performance Bond. Upon the filing of a copy of a performance bond with the Director, covering the terms and conditions of a state of Idaho mineral lease or an approved reclamation plan, in which these documents specify compliance with a plan of restoration of all mining operations, including the tailings impounding structure, the Director may determine the bond required of this section has been met, if the amount of the bond accurately reflects the cost associated with the abandonment plan provided by the owner. ()

041. -- 044. (RESERVED)

045. MINE TAILINGS IMPOUNDMENT STRUCTURES DESIGN CRITERIA (RULE 45).

The following minimum design criteria shall be used for all mine tailings impoundment structures designed for installation in Idaho. These limitations are intended to serve as guidelines for a broad range of circumstances, and engineers should not consider them as a restriction to the use of other sound design criteria. Deviation from this established criteria will be considered by the Director in approving plans and specifications. ()

01. Embankment Slopes. ()

a. For construction of borrowed fill embankments, in the absence of a stability analysis, the slopes shall be:

Upstream slope	2:1 or flatter
Downstream slope	2:1 or flatter

()

b. Construction by the upstream method shall not be used in the area of the state east of Range 22 E., Boise Meridian, unless the engineer can provide evidence that the construction and operation of the tailings impoundment will achieve a relative density of sixty percent (60%) or greater in the embankment and tailings to prevent liquefaction during earthquake loading. ()

c. Safety factors for the embankment shall be at least one and five-tenths (1.5) for static loads and a minimum of one (1) for the static plus the appropriate earthquake load. ()

d. To insure sufficient permeability and stability of the embankment, designs will require utilizing materials other than the tailings, when the tailings materials: ()

i. Contain greater than seventy-five percent (75) passing the #200 standard U.S. sieve, or fifty percent (50%) passing the #325 standard U.S. sieve; ()

ii. Contain phosphate clays; ()

iii. The design calls for the water to be impounded against the embankment; ()

iv. Have other properties which makes them unsuitable for use as construction materials. ()

e. Embankments designed for the storage of hazardous levels of radioactive materials shall, in addition to any requirements of these regulations, meet the criteria outlined in the Nuclear Regulatory Commission Regulatory Guide 3.11 and the Idaho Radiation Control Regulations administered by the Idaho Department of Environmental Quality. ()

f. The design shall consider the need for drains and/or operational procedures to promote consolidation and insure that a low phreatic surface is maintained within the embankment. Drainage pipe shall not be used beneath embankments where excessive or differential settlement may cause failure of the pipes and subsequent piping of the tailings or embankment. When the quality of the mine tailings slurry is such that it will adversely affect the quality of the existing groundwater, the design should be coordinated with the Department and the Department of Environmental Quality to insure that all applicable permits are obtained. ()

g. Instrumentation of the embankment and/or foundation will be required to insure that the structure is functioning satisfactorily. Standpipe piezometers with an inside diameter greater than one-half (1/2) inch will not be acceptable for use in fine-grained or cohesive soils in order to minimize response time. ()

h. Tailings impoundment structures which are constructed using the tailings shall not be constructed or raised during freezing weather to prevent frost lenses in the embankment. Sufficient freeboard must be provided during the summer construction season if the disposal operation is to continue during the winter. ()

i. If tailings are to be discharged during times of freezing weather and the embankment is to be constructed using either the upstream or centerline method, the pond shall be of sufficient size to insure that any ice formed in the tailings pond area melts during the next warm season. ()

02. Top Width Embankment. ()

a. In the absence of a stability analysis, the minimum top width for mine tailings impoundment structures shall be:

$$W = 2 (H \text{ to } 1/2 \text{ power}) + 4, \text{ minimum}$$

W = Top width
H = Embankment height ()

b. The minimum top width for any tailings embankment is ten (10) feet. ()

03. Cutoff Trenches or Walls. ()

a. Cutoff trenches, if needed, shall be used to bond the fill through relatively pervious material to an impervious stratum or zone. The bond area shall extend up the abutments to the maximum high water or tailings impoundment elevation. Cutoff (keylock) trenches which are to be backfilled with compacted fill shall be wide enough to allow the free movement of excavation and compaction equipment. Side slopes shall be no steeper than 1:1 for depths up to twelve (12) feet, and no steeper than one and one-half (1 1/2) to one (1) for greater depths to provide for proper compaction. Flatter slopes may be required for safety and stability. ()

b. Concrete cutoff walls may be used to bond fills to smooth rock surfaces in a similar manner as cutoff trenches and they shall be entrenched in the rock to a depth approximately one-half (1/2) the thickness of the cutoff wall. Concrete cutoff walls shall be doweled into the rock a minimum of twelve (12) inches with a maximum spacing of eighteen (18) inches for three-quarter (3/4) inch steel dowels. Concrete walls shall have a minimum projection of three (3) feet perpendicular to the rock surface and shall have a minimum thickness of twelve (12) inches. ()

04. Borrowed Fill Embankment. ()

a. The approved earth materials (silt soils are seldom acceptable) shall be zoned as shown in the plans and placed in the embankment in continuous, approximately level layers. Compaction shall be based on ASTM D-698 for cohesive soils and a minimum compaction of ninety-five percent (95%) of the laboratory Standard Proctor dry density is required. Compaction of cohesionless soils shall insure a relative density of sixty percent (60%) or

greater. ()

b. An acceptable working range of moisture content for the fill material shall be established and maintained. ()

c. The material shall be compacted by means of a loaded sheepsfoot roller, vibratory roller, or other acceptable means, to the required density. ()

d. No rock shall be left in the fill material which has a maximum dimension exceeding the lift thickness. The fill material shall be free of brush and organic materials. ()

e. The fill shall be carried up simultaneously the full design width of the structure, and the top of the fill shall be kept substantially level at all times or slope slightly toward the reservoir. ()

f. No frozen or cloddy fill material shall be used, and no material shall be placed upon frozen, muddy or unscarified surfaces. ()

g. All materials used in the embankment shall meet all the stability and seepage requirements as shown by a design analysis of the structure and shall be properly installed to meet these requirements. ()

05. Riprap. ()

a. All dams shall be protected from wave action. In cases where water is stored directly against the mine tailings impoundment structure or where wave action at maximum pool level during design inflow events would affect the integrity of the embankment, the Director may require use of riprap or other protective measures. ()

b. If riprap is used the design shall specify the rock size and extent of blanket required to prevent erosion. ()

06. Outlet Systems. ()

a. Reservoirs must safely handle the design inflow for all areas draining into the reservoir. This may be done either by storing the entire design inflow or by having an outlet system or combination of systems adequate to safely pass the design inflow. If the tailings reservoir is situated on a stream channel, an outlet system or an approved alternative system capable of meeting downstream flow requirements must be provided. ()

b. The minimum design inflow for all reservoirs shall be the flood with one percent (1%) probability of occurrence. The Director may require a greater design inflow be used in instances of high hazard, for larger mine tailings impoundment structures, or when the inflow is to be entirely stored in the reservoir during the flood period. ()

c. The outlet system may be composed of one (1) or a combination of the following: decant line, spillway, stream channel diversion to bypass the reservoir. The system will be determined by individual reservoir conditions. Unless removal of the mine tailings impoundment structure and reservoir is part of the abandonment plan, the outlet system shall be maintained in perpetuity, unless it is demonstrated that an outlet system is not needed. ()

d. Outlet systems will not be allowed if their use would release toxic, highly turbid, radioactive or otherwise hazardous flows from the reservoir. In these cases the design inflow must either be entirely stored or diverted around the reservoir. ()

e. All spillways shall be stabilized to discharge flow through the use of concrete, masonry, riprap or sod, if not constructed in resistant rock. ()

f. Wherever possible, the spillway shall be constructed independent of the impoundment structure. It shall lead the water far enough away from the mine tailings impoundment structure so as not to endanger the structure. ()

g. A diversion system must not subject the mine tailings impoundment structure to erosion during the design inflow event. All stream diversions shall conform to the minimum standards for stream channel alterations as written by this Department. ()

h. Decant conduits, if under the embankment, shall be laid on a firm, stable foundation and normally must not be placed on fill. They shall have a minimum inside diameter of twelve (12) inches and one (1) of the following provisions included in the design: ()

i. The owner shall have the conduit inspected by photographic or video tape equipment and a copy of the inspection provided to the Department, if a problem is suspected; or ()

ii. The conduit shall be completely plugged with concrete and/or suitable material, for that portion which extends through the embankment, if a nonrepairable problem occurs within the conduit. The conduit shall consist of material which has been shown to possess the qualities necessary to perform in the environment of the specific tailings impoundment. The design life of the conduit shall be greater than the life of the mine tailings impoundment structure. The portion of the conduit through the embankment shall be completely filled with concrete, or other suitable material, and the riser portion of the conduit capped, upon abandonment of the mine tailings impoundment structure. ()

i. All decant conduits, if under the embankment, shall have a seepage path through the impervious zone at least equivalent in length to the maximum head above the downstream end of the system. Only one third (1/3) the horizontal distance through the impervious zone will be utilized when calculating the length of the seepage path. Collars may be used to satisfy this requirement, but all collars shall extend a minimum of three (3) feet outside the conduit. Collars shall be spaced at intervals of at least seven (7) times their height and no collar may be closer to the outer surface of the impervious zone than the distance it extends out from the conduit. ()

j. More than two (2) decant conduits are not to be used, unless special conditions warrant. ()

07. Freeboard. A minimum freeboard of two (2) feet plus wave height (H) shall be provided on the crest of the mine tailings impoundment structure during passage of the design inflow.

$$H = 1.95 (F \text{ to } 1/2 \text{ power})$$

F = Fetch in miles across water surface at a design maximum level. ()

08. Records. All instrumentation shall be read and recorded on a regular basis, and all records must be available for inspection by Department personnel on request. ()

09. Inspection and Completion Reports. ()

a. It is the responsibility of the engineer to submit test reports along with periodic inspection and progress reports to the Director. ()

b. Upon completion of each approved stage of construction, a letter shall be sent to the Director, giving a short, narrative account covering all items of work. As-built plans shall be submitted to the Director if the completed project was substantially changed from the plans originally approved. ()

10. Abandonment. An abandonment plan which provides a stable, maintenance-free condition when the mine tailings impoundment is no longer being regularly maintained by the owner or the owner has ceased to use the site for disposal of mine tailings slurry, shall be submitted to the Director by the owner. The plan shall provide a safe condition by providing for removal of the tailings, or construction of a maintenance-free spillway or diversion works where needed to accommodate runoff. The plan shall include provisions to prevent water storage behind, and erosion of, the mine tailings impoundment structure and the impounded tailing. A conceptual plan which includes an engineering design report, detailed enough to provide the required cost estimate for bonding purposes, will be required prior to the approval of the proposed project. Detailed construction plans must be approved by the Director prior to implementation of any abandonment work. The Director shall notify the owner upon acceptance of completion of abandonment in accordance with the approved plan. ()

046. -- 049. (RESERVED)

050. DAMS STORING TAILING AND WATER (RULE 50).

Construction of dams intended to store water in excess of the water being decanted in the tailing placement operation shall also meet the requirements for water storage reservoirs specified in the Department's Rules for the Safety of Dams. The Director may waive any or all of these requirements if, in the opinion of the Director, sound engineering design supplied by the owner indicates such requirements are not applicable. ()

051. -- 054. (RESERVED)

055. PROVISIONS OF CHAPTER 17, TITLE 42, IDAHO CODE (RULE 55).

The provisions of Sections 42-1709 through 42-1721, Idaho Code, are a part of these rules. ()

056. -- 999. (RESERVED)

37.03.06 – SAFETY OF DAMS RULES

000. LEGAL AUTHORITY (RULE 0).

These rules are adopted pursuant to Chapter 17, Section 42-1714, Idaho Code, and implement the provisions of Sections 42-1709 through 42-1721, Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

01. **Title.** These rules are titled IDAPA 37.03.06, “Safety of Dams Rules.” ()

02. **Scope.** ()

a. The requirements that follow are intended as a guide to establish acceptable standards for construction and to provide guidelines for safety evaluation of new or existing dams. The rules apply to all new dams, to existing dams to be enlarged, altered or repaired, and maintenance of certain existing dams, as specifically provided in the rules. The Director will evaluate any deviation from the standards hereinafter stated as they pertain to the safety of any given dam. The standards are not intended to restrict the application of other sound engineering design principles. Engineers are encouraged to submit new ideas which will advance the state of the art and provide for the public safety. ()

b. Under no circumstances shall these rules be construed to deprive or limit the Director of the Department of Water Resources of any exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount or character of data, or information which may be required by the Director from any owner of a dam for the proper administration of the law. State sovereignty as expressed in Policy 1A of the adopted State Water Plan for independent review and approval of dam construction, operation and maintenance will not be waived due to any overlapping jurisdiction from federal agencies. ()

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

Unless the context otherwise requires, the following definitions govern these rules. ()

01. **Active Storage.** The water volume in the reservoir stored for irrigation, water supply, power generation, flood control, or other purposes but does not include flood surcharge. Active storage is the total reservoir capacity in acre-feet, less the inactive and dead storage. ()

02. **Alterations, Repairs or Either of Them.** Only such alterations or repairs as may directly affect the safety of the dam or reservoir, as determined by the Director. Alterations, repairs does not include routine maintenance items. (See Rule Subsections 055.02.a. and 055.02.b.) ()

03. **Appurtenant Structures.** Ancillary features (e.g. outlets, tunnels, gates, valves, spillways, auxiliary barriers) used for operation of a dam, which are owned by the dam owner or the owner has responsible control. ()

04. **Board.** The Idaho Water Resource Board. ()

05. **Certificate of Approval.** A certificate issued by the Director for all dams listing restrictions imposed by the Director, and without which no new dams shall be allowed by the owner to impound water. A certificate of approval is also required for existing dams before impoundment of water is authorized. ()

06. **Dam.** Any artificial barrier together with appurtenant works, which is or will be ten (10) feet or more in height or has or will have an impounding capacity at maximum storage elevation of fifty (50) acre-feet or more. Height of a dam is defined as the vertical distance from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the Director, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum water storage elevation. ()

07. **Small Dams.** Artificial barriers twenty (20) feet or less in height that are capable of storing less than one hundred (100) acre-feet of water. ()

08. **Intermediate Dams.** Artificial barriers more than twenty (20) feet, but less than forty (40) feet in height, or are capable of storing one hundred (100) acre-feet or more, but less than four thousand (4,000) acre-feet of water. ()

- 09. Large Dams.** Artificial barriers forty (40) feet or more in height or are capable of storing four thousand (4,000) acre-feet or more of water. ()
- 10. Department Jurisdiction.** The following are not subject to department jurisdiction: ()
- a.** Artificial barriers constructed in low risk areas as determined by the Director, which are six (6) feet or less in height, regardless of storage capacity. ()
- b.** Artificial barriers constructed in low risk areas as determined by the Director, which impound ten (10) acre-feet or less at maximum water storage elevation, regardless of height. ()
- c.** Artificial barriers in a canal used to raise or lower water therein or divert water therefrom. ()
- d.** Fills or structures determined by the Director to be designed primarily for highway or railroad traffic. ()
- e.** Fills, retaining dikes or structures, which are under jurisdiction of the Department of Environmental Quality, designed primarily for retention and treatment of municipal, livestock, or domestic wastes, or sediment and wastes from produce washing or food processing plants. ()
- f.** Levees, that store water regardless of storage capacity. Levee means a retaining structure alongside a natural lake which has a length that is two hundred (200) times or more greater than its greatest height measured from the lowest elevation of the toe to the maximum crest elevation of the retaining structure. ()
- 11. Days Used in Establishing Deadlines.** Calendar days including Sundays and holidays. ()
- 12. Dead Storage.** The water volume in the bottom of the reservoir stored below the lowest outlet and generally is not withdrawn from storage. ()
- 13. Department.** The Idaho Department of Water Resources. ()
- 14. Design Evaluation.** The engineering analysis required to evaluate the performance of a dam relative to earthquakes, floods or other site specific conditions that are anticipated to affect the safety of a dam or operation of appurtenant facilities. ()
- 15. Director.** The Director of the Idaho Department of Water Resources. ()
- 16. Engineer.** A registered professional engineer, licensed as such by the state of Idaho. ()
- 17. Enlargement.** Any change in or addition to an existing dam or reservoir, which raises or may raise the water storage elevation of the water impounded by the dam. ()
- 18. Factor of Safety.** A ratio of available shear strength to shear stress, required for stability. ()
- 19. Flood Surge.** A variable volume of water temporarily detained in the upper part of a reservoir, in the space (or part thereof) that is filled by excess runoff or flood water, above the maximum storage elevation. Flood surge cannot be retained either because of physical or administrative factors but is passed through the reservoir and discharged by the spillway(s) until the reservoir level has been drawn down to the maximum storage elevation. ()
- 20. Inflow Design Flood (IDF).** The flood specified for designing the dam and appurtenant facilities. ()
- 21. Maximum Credible Earthquake.** The largest earthquake that reasonably appears capable of occurring under the conditions of the presently known geological environment. ()
- 22. Operation Plan.** A specific plan that will assure the project is safely managed for its intended

purpose and which provides reservoir operating rule curves or specific limits and procedures for controlling inflow, storage, and/or release of water, diverted into, passed through or impounded by a dam. ()

23. Owner. Includes any of the following who own, control, operate, maintain, manage, hold the right to store and use water from the reservoir or propose to construct a dam or reservoir. ()

a. The state of Idaho and any of its departments, agencies, institutions and political subdivisions; ()

b. The United States of America and any of its departments, bureaus, agencies and institutions; provided that the United States of America are not required to pay any of the fees required by Section 42-1713, Idaho Code, and shall submit plans, drawings and specifications as required by Section 42-1712, Idaho Code, for information purposes only; ()

c. Every municipal or quasi-municipal corporation. ()

d. Every public utility; ()

e. Every person, firm, association, organization, partnership, business trust, corporation or company; ()

f. The duly authorized agents, lessees, or trustees of any of the foregoing; ()

g. Receivers or trustees appointed by any court for any of the foregoing. ()

24. Reservoir. Any basin which contains or will contain the water impounded by a dam. ()

25. Storage Capacity. The total storage in acre-feet at the maximum storage elevation. ()

26. Water Storage Elevation. The maximum elevation of the water surface which can be obtained by the dam or reservoir. It is further defined as the storage level attained when the reservoir is filled to capacity (i.e. to the spillway crest) or an authorized storage level attained by installing flashboards to increase the reservoir capacity, or a specified upper storage limit, which is attained by operation of movable gates that raises the reservoir to a controlled operating level. The maximum storage elevation is an equivalent term of water storage elevation. ()

27. Release Capability. The ability of a dam to pass excess water through the spillway(s) and outlet works and otherwise discharge. ()

011. -- 024. (RESERVED)

025. DAM SIZE CLASSIFICATION AND RISK CATEGORY (RULE 25).

01. Size Classification. The following table defines the height and storage capacity limits used by the Department to classify dams:

Size Classification	Height (ft)		Storage Capacity
Small	20 ft. or less	and	Less than 100 acre-ft.
Intermediate	More than 20 ft. but less than 40 ft.	or	100 Acre-ft or more, but less than 4000 acre ft
Large	40 ft. or more	or	4000 acre-ft., or more

()

02. Risk Category. The following table describes categories of risk used by the Department to classify losses and damages anticipated in down-stream areas, that could be attributable to failure of a dam during typical

flow conditions.

Risk Category	Dwellings	Economic Losses
Low	No permanent structures for human habitation.	Minor damage to land, crops, agricultural, commercial or industrial facilities, transportation, utilities or other public facilities or values.
Significant	No concentrated urban development, 1 or more permanent structures for human habitation which are potentially inundated with flood water at a depth of 2 ft. or less or at a velocity of 2 ft. per second or less.	Significant damage to land, crops, agricultural, commercial or industrial facilities, loss of use and/or damage to transportation, utilities or other public facilities or values.
High	Urban development, or any permanent structure for human habitation which are potentially inundated with flood water at a depth of more than 2 ft. or at a velocity of more than 2 ft. per second.	Major damage to land, crops, agricultural, commercial or industrial facilities, loss of use and/or damage to transportation, utilities or other public facilities or values.

()

03. Determination of Size and Risk Category. The Director shall determine the size and risk category of a new or existing dam. ()

026. -- 029. (RESERVED)

030. AUTHORITY OF REPRESENTATIVE (RULE 30).

When plans, drawings and specifications are filed by another person on behalf of an owner, written evidence of authority to represent the owner shall be filed with the plans, drawings and specifications. ()

031. -- 034. (RESERVED)

035. FORMS (RULE 35).

Forms required by these rules are available from the Department to interested parties upon request. Construction of a small dam requires the filing of Form 1710 and construction of an intermediate or large dam requires the filing of Form 1712. ()

036. -- 039. (RESERVED)

040. CONSTRUCTION PLANS, DRAWINGS AND SPECIFICATIONS (RULE 40).

The following provisions shall apply in submitting plans, drawings and specifications. ()

01. Submission of Duplicate Plans, Drawings and Specifications. Any owner who shall desire to construct, enlarge, alter or repair any intermediate or large dam, shall submit duplicate plans, drawings and specifications prepared by an engineer for the proposed work to the Director with required fees. The Director may, however, require the submittal of plans, drawings and specifications prior to the construction of any dam. ()

02. Applying for and Obtaining Written Approval. Construction of a new dam or enlargement, alteration or repairs on existing dams shall not be commenced until the owner has applied for and obtained written approval of the plans, drawings and specifications. Alteration or repairs do not include routine maintenance for which prior approval is not required. (See Rule Subsections 055.02.a and 055.02.b) ()

03. Plans Shall Be Prepared on a Good Quality Vellum or Mylar. Transparent copies reproducible by standard duplicating processes, if accurate, legible and permanent, will be accepted. Plans may initially be submitted in the form of nonreproducible paper prints. After reviewing the plans, the Director will notify the owner of

any required changes. ()

04. Preparation and Submission of Plans. Plans and drawings shall be of a sufficient scale with an adequate number of views showing proper dimensions, so that the plans and drawings may be readily interpreted and so that the structure and appurtenances can be built in conformance with the plans and drawings. ()

05. Information Included with Plans. Plans for new dams shall include the following information and plans for enlargement, alteration or repair of an existing dam shall include as much of the following information as required by the Director to adequately describe the enlargement, alteration or repair and the affect on the existing dam or its appurtenant facilities: ()

a. A topographic map of the dam site showing the location of the proposed dam by section, township and range, and location of spillway, outlet works, and all borings, test pits, borrow pits; ()

b. A profile along the dam axis showing the locations, elevations, and depths of borings or test pits, including logs of bore holes and/or test pits; ()

c. A maximum cross-section of the dam showing elevation and width of crest, slopes of upstream and downstream faces, thickness of riprap, zoning of earth embankment, location of cutoff and bonding trenches, elevations, size and type of outlet conduit, valves, operating mechanism and dimensions of all other essential structural elements such as cutoff walls, filters, embankment zones, etc.; ()

d. Detailed drawings showing plans, cross and longitudinal sections of the outlet conduits, valves and controls for operating the same, and trash racks; ()

e. A curve or table showing the capacity of the reservoir in acre-feet vs gauge height (referenced to a common project datum) of the reservoir storage level, and the computations used in making such determinations. ()

f. A curve or table showing the outlet discharge capacity in cubic feet per second vs gauge height of reservoir storage level, and the equation used in making such determination; ()

g. A curve showing the spillway discharge capacity in cubic feet per second vs gauge height of the reservoir or flood surcharge level above the spillway crest and the equation used in making such determinations; ()

h. Detailed drawings of spillway structure(s), cross-sections of the channel heading to and from the spillway and a spillway profile; ()

i. Plans for flow measuring devices capable of providing an accurate determination of the flow of the stream above and below the reservoir, and a permanent reservoir or staff gauge near the outlet of the reservoir plainly marked in feet and tenths of a foot referenced to a common project datum; ()

j. Plans or drawings of instruments, recommended by the owner's engineer to monitor performance of intermediate or large dams to assure safe operation, or as may be required by the Director to monitor any dam regardless of size, that is situated upstream of a high risk area. ()

06. Specifications. Specifications shall include provisions acceptable to the Director for adequate observation, inspection and control of the work by a registered professional engineer, during the period of construction. ()

07. Changes to Specifications. The specifications shall not be materially changed without prior written consent of the Director. Significant design changes, while construction is underway, shall be submitted for the Director's review and approval. ()

08. Inspections. The owner shall provide for and allow inspections by the Department to assure the dam and appurtenant structures are constructed in conformance with the approved plans and specifications, or as may

be revised by the engineer and approved by the Director if there are unforeseen conditions discovered during site excavation or construction of the dam which potentially jeopardize the future integrity and safety of the dam. Certain stages of construction shall not proceed without inspection and approval by the Director, including the following:

- ()
 - a. After clearing and excavation of the foundation area and cutoff trench and prior to placing any fill material. ()
 - b. After installation of the outlet conduit and collars and before placing any backfill material around the conduit; ()
 - c. After construction is completed and before any water is stored in the reservoir. ()
 - d. At such other times as determined necessary by the Director. The Director will, upon seven (7) days notice, inspect and if satisfactory, approve the completed stage of construction. The Director may conduct inspections upon shorter notice upon good reason being shown or upon a schedule jointly agreed upon by the Director and the owner. ()
- 09. Inspection, Examination and Testing of Materials.** All materials and workmanship shall be subject to inspection, examination and testing by the Director at any and all times. ()
- 10. Rejection of Defective Material.** The Director shall have the right to require the owner or engineer to reject defective material and workmanship or require its removal or correction respectively. Rejected workmanship shall be corrected and rejected material shall be replaced with proper material. ()
- 11. Suspension of Work.** The Director may order the engineer to suspend any work that may be subject to damage by inclement weather conditions. ()
- 12. Responsibility of Engineer.** These provisions shall not relieve the engineer of his responsibility to assure that construction is accomplished in accordance with the approved plans and specifications or to suspend work on his own motion. ()
- 13. Detailing Provisions of Specifications.** The specifications shall state in sufficient detail, all provisions necessary to insure that construction is accomplished in an acceptable manner and provide needed control of construction to insure that a safe structure is constructed. ()
- 14. Design Report.** Owners proposing to construct, enlarge, alter or repair an intermediate or large dam shall submit an engineering or design evaluation report with the plans and specifications. The engineering report shall include as much of the following information as necessary to present the technical basis for the design and to describe the analyses used to evaluate performance of the structure and appurtenances. ()
- a. All technical reference(s); equations and assumptions used in the design; ()
 - b. Hydrologic data used in determining runoff from the drainage areas; reservoir flood routing(s); and hydraulic evaluations of the outlet(s) and the spillway(s). ()
 - c. Engineering properties of the foundation area and of each type of material to be used in the embankment. ()
 - d. A stability analysis, including an evaluation of overturning, sliding, slope and foundation stability and a seepage analysis; ()
 - i. Seismic design loads shall be evaluated and applied at all large dams to be located in significant or high risk areas, in Seismic Zone 3, which for purposes of these rules is the area in Idaho east of Range 22 East, Boise Meridian. The evaluation required of large dams, that are classified significant or high risk, shall use the maximum ground motion/ acceleration generated by the maximum credible earthquake, which could affect the dam site. ()

ii. Seismic analysis may be required as determined by the Director for large dams located above high risk areas in Seismic Zone 2, which for purposes of these rules is the area in Idaho west of Range 22 East, Boise Meridian. ()

15. Additional Information/Waiver. The Director may require the filing of such additional information which in his opinion is necessary or waive any requirement herein cited if in his opinion it is unnecessary. ()

16. Alternate Plans. The Director may accept plans and specifications or portions thereof prepared for other agencies which are determined to meet the requirements of Rule 40. ()

041. -- 044. (RESERVED)

045. OPERATION PLAN (RULE 45).

An operation plan is required as described in the following rules and shall provide procedures for emergency operations and include guidelines and procedures for inspection, operation and maintenance of the dam and appurtenances, including any instruments required to monitor performance of the dam during normal operating cycles, critical filling or flood periods, or as may be required to monitor new or existing dams subject to earthquake effects. ()

01. New, Reconstructed or Enlarged Dams. Prior to the initial filling of the reservoir or refilling the reservoir for a reconstructed or enlarged dam in the following categories, the owner shall file with the Director an operation plan for review and approval: ()

- a. Small, high risk. ()
- b. Intermediate, significant risk. ()
- c. Intermediate, high risk. ()
- d. Large, any risk category. ()

02. Existing Dams. Unless exempted by the Director, owners of the following categories of dams shall file an operation plan with the Director on or before July 1, 1992 for review and approval: ()

- a. Intermediate, high risk. ()
- b. Large, significant risk. ()
- c. Large, high risk. ()

03. Alternate Plans. The Director may accept existing studies or plans in lieu of an operation plan if the Director determines the information provided fulfills the requirements of Rule 45. ()

046. -- 049. (RESERVED)

050. NEW INTERMEDIATE OR LARGE DAMS (RULE 50).

The following minimum criteria shall be used to evaluate the design of intermediate or large earthfill dams in Idaho. These standards are intended to serve as guidelines for a broad range of circumstances, and engineers should not consider them as a restriction to the use of other sound engineering design principles. Exclusion from this established criteria will be considered by the Director on a case-by-case basis in approving plans and specifications and evaluating dams. Dams constructed of other materials shall comply with these criteria as found appropriate by the Director and with other engineering criteria approved by the Director. ()

01. Embankment Stability. Slope stability analyses shall determine the appropriate upstream and downstream slopes. Unless slope stability analysis determines otherwise, the embankment slopes shall be:

Upstream slope	3:1 or flatter
Downstream slope	2:1 or flatter

()

a. For large high and significant hazard dams and intermediate high hazard dams the embankment shall be designed, constructed and maintained to assure stability under static loads and prevent instability due to seepage or uplift forces, or drawdown conditions. Transmission of seepage through the embankment, abutments and foundation shall be controlled to prevent internal removal of material and instability where seepage erodes or emerges. ()

b. The design analysis shall consider the need for installing filters, filter fabric and/or toe drains to stabilize the fill and protect against piping of the embankment fill material. ()

c. The minimum factor of safety for a dam under steady state condition shall be 1.5. During rapid drawdown of the reservoir, the minimum factor of safety for the embankment shall be 1.2. For dams constructed in Seismic Zone 3, the minimum factor of safety under seismic load shall be 1.0. ()

d. The stability of an embankment subjected to earthquake ground motions can be analyzed by dynamic response or pseudo-static analyses. Pseudo-static analyses are acceptable for embankment dams constructed of soils that will not build-up excess pore pressures due to shaking, nor sustain more than fifteen percent (15%) strength loss during earthquake events, otherwise the stability of an embankment dam shall be analyzed by a dynamic response method. A pseudo-static analysis simplifies the structural analysis (i.e. the resultant force of the seismic occurrence is represented by a static horizontal force applied to the critical section to derive the factor of safety against sliding along an assumed shear surface). The value of the horizontal force used in the pseudo-static analysis, is the product of the seismic coefficient and the weight of the assumed sliding mass. ()

e. Slope deformation analyses are required for dams located in Seismic Zone 3, that are constructed of cohesionless soils and/or on foundations which are subject to liquefaction, when the peak acceleration at the site is anticipated to exceed 0.15g. ()

f. The design analyses for new dams located in high risk areas (in Seismic Zone 2 or 3) shall include geologic and seismic reports, location of faults and history of seismicity. ()

g. Where in the opinion of the Director, embankment design or conditions warrant, instrumentation of the embankment and/or foundation will be required. ()

h. The design analyses for new large dams located in high risk areas (in Seismic Zone 3) shall include an evaluation of potential landslides in the vicinity of the dam or immediate area of the reservoir, which could cause damage to the dam or appurtenant structures, obstruct the spillway or suddenly displace water in the reservoir causing the dam to overtop. If potential landslides pose such a threat, they shall be stabilized against sliding, with a minimum factor of safety of 1.5. ()

02. Top Width. The crest width shall be sufficient to provide a safe percolation gradient through the embankment at the level of the maximum storage elevation. The minimum crest width (top of embankment) shall be determined by:

$$W = H / 5 + 10$$

W = Width, in feet
H = Structural Height, in feet

The minimum top width for any dam is twelve (12) feet. ()

03. Cutoff Trenches or Walls. Cutoff trenches shall be excavated through relatively pervious foundation material to an impervious stratum or zone. The trench shall be backfilled with suitable material, compacted to the specified density. The cutoff trench shall extend up the abutments to the maximum storage elevation. ()

a. Cutoff trenches shall be wide enough to allow the free movement of excavation and compaction equipment. Side slopes shall be no steeper than one to one (1:1) for depths up to twelve (12) feet, and no steeper than one and one half to one (1 1/2:1) for greater depths to provide for proper compaction. Flatter slopes may be required for safety and stability. ()

b. Concrete cutoff walls may be used to bond fills to smooth rock surfaces in a similar manner as cutoff trenches and shall be entrenched in the rock to a depth approximately one-half the thickness of the cutoff wall. Concrete cutoff walls shall be doweled into the rock a minimum of eight (8) inches with a maximum spacing of eighteen (18) inches for three-fourths (3/4) inch steel dowels. Concrete walls shall have a minimum projection of three (3) feet perpendicular to the rock surface and shall have a minimum thickness of twelve (12) inches. ()

04. Impervious Core Material. The approved earth materials (silt soils are seldom acceptable) shall be zoned as shown in the plans and placed in the embankment in continuous, approximately level layers, having a thickness of not more than six (6) inches before compaction. Compaction shall be based on ASTM D-698. A minimum compaction of ninety-five percent (95%) is required. ()

a. An acceptable working range of moisture content for the core material shall be established and maintained. ()

b. The material shall be compacted by means of a loaded sheepsfoot or pneumatic roller to the required density. ()

c. No rock shall be left in the core material which has a maximum dimension of more than four (4) inches. The core material shall be free of organic and extraneous material. ()

d. The core material shall be carried up simultaneously the full width and length of the dam, and the top of the core material shall be kept substantially level at all times, or slope slightly toward the reservoir. ()

e. No frozen or cloddy material shall be used, and no material shall be placed upon frozen, muddy or unscarified surfaces. ()

f. All materials used in the dam shall meet the stability and seepage requirements as shown by a design analysis of the structure and shall be properly installed to meet these requirements. ()

05. Drains. Toe or chimney drains or free draining downstream material shall be installed where necessary to maintain the phreatic line within the downstream toe. ()

a. Filter design for chimney drains, filter blankets and toe drains in clay and silt soils shall be selected using the following design criteria, unless deviations are substantiated by laboratory tests. All tests are subject to review and approval by the Director.

D15 filter/D15 base > 5 but < 20

D15 filter/D85 base < 5

D50 filter/D50 base < 25

D85 filter > 2 times diameter of pipe perforations, or 1.2 times width of pipe slots. ()

b. Filter material requirements are determined by comparing the particle size distribution of the filter to the particle size distribution of the materials to be protected;

e.g. D50 filter
D50 material to be protected

Where D is the particle size passing a mechanical (sieve) analysis expressed as a percentage by weight. ()

c. The base material should be analyzed considering the portion of the material passing the No. 4 sieve, for designing filters for base materials that contain gravel size particles. To assure internal stability and prevent segregation of the filter material, the coefficient of uniformity (D60/D10) shall not be greater than 20. ()

d. The minimum thickness of filter blankets and chimney drains shall be twelve (12) inches, with the maximum size particle passing the one (1) inch sieve. The maximum particle size may be increased with increasing thickness of the filter, by the rate of one (1) inch per foot of filter. However, the maximum particle shall not exceed three (3) inches. Zoned filters and chimney drains must not be less than twelve (12) inches thick per each zone. The width of granular filters shall not be less than the width of the installation equipment unless the plans and specifications include construction procedures adequate to insure the integrity of a narrower width. ()

e. Perforated drain pipes must have a minimum of six (6) inches of drain material around the pipe. The maximum particle size shall not exceed one-half (1/2) inch unless the layer thickness is increased at the rate of one (1) inch per foot of filter. Underdrains and collection pipes must be constructed of noncorrosive material. ()

06. Freeboard. The elevation of the top of the embankment shall be constructed and maintained above the flood surcharge level to prevent the dam from overtopping during passage of the inflow design flood and to provide freeboard for wind generated waves. Camber shall be included in the design and incorporated in the construction of the top of the embankment, unless waived by the Director. Camber may be estimated by multiplying the structural height of the dam by five percent (5%). ()

a. The height of wind generated waves (H) moving across a surcharged reservoir can be estimated by the following equation:

$H = 1.95 (F/2)$ where F = fetch, the distance in miles across the reservoir, measured perpendicular to the major axis of the dam. ()

b. For large, high risk dams the minimum freeboard shall be two (2) feet plus wave height during passage of the one percent (1%) flood or equal to the surcharge elevation of the reservoir during passage of the inflow design flood whichever is greater. ()

c. Estimation of the height of the wind generated wave using the empirical equation in Rule 050.06.a. shall not preclude a more conservative design including consideration of fill materials, embankment zoning, slope surface protection, drainage or other safety factors. ()

07. Riprap. All dams which are subject to erosion shall be protected from wave action. The design engineer, with approval of the Director, shall determine whether or not rock riprap or other protection is necessary. ()

a. Where rock riprap is used, it shall be placed on a granular bedding material, and extend up the slope, from three (3) feet below the normal minimum operating level to the top of the dam. ()

b. Where riprap is required by Rule Subsection 055.07, pipes, cables, brush, tree growth, dead growth, logs, or floating debris are not acceptable substitutes for rock riprap and granular bedding material. ()

08. Outlet Conduits. All reservoirs shall be provided with an outlet conduit of sufficient capacity to prevent interference with natural streamflow through the reservoir to the injury of downstream appropriators unless waived by the Director. In addition to any natural flow releases, the outlet conduit should be of sufficient capacity to pass at the same time, the maximum water requirement of the owner. A larger outlet conduit may be required to provide adequate release capability as determined by the Director. ()

a. Outlet conduits shall be laid on a firm, stable foundation and normally not be placed on fills which can consolidate, allow differential settlement, and cause separation or misalignment of the pipe. Unless otherwise required, the outlet shall have a minimum inside diameter of twelve (12) inches. The conduits shall be of reinforced concrete or of metal pipe encased in concrete, poured with a continuous seal between the concrete and the trench

except as otherwise approved by the Director. Void spaces and uncompacted areas shall not be covered over when the outlet trench is backfilled. Outlets shall be properly aligned on an established grade and may be supported on a concrete cradle, or otherwise supported and kept aligned when the outlet is covered. ()

b. Asphalt dipped or other metal pipe is not acceptable unless it is encased in concrete. Exceptions may be made only where conditions warrant, but in no case shall the reasonable life expectancy of the pipe be less than the design life of the dam. ()

c. All outlet conduits shall have a seepage path through the impervious zone at least equivalent in length to the maximum head above the downstream end of the system. Only one-third (1/3) the horizontal distance through the impervious zone will be utilized when calculating the length of the seepage path. Collars may be used to satisfy this requirement but all collars shall extend a minimum of two (2) feet outside the conduit for dams up to thirty (30) feet in height and a minimum of three (3) feet for dams above that height. Collars shall be spaced at intervals of at least seven (7) times their height and no collar may be closer to the outer surface of the impervious zone than the distance it extends out from the conduit. ()

d. The use of multiple conduits is allowed only upon the written approval of the Director. ()

09. Gates. All conduits shall be gated on the upstream end, unless otherwise approved by the Director, with either a vertical or an inclined gate. All conduits shall be vented directly behind the gate unless otherwise determined by the Director. Reservoirs storing water during the winter and subject to severe ice conditions shall have inclined gate controls enclosed in a protective sleeve which is buried. All gate stem pedestals shall be made of concrete. All trash racks shall slope toward the reservoir. At least one (1) of the sides of the inlet structure shall be open to allow water to flow into the outlet conduit and shall be covered with a trash rack. Trash racks should be designed with bars primarily in one (1) direction so they can be cleaned. If fish screens are used, they shall be placed over the trash rack and shall be removable for cleaning, or of the self-cleaning type. ()

10. Outlet Controls. Outlet controls shall be installed at a stable location, on the crest or on an elevated platform, or within an enclosure when required, which is readily accessible, but secured to prevent unauthorized operation. ()

11. Release Capability. Based on the size of the dam and on the risk category assigned by the Director, the release capability of a dam shall equal or exceed the inflow design flood in the following table:

Downstream Risk Category	Size Classification	Inflow Design Flood
Low	Small	Q50
	Intermediate	Q100
	Large	Q500
Significant	Small	Q100
	Intermediate	Q500
	Large	0.5 PMF
High	Small	Q100
	Intermediate	0.5 PMF
	Large	PMF

NOTE: The inflow design flood(s) indicated in the table include specific frequency floods (2%/50yr, 1%/100 yr.) expressed in terms of exceedance with a probability the flood will be equaled or exceeded in any given year (a fifty (50) year flood has a two percent (2%) chance of occurring in any given year and a one hundred (100) year flood has a one percent (1%) chance of occurring in any given year); or PMF - probable maximum flood, which may be

expected from the most severe combination of meteorologic and hydrologic conditions that are reasonably possible in the region. The PMF is derived from the probable maximum precipitation (PMP) which is the greatest theoretical depth of precipitation for a given duration that is physically possible over a particular drainage area at a certain time of year. ()

a. All spillways shall be stabilized for the discharge of flow by the use of concrete, masonry, riprap or sod, if not constructed in resistant rock. ()

b. Where site conditions allow, the spillway shall be constructed independent of embankment dams. The spillway(s) shall guide the discharge of water away from the dam embankment so as not to erode or endanger the structure. ()

c. The minimum base width of an open-channel spillway shall be ten (10) feet. Conduits or siphon pipes other than glory hole spillways are not acceptable substitutes for an open-channel spillway. ()

d. The effectiveness of spillways shall be undiminished by bridges, fences, pipelines or other structures. ()

e. Unless expressly authorized in writing by the Director, or approved as an integral part of an operation plan, stop logs or flashboards shall not be installed in spillways. ()

12. Reservoir Site. The dam site shall be cleared of all trees, brush, large rocks, and debris unless otherwise waived by the Director. The reservoir site shall be cleared of all woody material, growth or debris that is large enough to lodge in the spillway, or outlet works, except as otherwise approved by the Director. ()

13. Inspection and Completion Reports. As construction proceeds, it is the responsibility of the engineer to submit test reports (e.g. soil material analyses, density tests, concrete strength tests) along with periodic inspection and progress reports to the Director. ()

a. Upon completion of construction the owner or his engineer shall provide the Director a short, written narrative account of all items of work. Record drawings and revised specifications shall be submitted to the Director if the completed project has been substantially changed from the plans and construction specifications originally approved. ()

b. The engineer representing the owner shall certify that construction, reconstruction, enlargement, replacement or repair of the dam and appurtenances was completed in accordance with the record drawings and specifications, or as revised. ()

051. -- 054. (RESERVED)

055. EXISTING INTERMEDIATE OR LARGE DAMS (RULE 55).

All dams regulated by the department shall be operated and maintained to retain the embankment dimensions and the hydraulic capacity of the outlet works and spillway(s) as designed and constructed, or as otherwise required by these rules. ()

01. Analyses Required. The analyses required by Rule 40 are not applicable to existing dams except as required in Rule Subsections 055.01.a. and 055.01.e. unless for good cause, the Director specifically requires the analyses. Dams constructed of other than earth material shall comply with these criteria, as determined by the Director, or with other engineering criteria approved by the Director. ()

a. For large, significant or high risk dams, the release capability required by Rule Subsection 050.11 shall be evaluated and applied to the structure. Dams of other size and risk are required to provide the release capability of Rule Subsection 050.11 but are not required to conduct the analyses. ()

b. Every dam, unless exempted by the Director shall have a spillway with a capacity to pass a flood of one percent (1%) (two percent (2%) for small low hazard dams) occurring with the reservoir full to the spillway crest at the beginning of the flood while maintaining the freeboard required by Rule Subsection 050.06. ()

c. The Director may waive the spillway requirement for dams proposing off stream storage or upon a showing acceptable to the Director. ()

d. The release capability can include the capacity of spillway(s) and outlet(s), diversion facilities, or other appurtenant structures, and any approved operating procedures which utilize upstream storage, diversion and flood routing storage to pass flood events. The remainder of the required release capacity, if any, may be met by the following: ()

i. Reconstruction, enlargement or addition of spillway(s), outlet(s), diversion facilities or other appurtenant structures. ()

ii. A showing acceptable to the Director that failure of the dam during a flood of the specified magnitude described in Rule Subsection 050.11 would not substantially increase downstream damages over and above the losses and damages that would result from any natural flood up to that magnitude. ()

iii. A showing acceptable to the Director that the release capability of the dam together with other emergency release modes such as a controlled failure or overtopping of the dam would not result in a larger rate of discharge than the rate of inflow to the reservoir. ()

iv. A showing acceptable to the Director that limiting physical factors unique to the dam site exist that prevent construction of a spillway or other release capability mechanisms during a flood of the specified magnitude described in Rule Subsection 050.11 provided the owner implements storage operational procedures and/or provides for emergency warning to protect life and property. ()

e. For large, high risk dams, the seismic design loads shall be evaluated and applied to dams located east of Range 22E, B.M. The evaluation shall use the maximum ground motion/acceleration generated by the maximum credible earthquake. ()

f. The Director may accept existing studies relative to requirements of Rule Subsections 055.01.a. and 055.01.e., if the Director determines the information provided fulfills the requirements of Rule Subsections 055.01.a. and 055.01.e. ()

g. The Director may allow until July 1, 1992 for completion of the analyses required in Rule Subsections 055.01.a. and 055.01.g. and may allow the owner of an existing dam a compliance period of up to ten years for completing the studies, to complete structural modifications or implement other improvements necessary to provide the release capability determined to be required (Rule Subsection 055.01.a.) or complete structural modifications necessary to assure the dam and appurtenant facilities will safely function under earthquake loads (Rule Subsection 055.01.g.). ()

h. Within thirty (30) days after completing the analyses required in Rule Subsection 055.01.a. or 055.01.g., the owner of an existing dam that is deficient in either case (Rule Subsection 055.01.a. or 055.01.g.) shall file with the Director a schedule outlining the dates work or construction items will be completed. ()

02. Other Requirements. ()

a. Routine maintenance items include the following: ()

i. Eradication of rodents and filling animal burrows. ()

ii. Removal of vegetation and debris from the dam. ()

iii. Restoring original dimensions of the dam by the addition of fill material. ()

iv. Addition of bedding or riprap material which will not increase the height or storage capacity. ()

- v. Repair or replacement of gates, gate stems, seals, valves, lift mechanisms or vent pipes with similar equipment. ()
- vi. Repair or replacement of wingwalls, headwalls or aprons including spalling concrete. ()
- b. The following are not routine maintenance items: ()
 - i. Reconstruction of embankment slopes. ()
 - ii. Replacement, reconstruction or extension of outlets. ()
 - iii. Foundation stabilization. ()
 - iv. Filter or drain construction or replacement. ()
 - v. Spillway size alteration or modification. ()
 - vi. Installation of instrumentation or piezometers. ()
 - vii. Release capability modification. ()
- c. Items not specifically described in Rule Subsections 055.02.a. and 055.02.b. will be determined by the Director to be included in one rule or the other upon receipt of a written request from the owner or his representative seeking such a determination. ()
- d. Where riprap is required to prevent erosion and to maintain a stable embankment, pipes, cables, brush, tree growth, logs, or floating debris are not acceptable substitutes for rock riprap and granular bedding material. Dams or portions thereof which are stable without riprap, are not required to have riprap. ()
- e. Upon completion of reconstruction of a dam or feature of a dam included in Rule Subsection 055.02.b., the owner or his engineer shall provide the Director a short written narrative account of all items of work. Record drawings and revised specifications shall be submitted to the Director if the completed project has been substantially changed from the plans and construction specifications originally approved. ()
- f. Upon request, the owner of every dam shall provide his name and address to the Director and shall advise the Director of future changes in ownership. If the owner does not reside in Idaho, the owner shall provide the name and address of the person residing in Idaho who is responsible for the operation, maintenance and repair of the dam. ()

056. -- 061. (RESERVED)

060. SMALL DAM DESIGN CRITERIA (RULE 60).

The following provisions apply to small dams. ()

01. Design and Construction of Small Dams. Design and construction of small dams located in high risk areas as determined by the Director require submittal of fees, plans and specifications prepared by an engineer and shall follow the same general criteria established under Rules 40, 45, 50, and 55. Other small dams not determined to be in a high risk area shall follow the same general criteria established under Rules 50 and 55 or larger dams, except that submittal of plans, specifications and test results is not required. ()

02. Notification Prior to Construction. The owner shall notify the Director in writing ten (10) calendar days prior to commencing construction. ()

03. Approval Required. The owner shall not proceed with the following stages of construction without approval from the Director. ()

- a. After clearing and excavation of the foundation area and cutoff trench, and prior to placing any fill

material; ()

b. After installation of the outlet conduit, and before placing any backfill material around the conduit; ()

c. After construction is completed, and before any water is stored in the reservoir; ()

d. At such other times as determined necessary by the Director. The Director, will, upon seven (7) day notice, inspect and, if satisfactory, approve the completed stage of construction. ()

04. Notification upon Completion of Construction. The owner shall in writing notify the Director upon completion of construction. ()

061. -- 064. (RESERVED)

065. DAMS STORING TAILINGS AND WATER (RULE 65).

01. Construction of Dams Storing Fifty Acre-Feet or More. Construction of dams intended to store or likely to store fifty (50) acre-feet or more of water in excess of the water contained in the tailings material shall meet the requirements specified in Rules 40, 45, 50 and 55 of these rules. The Director may waive any or all of these requirements if, in the opinion of the Director, sound engineering design provided by the owner indicates such requirements are not applicable. ()

02. Abandonment Plan. An abandonment plan which provides a stable, maintenance-free condition at any time tailings are not being actively placed for an extended period of time, as determined by the Director, shall be submitted to the Director by the owner of a dam storing tailings and water. This rule may be waived by the Director if determined not to be applicable. ()

066. -- 999. (RESERVED)

37.03.07 – STREAM CHANNEL ALTERATION RULES

000. LEGAL AUTHORITY (RULE 0).

The purpose of these rules and minimum standards is to specify procedures for processing and considering applications for stream channel alterations under the provisions of Title 42, Chapter 38, Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

01. **Title.** These rules are titled IDAPA 37.03.07, “Stream Channel Alteration Rules.” ()

02. **Scope.** The minimum standards are intended to enable the Director to process, in a short period of time, those applications which are of a common type and which do not propose alterations which will be a hazard to the stream channel and its environment. It is intended that these rules and minimum standards be administered in a reasonable manner, giving due consideration, to all factors affecting the stream and adjacent property. ()

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

01. **Alteration.** To obstruct, diminish, destroy, alter, modify, relocate or change the natural existing shape of the channel or to change the direction of flow of water of any stream channel within or below the mean high water mark. It includes removal of material from the stream channel and emplacement of material or structures in or across the stream channel where the material or structure has the potential to affect flow in the channel as determined by the director. ()

02. **Applicant.** Any individual, partnership, company, corporation, municipality, county, state or federal agency, their agent, or other entity proposing to alter a stream channel or actually engaged in constructing a channel alteration, whether authorized or not. ()

03. **Board.** The Idaho Water Resource Board. ()

04. **Continuously Flowing Water.** A sufficient flow of water that could provide for migration and movement of fish, and excludes those reaches of streams which, in their natural state, normally go dry at the location of the proposed alteration. IDWR will assume, subject to information to the contrary, that the USGS quadrangle maps accurately depict whether a stream reach is continuously flowing, at the location of the proposed alteration. Such exclusion does not apply to minor flood channels that are a part of a stream which is continuously flowing in the reach where the alteration is located. Also, such exclusion does not apply to streams which may be dry as a result of upstream diversion or storage of water. ()

05. **Department.** The Idaho Department of Water Resources. ()

06. **Drop Structures, Sills and Barbs.** Physical obstructions placed within a stream channel for the purpose of stabilizing the channel by decreasing stream gradient and velocity and by dissipating stream energy. ()

07. **Director.** The Director of the Idaho Department of Water Resources. ()

08. **Mean High Water Mark.** A water level corresponding to the “natural or ordinary high water mark” as defined in Section 58-104(9), Idaho Code, and is the line which the water impresses on the soil by covering it for sufficient periods of time to deprive the soil of its terrestrial vegetation and destroy its value for commonly accepted agricultural purposes. ()

09. **Non-Powered Sluice Equipment.** Equipment which is powered only by human strength. ()

10. **Plans.** Maps, sketches, engineering drawings, photos, work descriptions and specifications sufficient to describe the extent, nature, and location of the proposed stream channel alteration and the proposed method of accomplishing the alteration. ()

11. **Repair.** Any work needed or accomplished, to protect, maintain, or restore any water diversion structure and the associated stream channel upstream and downstream as necessary for the efficient operation of the water diversion structure. ()

12. **Stream Channel.** A natural water course of perceptible extent with definite beds and banks which

confines and conducts continuously flowing water. The channel referred to is that which exists at the present time, regardless of where the channel may have been located at any time in the past. For the purposes of these rules only, the beds of lakes and reservoir pool areas are not considered to be stream channels. ()

13. Base Flood Elevation. The Base Flood (BF) is referred to as the one hundred (100) year flood and is a measure of flood magnitude based on probability. The base flood has a one percent chance of occurring or being exceeded in any given year, with the Base Flood Elevation (BFE) being the level of flooding reached during the BF or the one hundred (100) year flood event. ()

011. -- 024. (RESERVED)

025. EXEMPTIONS (RULE 25).

01. Work on Existing or Proposed Reservoir Projects. Permits are not required under the provisions of Title 42, Chapter 38 for construction work on any existing or proposed reservoir project, including the dam, and such areas downstream as the Director may determine is reasonably necessary for construction and maintenance of the dam. ()

02. Snake and Clearwater Rivers. Permits are not required for work within that portion of the Snake and Clearwater rivers from the state boundary upstream to the upper boundary of the Port of Lewiston Port District as it now exists or may exist in the future. ()

03. Cleaning, Maintenance, Construction or Repair Work. No permit is required of a water user or his agent to clean, maintain, construct, or repair any diversion structure, canal, ditch, or lateral or to remove any obstruction from a stream channel which is interfering with the delivery of any water under a valid existing water right or water right permit. ()

04. Removal of Debris. No permit is required for removal of debris from a stream channel provided that no equipment will be working in the channel and all material removed will be disposed of at some point outside the channel where it cannot again reenter the channel. ()

026. -- 029. (RESERVED)

030. APPLICATIONS (RULE 30).

01. Joint Application Permit Form. The Department of Water Resources, Department of Lands, and the U.S. Army Corps of Engineers have developed a joint application for permit form which will suffice for the required application under the Stream Protection Act. An application should be filed at least sixty (60) days before the applicant proposes to start the construction and shall be upon the joint application form furnished by the Department. The application shall be accompanied by plans which clearly describe the nature and purpose of the proposed work. ()

02. Applicant Following Minimum Standards. In those cases where the applicant intends to follow the minimum standards (Rule 055), detailed plans may be eliminated by referring to the specific minimum standard; however, drawings necessary to adequately define the extent, purpose, and location of the work will still be required. Plans shall include some reference to water surface elevations and stream boundaries to facilitate review. The application should show the mean high water mark on the plans; however, any water surface or water line reference available will be helpful as long as this reference is described. (Examples: present water surface, low water, high water.) ()

03. Submission of Copies. The applicant shall submit one (1) copy of all necessary plans along with the application form. When drawings submitted are larger than eight and one half by eleven (8 1/2 x 11), the applicant shall provide the number of copies specified by the department. ()

04. Stream Channel Alteration Permit. Any applicant proposing to operate a vacuum or suction dredge within or below the mean high water mark of a stream channel shall apply for and obtain a stream channel alteration permit. The vacuum or suction dredge shall only be operated in accordance with the conditions of the

permit and with the applicable rules. ()

031. -- 034. (RESERVED)

035. APPLICATION REVIEW (RULE 35).

01. Prior to Issuance of Permit. The following items shall be among those considered by the Director prior to issuing a permit: ()

- a. What is the purpose of doing the work? ()
- b. What is the necessity and justification for the proposed alteration? ()
- c. Is the proposal a reasonable means of accomplishing the purpose? ()
- d. Will the alteration be a permanent solution? ()
- e. Will the alteration pass anticipated water flows without creating harmful flooding or erosion problems upstream or downstream? ()
- f. What effect will the alteration have on fish habitat? ()
- g. Will the materials used or the removal of ground cover create turbidity or other water quality problems? ()
- h. Will the alteration interfere with recreational use of the stream? ()
- i. Will the alteration detract from the aesthetic beauty of the area? ()
- j. What modification or alternative solutions are reasonably possible which would reduce the disturbance to the stream channel and its environment and/or better accomplish the desired goal of the proposed alteration? ()
- k. Is the alteration to be accomplished in accordance with the adopted minimum standards? ()
- l. Are there public safety factors to consider? ()

02. Proposed Alteration Which Does Not Follow Minimum Standards. In those cases where a proposed alteration does not follow the minimum standards, a copy of the application will be sent for review to those state agencies requesting notification. The Director shall provide for review by the Department of Lands, copies of applications on navigable rivers. The Director will provide a copy of any other application requested by the Department of Lands and may request review by other state agencies regardless of whether or not the proposed alteration will comply with the minimum standards. ()

036. -- 039. (RESERVED)

040. APPROVAL (RULE 40).

01. Conformance to Application. All work shall be done in accordance with the approved application, subject to any conditions specified by the department. ()

02. Permits Allowed Without Review. A permit may be approved by the Director of the Department of Water Resources without review by other agencies in situations where the work is of a nature not uncommon to the particular area and where it is clear that the work will not seriously degrade the stream values except on navigable rivers which require review by the Department of Lands. All work approved in this manner shall be accomplished in accordance with the minimum standards. ()

03. Reinstatement of Expired Permit. A permit which has expired may be reinstated by the Director after review by other agencies as determined by the Director. ()

041. -- 044. (RESERVED)

045. ENFORCEMENT OF ACT (RULE 45).

01. Written Orders Issued by Designated Employees of Department. Employees of the Department designated by the Director may issue written orders directing an applicant to cease and desist, to ensure proper notice to applicants who are found to be altering a stream without a permit or not in compliance with the conditions of a permit. Such orders shall be in effect immediately upon issuance and will continue in force until a permit is issued or until the order is rescinded by the Director. ()

02. Failure to Comply with Stream Protection Act. Failure to comply with any of the provisions of the Stream Protection Act (Chapter 38, Title 42, Idaho Code), may result in issuance of an Idaho uniform citation and/or the cancellation of any permit by the Director without further notice and the pursuit in a court of competent jurisdiction, such civil or criminal remedies as may be appropriate and provided by law. The Director may allow reasonable time for an applicant to complete stabilization and restoration work. ()

046. -- 049. (RESERVED)

050. EMERGENCY WAIVER (RULE 50).

01. Waiver of Provisions of Stream Protection Act. Section 42-3808, Idaho Code, provides for waiver of the provisions of the Stream Protection Act in emergency situations where immediate action must be taken to protect life or property including growing crops. The Director will not consider failure to submit an application for a stream channel alteration far enough ahead of the desired starting time of the construction work as an emergency situation. ()

02. Verbal Waivers. A verbal waiver may be granted initially; however, all verbal requests for waivers shall be followed up by the applicant in writing within fifteen (15) days of any initial authorization to do work. If the applicant is unable to contact the Director to obtain an emergency waiver, he may proceed with emergency work; however, he must contact the Director as soon as possible thereafter. Proving that a bonafide emergency did actually exist will be the responsibility of the applicant. ()

03. Emergency Waiver. Work authorized by an emergency waiver shall be limited to only that which is necessary to safeguard life or property, including growing crops, during the period of emergency. ()

04. Conformance to Conditions of Waiver. The applicant shall adhere to all conditions set by the Director as part of a waiver. ()

05. Waivers Granted by Designated Employees. The Director may delegate the authority to grant waivers to designated employees of the Department. Names and telephone numbers of such employees will be made available to any interested applicant upon request. ()

051. -- 054. (RESERVED)

055. MINIMUM STANDARDS (RULE 55).

These standards are intended to cover the ordinary type of stream channel alteration and to prescribe minimum conditions for approval of such construction. Unless otherwise provided in a permit, these standards shall govern all stream channel alterations in this state. An applicant should not assume that because an application utilizes methods set forth in these standards it will automatically be approved. These minimum standards include the following items: ()

01. Construction Procedures. ()

02. Dumped Rock Riprap. ()

- 03. Drop Structures, Sills and Barbs. ()
- 04. Culverts and Bridges. ()
- 05. Removal of Sand and Gravel Deposits. ()
- 06. Suction Dredges and Non-Powered Sluice Equipment. ()
- 07. Piling. ()
- 08. Pipe Crossings. ()
- 09. Concrete Plank Boat Launch Ramps. ()

056. CONSTRUCTION PROCEDURES (RULE 56).

01. Conformance to Procedures. Construction shall be done in accordance with the following procedures unless specific approval of other procedures has been given by the Director. When an applicant desires to proceed in a manner different from the following, such procedures should be described on the application. ()

02. Operation of Construction Equipment. No construction equipment shall be operated below the existing water surface without specific approval from the Director except as follows: Forging the stream at one (1) location only will be permitted unless otherwise specified; however, vehicles and equipment will not be permitted to push or pull material along the streambed below the existing water level. Work below the water which is essential for preparation of culvert bedding or approved footing installations shall be permitted to the extent that it does not create unnecessary turbidity or stream channel disturbance. Frequent forging will not be permitted in areas where extensive turbidity will be created. ()

03. Temporary Structures. Any temporary crossings, bridge supports, cofferdams, or other structures that will be needed during the period of construction shall be designed to handle high flows that could be anticipated during the construction period. All structures shall be completely removed from the stream channel at the conclusion of construction and the area shall be restored to a natural appearance. ()

04. Minimizing Disturbance of Area. Care shall be taken to cause only the minimum necessary disturbance to the natural appearance of the area. Streambank vegetation shall be protected except where its removal is absolutely necessary for completion of the work adjacent to the stream channel. ()

05. Disposal of Removed Materials. Any vegetation, debris, or other material removed during construction shall be disposed of at some location out of the stream channel where it cannot reenter the channel during high stream flows. ()

06. New Cut of Fill Slopes. All new cut or fill slopes that will not be protected with some form of riprap shall be seeded with grass and planted with native vegetation to prevent erosion. ()

07. Fill Material. All fill material shall be placed and compacted in horizontal lifts. Areas to be filled shall be cleared of all vegetation, debris and other materials that would be objectionable in the fill. ()

08. Limitations on Construction Period. The Director may limit the period of construction as needed to minimize conflicts with fish migration and spawning, recreation use, and other uses. ()

057. DUMPED ROCK RIPRAP (RULE 57).

01. Placement of Riprap. Riprap shall be placed on a granular bedding material or a compact and stable embankment. ()

02. Sideslopes of Riprap. Sideslopes of riprap shall not be steeper than 2:1 (2' horizontal to 1' vertical) except at ends of culverts and at bridge approaches where a 1 1/2:1 sideslope is standard. ()

03. Minimum Thickness of Riprap. The minimum thickness of the riprap layer shall equal the dimension of the largest size riprap rock used or be eighteen (18) inches, whichever is greater. When riprap will be placed below high water level, the thickness of the layer shall be fifty percent (50%) greater than specified below. ()

04. Riprap Protection. Riprap protection must extend at least one (1) foot above the anticipated high water surface elevation in the stream. ()

05. Rock Used for Riprap. Rock for riprap shall consist of sound, dense, durable, angular rock fragments, resistant to weathering and free from large quantities of soil, shale, and organic matter. The length of a rock shall not be more than three (3) times its width or thickness. Rounded cobbles, boulders, and streambed gravels are not acceptable as dumped riprap. ()

06. Size and Gradation of Riprap. Riprap size and gradation are commonly determined in terms of the weight of riprap rock. The average size of riprap rock shall be at least as large as the maximum size rock that the stream is capable of moving. The maximum size of riprap rock used shall be two (2) to five (5) times larger than the average size. ()

07. Methods Used for Determining Gradation of Riprap. There are many methods used for determining the gradation of riprap rock. One of these many acceptable methods is shown in Table 1 below the Far West States (FWS) method shown in APPENDIX A - Table 1A at the end of this chapter.

GRADATION OF RIPRAP IN POUNDS		
Max. Weight of Stone required (lbs)	Min. and Max. Range in weight of Stones (lbs)	Weight Range 75 percent of Stones (lbs)
150	25 - 150	50 - 150
200	25 - 200	50 - 200
250	25 - 250	50 - 250
400	25 - 400	100 - 400
600	25 - 600	150 - 600
800	25 - 800	200 - 800
1000	50 - 1000	250 - 1000
1300	50 - 1300	325 - 1300
1600	50 - 1600	400 - 1600
2000	75 - 2000	600 - 2000
2700	100 - 2700	800 - 2700

()

08. Use of Filter Material. A blanket of granular filter material or filter fabric shall be placed between the riprap layer and the bank in all cases where the bank is composed of erodible material that may be washed out from between the riprap rock. Filter material shall consist of a layer of well-graded gravel and coarse sand at least six (6) inches thick. ()

09. Toe Protection. Some suitable form of toe protection shall be provided for riprap located on erodible streambed material. ()

a. Various acceptable methods of providing toe protection are shown in APPENDIX B at the end of this chapter. ()

b. In addition to the approved methods of providing toe protection as shown in APPENDIX B at the end of this chapter, any other reasonable method will be considered by the Director during review of a proposed project. ()

10. Extension of Riprap Area. Riprap shall extend far enough upstream and downstream to reach stable areas, unless protected against undermining at ends by the method shown in APPENDIX C, Figure 3 at the end of this chapter. On extremely long riprap sections, it is recommended that similar cutoff sections be used at several intermediate points to reduce the hazard that would be created if failure of the riprap occurred at any one (1) location. ()

11. Finished Surface. Placement shall result in a smooth, even finished surface. Compaction is not necessary. ()

12. Placement of Riprap. The full course thickness of the riprap shall be placed in one (1) operation. Dumping riprap long distances down the bank or pushing it over the top of the bank with a dozer shall be avoided if possible. Material should be placed with a backhoe, loader, or dragline. Dumping material near its final position on the slope or dumping rock at the toe and bulldozing it up the slope is a very satisfactory method of placement, if approval is obtained for the use of equipment in the channel. ()

13. Design Procedure. Design procedure using the Far West States (FWS) method. ()

a. The FWS method uses a single equation to deal with variables for riprap. ()

$$D_{75} = 3.5/CK \text{ WDS for Channel Banks}$$

where: D_{75} = Size of the rock at seventy five percent (75%) is finer in gradation, in inches.

W	=	Specific weight of water, usually 62.4 lbs./cu.ft.
D	=	Depth of flow in stream, in feet in flood stage
S	=	Channel slope or gradient, in ft/ft.
C	=	A coefficient relating to curvature in the stream
K	=	A coefficient relating to steepness of bank slopes

()

b. The coefficient, C, is based on the ratio of the radius of curvature of the stream, (CR), to the water surface width, (WSW), so it is necessary for the user to make field determination of these values. The coefficient varies from 0.6 for a curve ratio of 4 to 6, up to 1.0 for a straight channel. If the computed ratio for a particular project is less than 4, the designer should consider some modification less than 4.

CR/WSW	C
4 - 6	0.60
6 - 9	0.75
9 - 12	0.90
Straight Channel	1.00

()

c. The coefficient, K, ranges from 0.5 for a 1.5:1 sideslope to 0.87 for 3:1 sideslope. No values are given for steeper or flatter slopes. Slopes steeper than 1.5:1 are not recommended. If slopes flatter than 3:1 are

desired, it would be conservative to use the K-value for 3:1 slopes.

Bankslope	K
1.5:1	0.50
1.75:1	0.63
2.0:1	0.72
2.5:1	0.80
3.0:1	0.87

()

Table 1A in APPENDIX A, located at the end of this chapter.

058. DROP STRUCTURES, SILLS AND BARBS (RULE 58).

01. Drop Structures. A drop structure shall be constructed of rocks, boulders and/or logs placed within a stream channel to act as a low level dam. Placement of a drop structure perpendicular to stream flow will decrease the stream gradient, dissipate stream energy and decrease stream velocity through an increase in water surface elevation immediately above the structure. Drop structures shall comply with the following criteria: ()

a. Maximum water surface differential across (upstream water surface elevation minus downstream water surface elevation) a drop structure shall not exceed two (2) feet. The department shall approve the final elevation of any structure. ()

b. Rock drop structures shall be constructed of clean, sound, dense, durable, angular rock fragments, and/or boulders of size and gradation, such that the stream is incapable of moving the material during peak flows. Rocks shall be keyed into the stream banks to minimize the likelihood of bank erosion, (See Figure 8 in APPENDIX H located at the end of this chapter). ()

c. Log drop structures are acceptable in four (4) designs including the single log dam, the stacked log dam, the three (3) log dam, and the pyramid log dam. Log ends shall be keyed into both banks at least one-third (1/3) of the channel width or a distance sufficient to prevent end erosion. To prevent undercutting, the bottom log shall be imbedded in the stream bed or hardware cloth, cobbles or boulders shall be placed along the upper edge. Minimum log size for a single log structure shall be determined by on-site conditions and shall be placed to maintain flow over the entire log to prevent decay. Each log drop structure must be accompanied by downstream scour protection, such as a rock apron (See Figure 9 in APPENDIX I located at the end of this chapter). ()

d. All drop structures shall be constructed to facilitate fish passage and centralized scour pool development. ()

02. Sills. A sill shall be constructed of the same material and in the same manner as a drop structure. The top of the sill may not exceed the elevation of the bottom of the channel. The purpose of a sill is to halt the upstream movement of a headcut, thus precluding the widening or deepening of the existing channel. (See Figure 10 in APPENDIX J located at the end of this chapter). ()

03. Barb or Partial Drop Structure. A barb or partial drop structure shall be constructed in the same manner and of the same material as a drop structure and placed into the stream channel to act as a low level dam and grade control structure. The barb will decrease stream gradient, dissipate stream energy and redirect stream flow. ()

a. Barbs shall be constructed of clean, sound, dense, angular rock fragments, of size and gradation such that the stream is incapable of moving the material during peak flows. ()

b. Barbs shall be constructed with a downstream angle of no less than one hundred (100) degrees and no greater than one hundred thirty-five (135) degrees unless otherwise specified. ()

c. Barbs shall “extend” into the channel a distance of not more than twenty percent (20%) of the width of the channel unless otherwise specified by the Director. ()

d. Barbs shall be keyed into the bank a distance equal to or greater than the width of the structure and down to bed level. Whenever moisture is encountered in the construction of the keyways, willow cuttings or clumps shall be placed before and during rock placement in such a manner that the base of the cutting is in permanent moisture and the top extends a minimum of six (6) inches above grade (see Figure 11 in APPENDIX K located at the end of this chapter). ()

059. CULVERTS AND BRIDGES (RULE 59).

01. Culverts and Bridges. Culverts and bridges shall be capable of carrying streamflows and shall not significantly alter conditions upstream or downstream by causing flooding, turbidity, or other problems. The appearance of such installations shall not detract from the natural surroundings of the area. ()

02. Location of Culverts and Bridges. Culverts and bridges should be located so that a direct line of approach exists at both the entrance and exit. Abrupt bends at the entrance or exit shall not exist unless suitable erosion protection is provided. ()

03. Ideal Gradient. The ideal gradient (bottom slope) is one which is steep enough to prevent silting but flat enough to prevent scouring due to high velocity flows. It is often advisable to make the gradient of a culvert coincide with the average streambed gradient. ()

a. Where a culvert is installed on a slope steeper than twenty percent (20%), provisions to anchor the culvert in position will be required. Such provisions shall be included in the application and may involve the use of collars, headwall structures, etc. Smooth concrete pipe having no protruding bell joints or other irregularities shall have such anchoring provisions if the gradient exceeds ten percent (10%). ()

04. Size of Culvert or Bridge Opening. The size of the culvert or bridge opening shall be such that it is capable of passing design flows without overtopping the streambank or causing flooding or other damage. ()

a. Design flows shall be based upon the following minimum criteria:

Drainage Area	Design Flow Frequency
Less than 50 sq. mi.	25 Years
Over 50 sq. mi. or more	50 years or greatest flow of record, whichever is more

()

b. For culverts and bridges located on U.S. Forest Service or other federal lands, the sizing should comply with the Forest Practices Act as adopted by the federal agencies or the Department of Lands. ()

c. For culverts or bridges located in a community qualifying for the national flood issuance program, the minimum size culvert shall accommodate the one hundred (100) year design flow frequency. ()

d. If the culvert or bridge design is impractical for the site, the crossing may be designed with additional flow capacity outside the actual crossing structure, provided there is no increase in the Base Flood Elevation.

(NOTE: When flow data on a particular stream is unavailable, it is almost always safe to maintain the existing gradient and cross-section area present in the existing stream channel. Comparing the proposed crossing size with others upstream or downstream is also a valuable means of obtaining information regarding the size needed for a

proposed crossing.) ()

e. Minimum clearance shall be at least one (1) foot at all bridges. This may need to be increased substantially in the areas where ice passage or debris may be a problem. Minimum culvert sizes required for stream crossings: ()

i. Eighteen (18) inch diameter for culverts up to seventy (70) feet long; ()

ii. Twenty-four (24) inch diameter for all culverts over seventy (70) feet long. ()

f. In streams where fish passage is of concern as determined by the director, an applicant shall comply with the following provisions and/or other approved criteria to ensure that passage will not be prevented by a proposed crossing. ()

g. Minimum water depth shall be approximately eight (8) inches for salmon and steelhead and at least three (3) inches in all other cases. ()

h. Maximum flow velocities for streams shall not exceed those shown in Figure 17 in APPENDIX N, located at the end of this chapter, for more than a forty-eight (48) hour period. The curve used will depend on the type of fish to be passed. ()

i. Where it is not feasible to adjust the size or slope to obtain permissible velocities, the following precautions may be utilized to achieve the desired situation. ()

j. Baffles downstream or inside the culvert may be utilized to increase depth and reduce velocity. Design criteria may be obtained from the Idaho Fish and Game Department. ()

k. Where multiple openings for flow are provided, baffles or other measures used in one (1) opening only shall be adequate provided that the opening is designed to carry the main flow during low-flow periods. ()

05. Construction of Crossings. When crossings are constructed in erodible material, upstream and downstream ends shall be protected from erosive damage through the use of such methods as dumped rock riprap, headwall structures, etc., and such protection shall extend below the erodible streambed and into the banks at least two (2) feet unless some other provisions are made to prevent undermining. ()

a. Where fish passage must be provided, upstream drops at the entrance to a culvert will not be permitted and a maximum drop of one (1) foot will be permitted at the downstream end if an adequate jumping pool is maintained below the drop. ()

b. Downstream control structures such as are shown in Figure 18 in APPENDIX O, located at the end of this chapter, can be used to reduce downstream erosion and improve fish passage. They may be constructed with gabions, pilings and rock drop structures. ()

06. Multiple Openings. Where a multiple opening will consist of two (2) or more separate culvert structures, they shall be spaced far enough apart to allow proper compaction of the fill between the individual structures. The minimum spacing in all situations shall be one (1) foot. In areas where fish passage must be provided, only one (1) opening shall be constructed to carry all low flows. Low flow baffles may be required to facilitate fish passage. ()

07. Areas to be Filled. All areas to be filled shall be cleared of vegetation, topsoil, and other unsuitable material prior to placing fill. Material cleared from the site shall be disposed of above the high water line of the stream. Fill material shall be reasonably well-graded and compacted and shall not contain large quantities of silt, sand, organic matter, or debris. In locations where silty or sandy material must be utilized for fill material, it will be necessary to construct impervious sections both upstream and downstream to prevent the erodible sand or silt from being carried away (see Figure 19, APPENDIX P, located at the end of this chapter), Sideslopes for fills shall not exceed one and one half to one (1.5:1). Minimum cover over all culvert pipes and arches shall be one (1) foot. ()

08. Installation of Pipe and Arch Culvert. All pipe and arch culverts shall be installed in accordance with manufacturer's recommendations. ()

a. The culvert shall be designed so that headwaters will not rise above the top of the culvert entrance unless a headworks is provided. ()

060. REMOVAL OF SAND AND GRAVEL DEPOSITS (RULE 60).

01. Removal of Sand and Gravel. This work consists of removal of sand and gravel deposits from within a stream channel. The following conditions shall be adhered to unless other methods have been specified in detail on the application and approved by the Director. ()

02. Removal Below Water Surface. Sand and gravel must not be removed below the water surface existing at the time of the work. Where work involves clearing a new channel for flow, removal of material below water level will be permitted to allow this flow to occur; however, this must not be done until all other work in the new channel has been completed. ()

03. Buffer Zone. A buffer zone of undisturbed streambed material at least five (5) feet in width or as otherwise specified by the Director shall be maintained between the work area and the existing stream. The applicant shall exercise reasonable precautions to ensure that turbidity is kept to a minimum and does not exceed state water quality standards. ()

04. Movement of Equipment. Equipment may cross the existing stream in one (1) location only, but shall not push or pull material along the streambed while crossing the existing stream. ()

05. Disturbing Natural Appearance of Area. Work must be done in a manner that will least disturb the natural appearance of the area. Sand and gravel shall be removed in a manner that will not leave unsightly pits or other completely unnatural features at the conclusion of the project. ()

061. SUCTION DREDGES AND NON-POWERED SLUICE EQUIPMENT (RULE 61).

01. Standards for Suction Dredges. The following standards shall apply only to uses of suction dredges with nozzle diameter of five (5) inches or less and rated at fifteen (15) HP or less and non-powered sluice equipment moving more than one-quarter (1/4) cubic yard per hour. ()

02. Operating Permit. A permit for the operation of a suction dredge may authorize the use of the dredge within a drainage basin or a large portion of a drainage basin except as otherwise determined by the Director. ()

03. Mechanized Equipment Prohibited Below High Water Mark. There shall be no use of mechanized equipment below the mean high water mark except for the dredge itself, and any life support system necessary to operate the dredge. ()

04. Operation of Dredge. The operation of the dredge shall be done in a manner so as to prevent the undercutting of streambanks. ()

05. Permit Required for Non-Powered Operation -- More Than Five People. A permit shall be required for any non-powered operation in which more than five (5) people are working the same area. ()

06. Permit Required for Non-Powered Operation -- More Than Thirty-Three Percent of Stream Width. A permit shall be required for any non-powered operation if the disturbed area exceeds thirty-three percent (33%) of the stream width at the mining location. ()

07. Limitation of Mining Sites. Only one (1) mining site per one hundred (100) linear feet of stream channel shall be worked at one (1) time unless waived by the Director. ()

062. PILING (RULE 62).

01. Standards for Pilings. The following standards apply to a piling associated with a boat or swimming dock, a log boom, a breakwater, or bridge construction. ()

02. Replacement of Pilings. In replacing a piling the old piling shall be completely removed from the channel, secured to the new piling or cut at stream bed level. ()

03. Condition of Pilings. Chemicals or compounds used for protection of piles and lumber shall be thoroughly dried to prevent bleeding, weeping or dissolution before placing such piles and lumber over, in or near water. ()

04. Prohibited Materials. The application of creosote, arsenicals or phentachlorophenol (Penta) to timber shall not occur in, or over water. ()

063. PIPE CROSSINGS (RULE 63).

01. Standards for Pipe Crossings. The following standards apply to pipe crossings to be installed below the bed of a stream or river such as utility crossings of a gas line, sewer line, electrical line, communication line, water line or similar line. ()

02. Depth of Line. The line shall be installed below the streambed to a depth which will prevent erosion and exposure of the line to free flowing water. In areas of high stream velocity where scouring may occur, the pipe shall be encased in concrete or covered with rock riprap to prevent the pipeline from becoming exposed. ()

03. Pipe Joints. The joints shall be welded, glued, cemented or fastened together in a manner to provide a water tight connection. ()

04. Construction Methods. Construction methods shall provide for eliminating or minimizing discharges of turbidity, sediment, organic matter or toxic chemicals. A settling basin or cofferdam may be required for this purpose. ()

05. Cofferdam. If a cofferdam is used, it shall be completely removed from the stream channel upon completion of the project. ()

06. Revegetation of Disturbed Areas. Areas disturbed as a result of the alteration shall be revegetated with plants and grasses native to these areas. ()

064. CONCRETE PLANK BOAT LAUNCH RAMPS (RULE 64).

01. Construction of Concrete Plank Boat Launch Ramps. Concrete plank boat launch ramps, shall be constructed with individual sections of precast, reinforced concrete planks linked together to provide a stable non-erosive water access. Typical plank size is twelve feet by fourteen inches by four inches (12' x 14" x 4"). (See Figure 20, APPENDIX Q, located at the end of this chapter). ()

02. Construction of Planks. All planks shall be constructed with Type II low alkali cement. ()

03. Concrete Planks. All concrete planks shall have a smooth form finish, free of rock pockets and loose materials. Figure 22 shows a typical launch plank detail. (See Figures 21 and 22 in APPENDIXES R and S). ()

04. Assembly of Planks. The planks shall be assembled out of the water and slid into place on a constructed launch ramp where water velocities do not exceed two (2) feet per second. In waters exceeding (2) feet per second the ramp sections shall be linked together and fastened to pre-positioned stringers anchored into the launch ramp. (See Figure 23, APPENDIX T, located at the end of this chapter). ()

05. Water Depth. The water depth above the lower end of the ramp section shall not be less than three (3) feet during low level or low flow periods. (See Figure 20, APPENDIX Q, located at the end of this chapter). ()

06. Construction of Boat Ramp. The boat launch ramp shall have a base constructed of sound, dense, durable, angular rock resistant to weathering and free from soil, shale and organic materials. Rounded cobbles, boulders and streambed material are not acceptable as base material in areas with stream flow velocities greater than two (2) fps. Base materials shall be covered with a layer of (three-fourths inches (3/4") min.) crushed rock with a minimum depth of two inches (2"). The ramp shall have a minimum and maximum slope of ten percent (10%) and fifteen percent (15%) respectively, and shall be constructed in a manner to avoid long incursions into the stream channel. All ramps and fill material shall be protected with rock riprap in accordance with Rule 057 when stream flow velocities exceed two (2) fps. (See Figure 24, APPENDIX U, located at the end of this chapter). ()

065. -- 069. (RESERVED)

070. HEARINGS ON DENIED, LIMITED, OR CONDITIONED PERMIT OR OTHER DECISIONS OF THE DIRECTOR (RULE 70).

Any applicant who is granted a limited or conditioned permit, or who is denied a permit, may seek a hearing on said action of the Director by serving on the Director written notice and request for a hearing before the Board within fifteen (15) days of receipt of the Director's decision. Said hearing will be set, conducted, and notice given as set forth in the Rules promulgated by the Board under the provisions of Title 67, Chapter 52, Idaho Code. ()

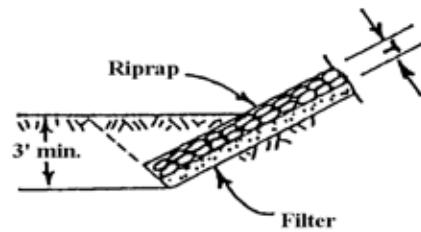
071. -- 999. (RESERVED)

APPENDIX A
Table 1A

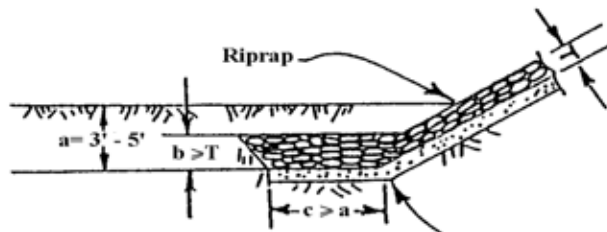
Riprap Gradation Using FWS Method

% Finer by Weight (Lbs.)	Minimum Size (Lbs.)	Maximum Size (Lbs.)
D ₁₀₀	1.33 X D ₇₅	2.0 X D ₇₅
D ₇₅	1.0 X D ₇₅	1.67 X D ₇₅
D ₅₀	0.67 X D ₇₅	1.17 X D ₇₅
D ₂₅	0.33 X D ₇₅	0.77 X D ₇₅
D ₀	None	0.33 X D ₇₅

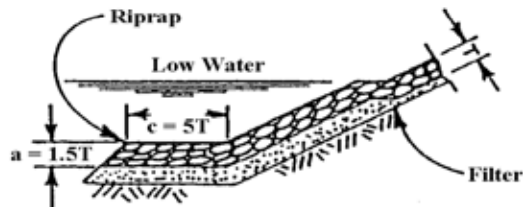
APPENDIX B



METHOD 1: This is most suited to areas where the toe is dry during construction.



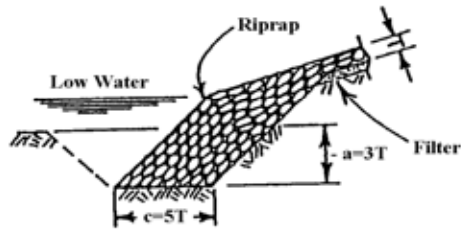
METHOD 2: Used when streambed is very wet or groundwater present makes using Method 1 impractical.



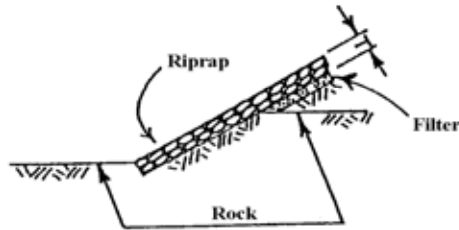
METHOD 3: Often used when toe is underwater during construction. Both Methods 2 and 3 utilize the idea that undermining will cause rock at toe blanket to settle into eroded area providing protection during scouring.

FIGURE 2. Acceptable toe protection

APPENDIX B (CONTINUED)



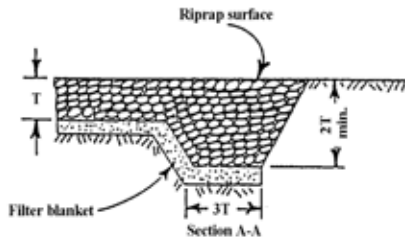
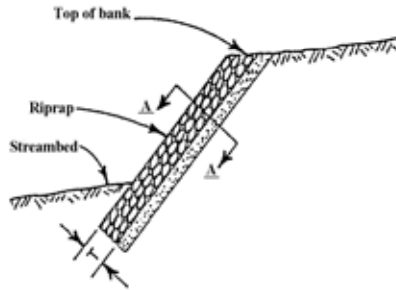
METHOD 4: Used underwater in areas with extremely bad streambed erosion conditions which make Method 3 unfeasible. This method may also be preferred where Method 3 would destroy fish spawning beds.



METHOD 5: When the streambed is non-erodible, no special provisions for toe protection are needed other than insuring that the riprap is well keyed to the rock.

FIGURE 2. Acceptable toe protection *continued*

APPENDIX C

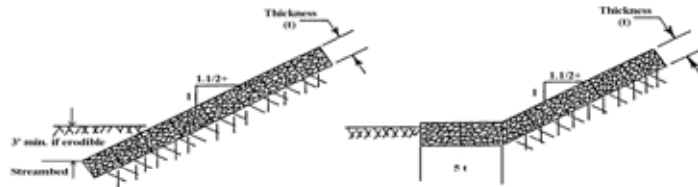


View shown above is cross section at end of riprap looking down along the sideslope toward streambed.

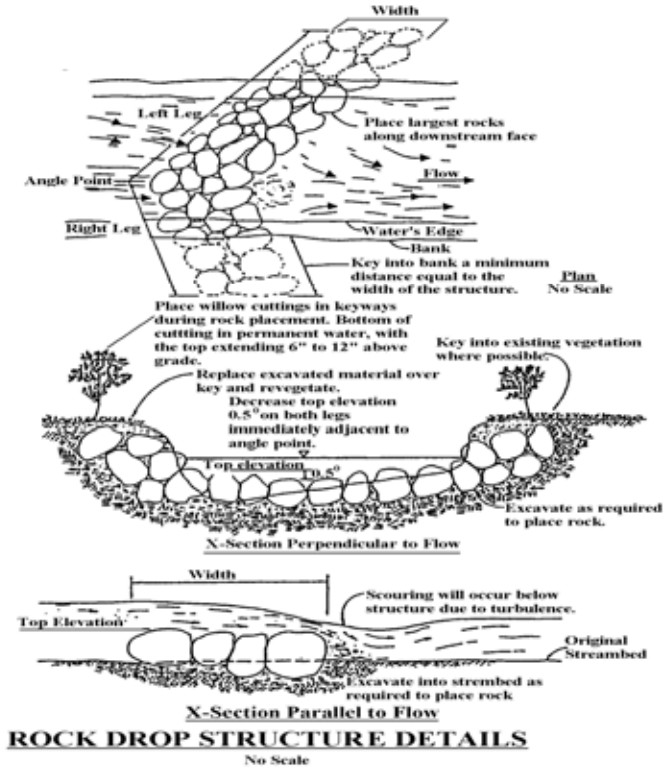
FIGURE 3. Protection against undermining

APPENDIX D

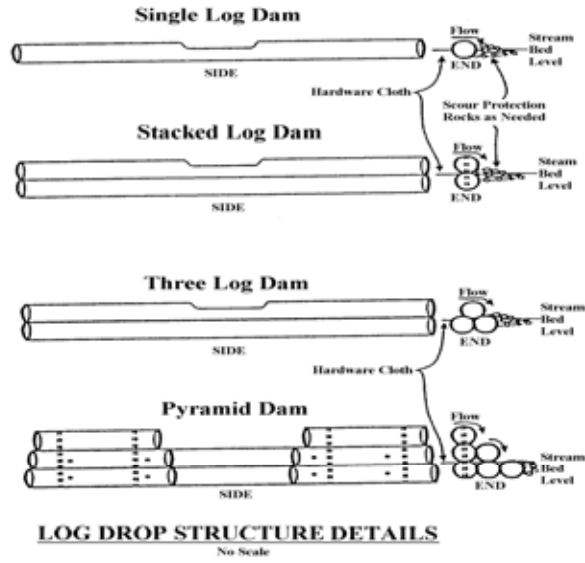
FIGURE 4. Mattress Construction



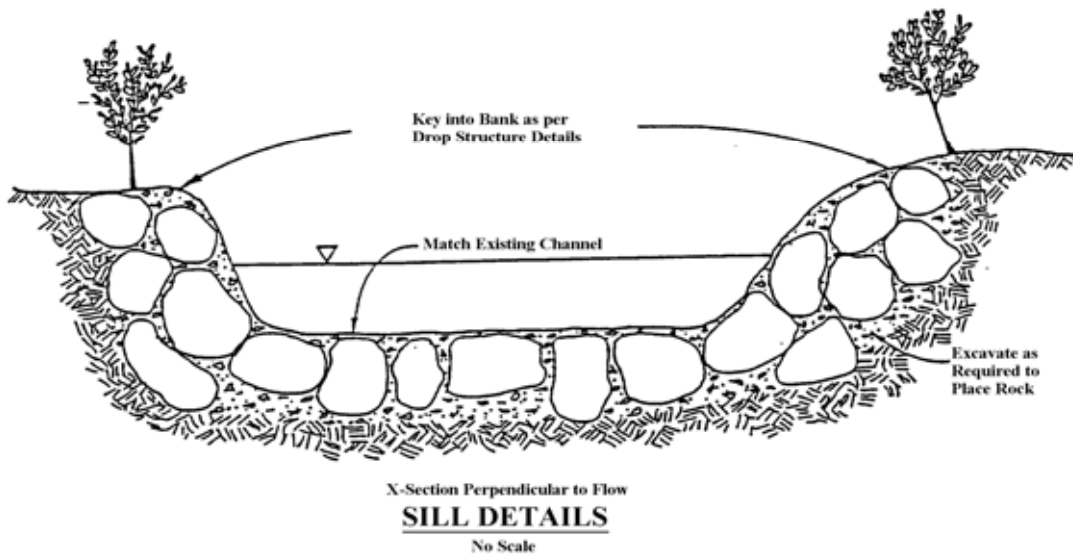
APPENDIX E



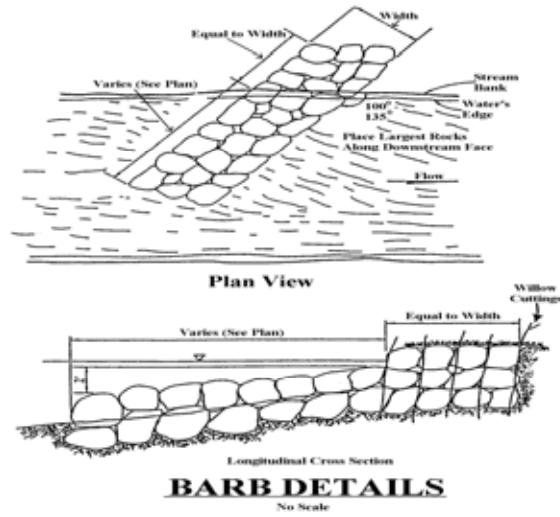
APPENDIX F



APPENDIX G



APPENDIX H



APPENDIX I

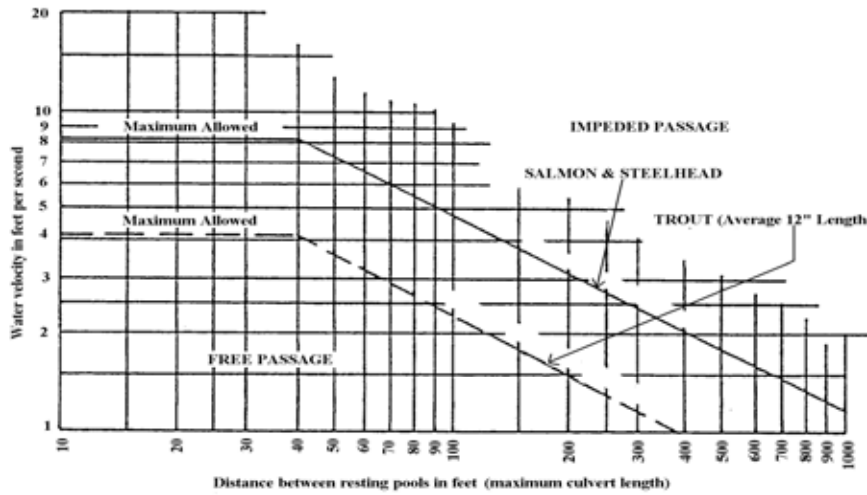


FIGURE 17. Swimming capability of migrating salmon and trout (Alaskan Curve)

APPENDIX J

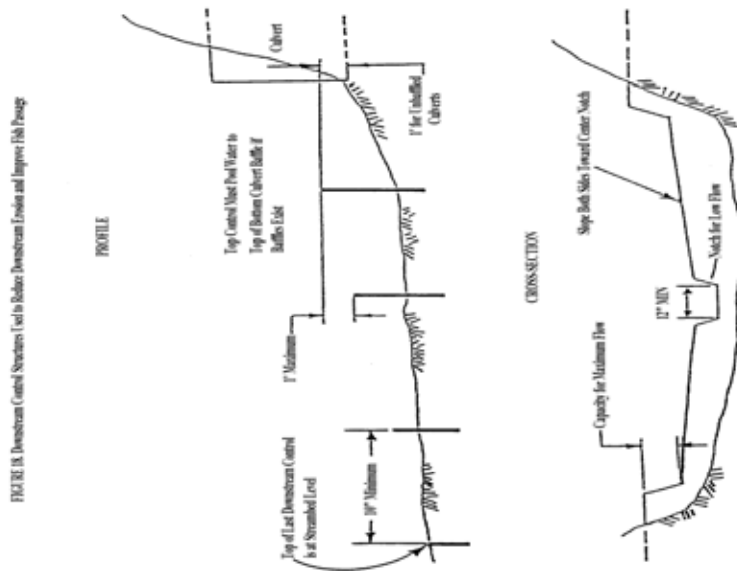


FIGURE 18. Downstream Control Structures Used to Reduce Downstream Erosion and Improve Fish Passage

APPENDIX K

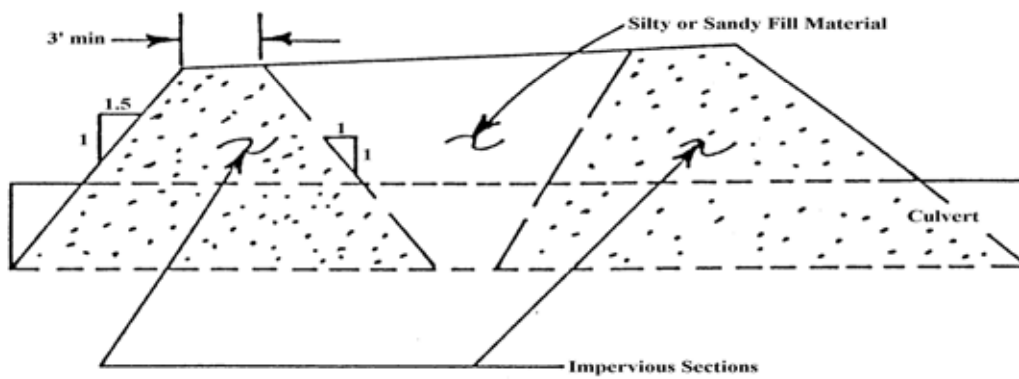
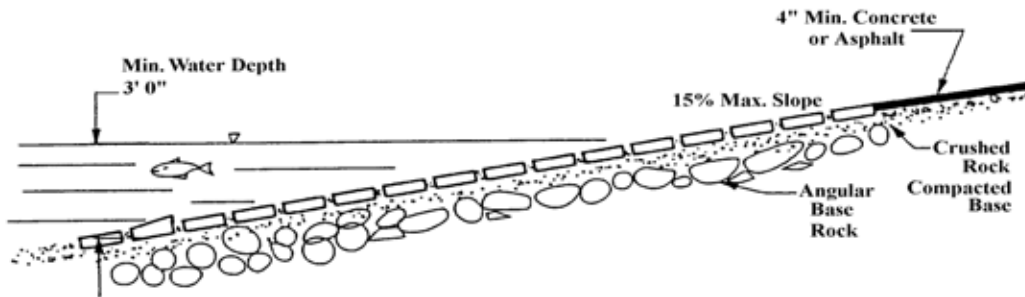


FIGURE 19. Culvert Backfill Using Silty or Sandy Material

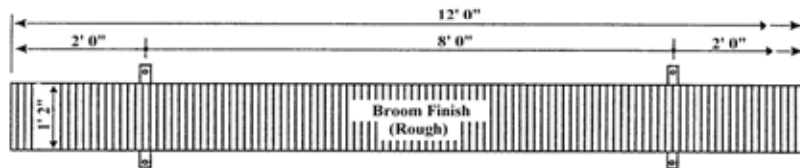
APPENDIX L



LAUNCH RAMP SECTION

No Scale
Figure 20

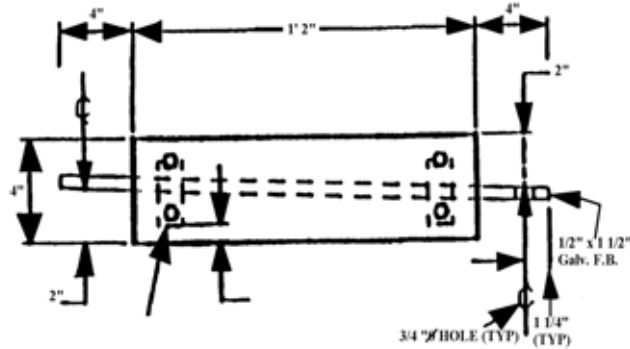
APPENDIX M



CONCRETE PLANK

No Scale
Figure 21

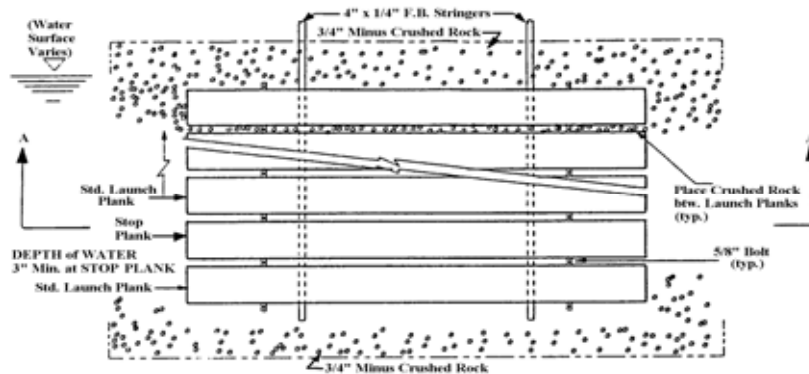
APPENDIX N



CONCRETE LAUNCH PLANK DETAIL

No Scale
Figure 22

APPENDIX O

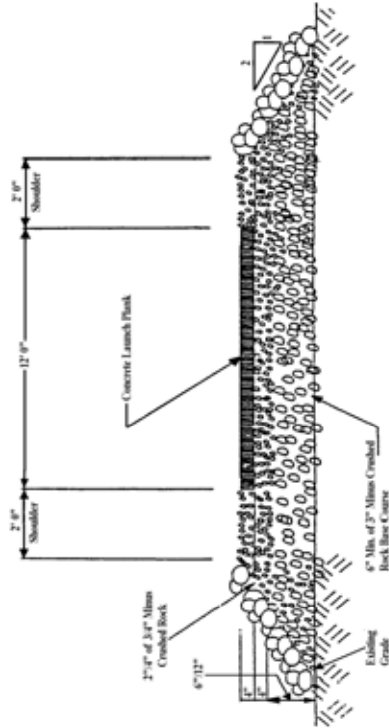


Place crushed rock as shown. Position stringers under planks in order shown and secure with 5/8" bolts. Slide planks on stringers, adding planks as needed, to desired water depth. Stringers consist of 2 - 4" x 1 1/4" x 20' lng. std. flat bar w/ clevis pin hole one end. Pull flat bar stringers up grade from water when planks are positioned and bolted together, remove when last plank has been set in place.

CONCRETE LAUNCH-PLAN VIEW

Figure 23
No Scale

APPENDIX P



CONCRETE LAUNCH - CROSS-SECTION

No Scale
Figure 24

37.03.08 – WATER APPROPRIATION RULES

000. LEGAL AUTHORITY (RULE 0).

The Director of the Department of Water Resources adopts these rules under the authority provided by Section 42-1805(8), Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

01. Title. These rules are titled IDAPA 37.03.08, “Water Appropriation Rules.” ()

02. Scope. ()

a. Background and Purpose. The 1985 Idaho Legislature authorized reallocation of certain hydropower water rights to new upstream beneficial uses. The reallocation is to be accomplished using statutes designed to provide for the appropriation of unappropriated public water supplemented by a public interest review of those reallocations which significantly reduce existing hydropower generation. These rules provide the procedures for obtaining the right to divert and use unappropriated public water as well as water previously appropriated for hydropower use which has been placed in trust with the State of Idaho and is subject to reallocation. Guidelines are provided for the filing and processing of applications, and criteria are established for determining the actions to be taken by the Director. ()

b. Scope and Applicability. These rules are applicable to appropriations from all sources of unappropriated public water in the state of Idaho under the authority of Chapter 2, Title 42, Idaho Code. Sources of public water include rivers, streams, springs, lakes and groundwater. The rules are also applicable to the reallocation of hydropower water rights held in trust by the state of Idaho. The rules are applicable to all applications to appropriate water filed with the Department of Water Resources prior to the effective date of these rules upon which an action to approve or deny the application is pending and to all applications filed subsequent to adoption of the rules and regulations. In addition, the rules are applicable to existing permits to appropriate water required to be reviewed under the provisions of Section 42-203D, Idaho Code. ()

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

Unless the context otherwise requires, the following definitions govern these rules: ()

01. Acre-Foot (AF). A volume of water sufficient to cover one (1) acre of land one (1) foot deep and is equal to forty-three thousand five hundred sixty (43,560) cubic feet. ()

02. Advertisement. The action taken by the Director to provide notice, usually by publication of a legal notice in one (1) or more newspapers, of a proposed appropriation or other notice required in administration of his duties and responsibilities. ()

03. Applicant. The person, corporation, association, firm, governmental agency or other entity, or the holder of a permit being reprocessed pursuant to Section 42-203D, Idaho Code, who initiates an appropriation of water or related water matter for the Director’s consideration. ()

04. Application for Permit. The written request to the department on forms furnished by the department proposing to appropriate the public waters or trust waters of the state. ()

05. Board. The Idaho Water Resource Board. ()

06. Beneficial Use. One (1) or more of the recognized beneficial uses of water including but not limited to, domestic, municipal, irrigation, hydropower generation, industrial, commercial, recreation, stockwatering and fish propagation uses for which permits to appropriate water can be issued as well as other uses which provide a benefit to the user of the water as determined by the Director. Industrial use as used for purposes of these rules includes, but is not limited to, manufacturing, mining and processing uses of water. ()

07. Cubic Foot Per Second (CFS). A rate of flow approximately equal to four hundred forty-eight and eight-tenths (448.8) gallons per minute and also equals fifty (50) Idaho miner’s inches. ()

08. DCMI. An acronym for domestic, commercial, municipal and industrial. In these rules it designates certain classes of these uses presumed to satisfy public interest requirements. Domestic use, for purposes of this definition, is water for one or more households and water used for all other purposes including irrigation of a

residential lot in connection with each of the households where the diversion to each household does not exceed thirteen thousand (13,000) gallons per day. Also for purposes of this definition, commercial, municipal and industrial uses are any such uses which do not deplete the system containing the trust water more than two (2) acre feet per day. ()

09. Department. The Idaho Department of Water Resources. ()

10. Director. The Director of the Idaho Department of Water Resources. ()

11. Legal Subdivision. A tract of land described by the government land survey and usually is described by government lot or quarter-quarter, section, township and range. A lot and block of a subdivision plat recorded with the county recorder may be used in addition to the quarter-quarter, section, township and range description. ()

12. Permit or Water Right Permit. The water right document issued by the Director authorizing the diversion and use of unappropriated public water of the state or water held in trust by the state. ()

13. Priority, or Priority of Appropriation, or Priority Date. The date of appropriation established in the development of a water right. The priority of a water right for public water or trust water is used to determine the order of water delivery from a source during times of shortage. The earlier or prior date being the better right. ()

14. Project Works. A general term which includes diversion works, conveyance works, and any devices which may be used to apply the water to the intended use. Improvements which have been made as a result of application of water, such as land preparation for cultivation, are not a part of the project works. ()

15. Single Family Domestic Purposes. Water for household use or livestock and water used for all other purposes including irrigation of up to one half (1/2) acre of land in connection with said household where total use is not in excess of thirteen thousand (13,000) gallons per day. ()

16. Subordinated Water Right. A water right used for hydropower generation purposes that is subject to depletion without compensation by upstream water rights which are initiated later in time and which are for a purpose other than hydropower generation purposes. ()

17. Trust Water. That portion of an unsubordinated water right used for hydropower generation purposes which is in excess of a minimum stream flow established by state action either with agreement of the holder of the hydropower right as provided by Section 42-203B(5), Idaho Code or without an agreement as provided by Section 42-203B(3), Idaho Code. ()

18. Unappropriated Water. The public water of the state of Idaho in streams, rivers, lakes, springs or groundwater in excess of that necessary to satisfy prior rights including prior rights reserved by federal law. ()

011. -- 024. (RESERVED)

025. GENERAL DESCRIPTION OF THE PROCEDURE TO BE USED FOR ALLOCATION (RULE 25).

01. Applications to Appropriate Unappropriated Water and Water Held in Trust. Applications to appropriate unappropriated water and water held in trust as provided by Section 42-203B(3), Idaho Code, will be evaluated using the criteria of Section 42-203A, Idaho Code, which requires an assessment to be made of the impact of the proposed use on water availability for existing water rights, the adequacy of the water supply for the proposed use, whether the application is filed for speculative purposes, the financial ability of the applicant to complete the project, and the effect of the proposed use on the local public interest. ()

02. Applications to Appropriate Water from Sources Held by State in Trust. Applications to appropriate water from sources on which the state holds water in trust, pursuant to Section 203B(5), Idaho Code, will be processed in a three-step analysis. Evaluation will consider the purposes of "trust water" established in Section 42-203B, Idaho Code. ()

a. First, the proposed use must be evaluated using the procedures and criteria of Section 42-203A, Idaho Code. If all criteria of Section 42-203A(5), Idaho Code, are satisfied, the application may be approved for unappropriated water. If the application does not satisfy the criteria of Section 42-203A(5) b, c, d, and e, Idaho Code, or is found to reduce the water to existing water rights other than those held in trust by the state, the application will be denied. If the application satisfies all criteria of Section 42-203A(5), Idaho Code, except Section 42-203A(5)a, Idaho Code, but is found to reduce water held in trust by the state, the application will be reviewed under criteria of Section 42-203C, Idaho Code. ()

b. Second, Section 42-203C, Idaho Code, requires a determination of whether the proposed use will significantly reduce, individually or cumulatively with existing uses and other uses reasonably likely to exist within twelve months of the proposed use, the amount of trust water available to the holder of the water right used for power production that is defined by agreement pursuant to subsection (5) of Section 42-203B, Idaho Code (hereinafter termed "significant reduction"). If a significant reduction will not occur, the application may be approved without an evaluation of the public interest criteria of Section 42-203C(2), Idaho Code. ()

c. Third, based upon a finding of significant reduction, the proposed use will be evaluated in terms of the public interest criteria of Section 42-203C(2), Idaho Code. ()

026. -- 029. (RESERVED)

030. LOCATION AND NATURE OF TRUST WATER (RULE 30).

01. Snake River Water Rights Agreement. The legislation ratifying the Snake River water rights agreement between the state of Idaho and Idaho Power Company places in trust a part of the flows available to Idaho Power Company under its hydropower water rights in the Snake River Basin between Swan Falls Dam and Milner Dam. The flows subject to the trust water provisions and reallocation under Section 42-203C(2), Idaho Code, are as follows: ()

a. Trust water flows under the Snake River water rights agreement are located in the Snake River between Swan Falls Dam located in Section 18, Township 2 South, Range 1 East, Boise Meridian (B.M.) and Milner Dam located in Sections 28 and 29, Township 10 South, Range 21 East, Boise Meridian (B.M.) and all surface and groundwater sources tributary to the Snake River in that reach. ()

b. Surface water and groundwater tributary to the Snake River upstream from Milner Dam is not trust water. After giving notice and considering public comment, the Director will designate the area in which groundwater is presumed to be tributary to the Snake River upstream from Milner Dam. Modification or changes in the designated boundary may be made only after providing notice and considering public comment. The area presently designated as tributary to the Snake River in the Milner Dam to Swan Falls Dam reach is appended to these rules (See Attachment A in APPENDIX A located at the end of this chapter), for information purposes only. ()

c. Trust water flows under the Snake River water rights agreement are those occurring in the Snake River and tributaries in the geographic area designated in Subsection 030.01.a. that exceed the established minimum stream flows but are less than the water rights for hydropower generating facilities in the Swan Falls Dam to Milner Dam reach of Snake River, to the extent such rights were unsubordinated prior to the Snake River water rights agreement. Minimum average daily flows have been established by action of the Board and legislature at the U.S. Geological Survey gauging station located near Murphy (Section 35, Township 1 South, Range 1 West B.M.) in the amount of three thousand nine hundred (3900) cfs from April 1 to October 31 and five thousand six hundred (5600) cfs from November 1 to March 31, and at Milner gauging station located in Section 29, Township 10 South, Range 21 East, B.M. in the amount of zero (0) cfs from January 1 to December 31. ()

02. Trust Water Created by State Action. Section 42-203B(3), Idaho Code, provides that trust water can be created by state action establishing a minimum flow without an agreement with the holder of the hydropower water right. Allocation of trust water so established will be pursuant to state law except the criteria of Section 42-203C, Idaho Code, will not be considered. ()

03. Sources of Public Water Not Trust Water. The following sources of public water are not trust water and are not subject to the public interest provisions of Section 42-203C, Idaho Code: ()

a. Sources or tributaries to sources upon which no hydropower generating facilities are located downstream within the state of Idaho. ()

b. Sources or tributaries to sources which have a state hydropower water right permit or license or Federal Energy Regulatory Commission license which have not been subordinated, and the state of Idaho has not entered into an agreement with the holder of the hydropower water right pursuant to Section 42-203B(2), Idaho Code, and the State of Idaho has not established a minimum stream flow for purposes of protecting hydropower generation. ()

c. Sources or tributaries to sources for which a state hydropower water right permit or license, or the Federal Energy Regulatory Commission license included a subordination condition. Such flows are considered to be public waters subject to appropriation under the provisions of Section 42-203A, Idaho Code. ()

d. Flows in excess of established rights including rights used for hydropower purposes. Such flows are unappropriated waters subject to allocation under Section 42-203A, Idaho Code. ()

e. Flows in the Snake River upstream from Milner Dam and all surface and groundwater tributaries to that reach. Such flows are subject to allocation under Section 42-203A, Idaho Code, without consideration of water rights existing downstream from Milner Dam (Reference: 42-203B(2), Idaho Code). ()

031. -- 034. (RESERVED)

035. APPLICATION REQUIREMENTS (RULE 35).

01. General Provisions. ()

a. No person shall commence the construction of any project works or commence the diversion of the public water or trust water of the state of Idaho from any source without first having filed an application for permit to appropriate the water or other appropriate form with the department and received approval from the Director, unless exempted by these rules or by statute. ()

b. Any person proposing to commence a diversion of the public water or the trust water of the state of Idaho from a groundwater source for single family domestic purposes is exempt from the application and permit requirements of Subsection 035.01.a. ()

c. Any person watering livestock directly from a natural stream or natural lake without the use of a constructed diversion works is exempt from Subsection 035.01.a. ()

d. All applications for permit to appropriate public water or trust water of the state of Idaho shall be on the form provided by the department entitled "Application for Permit to appropriate the Public Waters of the State of Idaho" and include all necessary information as described in Subsection 035.03. An application for permit that is not complete as described in Subsection 035.03 will not be accepted for filing and will be returned along with any fees submitted to the person submitting the application. No priority will be established by an incomplete application. Applications meeting the requirements of Subsection 035.03. will be accepted for filing and will be endorsed by the department as to the time and date received. The acceptability of applications requiring clarification or corrections shall be determined by the Director. ()

e. The department will correspond with the applicant concerning applications which have been accepted for filing by the department which require clarification or correction of the information required by Subsection 035.03. If the additional or corrected information is supplied after thirty (30) days, the priority date of the application will be determined by the date the additional or corrected information is received by the department unless the applicant has requested within the thirty (30) day period additional time to provide the information, has shown good reasons for needing additional time, and the Director has granted additional time. ()

f. Failure to submit the additional or corrected information is cause for the Director to void the department's records of the application. ()

02. Effect of an Application. ()

a. Any application that seeks to appropriate water from a source upon which the state holds trust water shall be considered an application for appropriation of unappropriated water. If the Director determines unappropriated water is not available, the application, if otherwise approvable, will be reviewed for compliance with provisions of Section 42-203C, Idaho Code. ()

b. The priority of an application for unappropriated or trust water is established as of the time and date the application is received in complete form along with the statutory fee in any official office of the department. The priority of the application remains fixed unless changed by action of the Director in accordance with applicable law. ()

c. An application for permit to appropriate water is not a water right and does not authorize diversion or use of water until approved by the Director in accordance with statutes in effect at the time the application is approved. ()

d. An applicant's interest in an application for permit to appropriate water is personal property. An assignment of interest in an application must include evidence satisfactory to the Director that the application was not filed for speculative purposes. ()

03. Requirements for Applications to Be Acceptable for Filing. ()

a. The following information shall be shown on an application for permit form and submitted together with the statutory fee to an office of the department before the application for permit may be accepted for filing by the department. ()

i. The name and post office address of the applicant shall be listed. If the application is in the name of a corporation, the names and addresses of its directors and officers shall be provided. If the application is filed by or on behalf of a partnership or joint venture, the application shall provide the names and addresses of all partners and designate the managing partner, if any. ()

ii. The name of the water source sought to be appropriated shall be listed. For surface water sources, the source of water shall be identified by the official geographic name listed on the U.S. Geological Survey Quadrangle map. If the source has not been named, it can be described as "unnamed," but the system or river to which it is tributary shall be identified. For groundwater sources, the source shall be listed as "groundwater." Only one source shall be listed on an application unless the application is for a single system which will have more than one source. ()

iii. The legal description of the point of diversion and place of use shall be listed. The location of the point(s) of diversion and the place of use shall be described to the nearest forty (40) acre subdivision or U.S. Government Lot of the Public Land Survey System. The location of springs shall be described to the nearest ten (10) acre tract. Subdivision names, lot and block numbers and any name in local common usage for the point of diversion, or place of use shall be included in the comments section of the application form. If irrigation is listed as a purpose of use, the number of acres in each forty (40) acre subdivision of the place of use shall be listed. ()

iv. The quantity of water to be diverted shall be listed as a rate of flow in cubic feet per second and/or as a volume to be stored in acre-feet per year for each purpose of use requested. ()

v. Impoundment (storage) applications shall show the maximum acre-feet requirement per year which shall not exceed the storage capacity of the impoundment structure unless the application describes a plan of operation for filling the reservoir more than once per year. ()

vi. Every offstream storage impoundment application shall show a maximum rate of diversion to storage as well as the total storage volume. ()

vii. The nature of the proposed beneficial use or uses of the water shall be listed. While the purpose

may be described in general terms such as irrigation, industrial or municipal, a description sufficient to identify the proposed use or uses of the water shall also be included. ()

viii. The period of each year during which water will be diverted, stored and beneficially used shall be listed. The period of use for irrigation purposes shall coincide with the annual periods of use shown in Figure 1 in APPENDIX B (located at the end of this chapter), unless it can be shown to the satisfaction of the Director that a different period of use is necessary. ()

ix. The proposed method of diversion, conveyance system and system for distributing and using the water shall be described. ()

x. The period of time required for completion of the project works and application of water to the proposed use shall be listed. This period of time shall not exceed the time required to diligently and uninterruptedly apply the water to beneficial use and shall not exceed five (5) years. ()

xi. A map or plat of sufficient scale (not less than two (2) inches equal to one (1) mile) to show the project proposed shall be included. The map or plat shall agree with the legal descriptions and other information shown on the application. ()

xii. The application form shall be signed by the applicant listed on the application or evidence must be submitted to show that the signator has authority to sign the application. An application in more than one (1) name shall be signed by each applicant unless the names are joined by “or” or “and/or.” ()

xiii. Applications by corporations, companies or municipalities or other organizations shall be signed by an officer of the corporation or company or an elected official of the municipality or an individual authorized by the organization to sign the application. The signator’s title shall be shown with the signature. ()

xiv. Applications may be signed by a person having a current “power of attorney” authorized by the applicant. A copy of the “power of attorney” shall be included with the application. ()

xv. Applications to appropriate water in connection with Carey Act or Desert Land Entry proposals shall include evidence that appropriate applications have been filed for the lands involved in the proposed project. ()

xvi. The application form shall be accompanied with a fee in the amount required by Section 42-221A, Idaho Code. ()

04. Amended Applications. ()

a. Applications for permit shall be amended whenever significant changes to the place, period or nature of the intended use, method or location of diversion or proposed use of the water or other substantial changes from that shown on the pending application are intended. An application shall be amended if the proposed change will result in a greater rate of diversion or depletion (see Subsection 035.04.c.), if the point of diversion, place of use, or point of discharge of the return flow are to be altered, if the period of the year that water will be used is to be changed, or if the nature of the use is to be changed. ()

b. An application can be amended to clarify the name of the source of water but may not be amended to change the source of water. ()

c. An amendment which increases the rate of diversion, increases the volume of water diverted per year or the volume of water depleted, lengthens the period of use, or adds an additional purpose of use shall result in the priority of the application for permit being changed to the date the amended application is received by the department. ()

d. An application for permit may be amended by endorsement by the applicant or his agent on the original application for permit form which endorsement shall be initialed and dated. If the changes required to the information on the application are, in the judgment of the Director, substantial enough to cause confusion in

interpreting the application form, the amended application shall be submitted on a new application for permit form to be designated as an amended application. ()

e. An amended application shall be accompanied by the additional fee required by Section 42-221A, Idaho Code, if the total rate of diversion or total volume of storage requested is increased and by the fee required by Section 42-221F, Idaho Code, for readvertising if notice of the original application has been published. ()

f. If the applicant's name or mailing address changes, the applicant shall in writing notify the department of the change. ()

036. -- 039. (RESERVED)

040. PROCESSING APPLICATIONS FOR PERMIT AND REPROCESSING PERMITS (RULE 40).

01. General. ()

a. Unprotected applications, whether for unappropriated water or trust water, will be processed using the following general steps: ()

i. Advertisement and protest period; ()

ii. Department review of applications and additional information, including department field review if determined to be necessary by the Director; ()

iii. Fact finding hearing if determined to be necessary by the Director; ()

iv. Director's decision; ()

v. Section 42-1701A, Idaho Code, hearing, if requested; and ()

vi. Director's decision affirmed or modified. ()

b. Protested applications, whether for unappropriated water or trust water, will be processed using the following general steps: ()

i. Advertisement and protest period; ()

ii. Hearing and/or conference; ()

iii. Department review of applications, hearing record and additional information including department field review if determined to be necessary by the Director. ()

iv. Proposed decision (unless waived by parties); ()

v. Briefing or oral argument in accordance with the department's adopted Rules of Procedure. ()

vi. Director's decision accepting or modifying the proposed decision. ()

c. The Director's decision rejecting and denying approval of an application for permit filed for diversion from a source previously designated as a critical groundwater area or upon which a moratorium has previously been entered may be issued without advertisement of the application. ()

d. An applicant may request in writing that commencement of processing of his or her application be delayed for a period not to exceed one (1) year or that processing be interrupted for a period not to exceed six (6) months. The Director at his discretion may approve the request unless he determines that others will be injured by the delay or that the applicant seeks the delay for the purpose of speculation, or that the public interest of the people of Idaho will not be served by the delay. The Director may approve a request for delay for a shorter period of time or

upon conditions, and may renew the approval upon written request. ()

02. Public Notice Requirement. ()

a. Applications for permit which have not been advertised. ()

i. Advertisement of applications for permit proposing a rate of diversion of ten (10) cfs or less or storage of one thousand (1000) AF or less shall comply with Section 42-203A, Idaho Code. The first required advertisement will be published on the first or third Thursday of a month when published in daily newspapers and on the first or third publishing day of the month for weekly newspapers. ()

ii. Advertisement of applications for permit in excess of the amounts in Subsection 040.02.a.i. shall comply with Subsection 040.02.a.i. and shall also be published in a newspaper or newspapers to achieve statewide circulation. ()

iii. Statewide circulation with respect to Section 42-203A(2), Idaho Code, shall be obtained by publication of a legal notice at least once each week for two (2) successive weeks in a newspaper, as defined in Section 60-106, Idaho Code, of general circulation in the county in which the point of diversion is located and by publication of a legal notice at least once each week for two (2) successive weeks in at least one (1) daily newspaper, as defined in Section 60-107, Idaho Code, published in each of the department's four (4) administrative regions and determined by the Director to be of general circulation within the department's region within which it is published. The administrative regions of the department are identified on Figure 2 in APPENDIX C (located at the end of this chapter). The names of newspapers used for statewide publication are available from any department office. ()

b. Applications for permit which have been advertised. ()

i. Notice of applications for permit for water from the Snake River between Swan Falls Dam and Milner Dam or surface and groundwater tributaries to that reach of Snake River which were advertised prior to July 1, 1985 and have been held without final action by the department due to the Swan Falls controversy shall be readvertised by the Director in accordance with Subsection 040.02.a. as appropriate to allow opportunity for protests to be entered with respect to the public interest criteria of Section 42-203C(2), Idaho Code. ()

ii. Applications for permit from the Snake River or surface and groundwater sources upstream from Milner Dam which have been held without action due to the Swan Falls controversy may be processed without readvertisement. ()

iii. The applicant shall pay the readvertisement fee provided in Section 42-221F, Idaho Code, prior to the readvertisement. ()

iv. Failure to pay the readvertising fee within thirty (30) days after the applicant is notified to do so is cause for the Director to void the application. ()

c. Notice of existing permits. ()

i. Existing permits appropriating water held in trust by the state of Idaho issued prior to July 1, 1985, unless exempted by Subsection 040.02.c.ii. shall be subject to the review requirements of Section 42-203D, Idaho Code, and shall be readvertised in accordance with Subsection 040.02.a. as appropriate. The review is limited to the criteria described in Section 42-203C(2), Idaho Code. ()

ii. Permits exempt from the provisions of Section 42-203D, Idaho Code, include: ()

(1) Permits appropriating water not held in trust by the state of Idaho; ()

(2) Permits for DCMI uses, stockwater uses and other essentially non-consumptive uses as determined by the Director; and ()

(3) Permits for which an acceptable proof of beneficial use submittal was received by the department

prior to July 1, 1985, or permits for which an acceptable proof of beneficial use was submitted after July 1, 1985, if evidence satisfactory to the Director has been received to show that the permit was fully developed prior to July 1, 1985 to the extent claimed on the proof of beneficial use. ()

iii. Holders of permits subject to the review requirement of Section 42-203D, Idaho Code, shall pay in advance, upon the request of the Director, the readvertising fee required by Section 42-221F, Idaho Code. ()

iv. Failure to pay the readvertising fee within thirty (30) days after the applicant is notified to do so is cause for the Director to cancel the permit. ()

03. Protests, Intervention, Hearings, and Appeals. ()

a. Protests. ()

i. Protests against the approval of an application for permit or against a permit being reprocessed shall comply with the requirements for pleadings as described in the department's adopted Rules of Procedure. ()

ii. Protests against the approval of an application for permit or against a permit being reprocessed will only be considered if received by the department after receipt of the application by the department and prior to the expiration of the protest period announced in the advertisement unless the protestant successfully intervenes in the proceeding. ()

iii. General statements of protest (blanket protests) against appropriations for a particular class of use or from a particular source of water will not be considered as valid protests by the Director. ()

b. Intervention. Requests to intervene in a proceeding pending before the department shall comply with the Department's adopted Rules of Procedure. ()

c. Hearings. Hearings will be scheduled and held in accordance with the department's adopted Rules of Procedure. ()

d. Appeals. Any final decision of the Director may be appealed in accordance with Section 42-1701A, Idaho Code. ()

04. Burden of Proof. ()

a. Burden of proof is divided into two (2) parts: first, the burden of coming forward with evidence to present a prima facie case, and second, the ultimate burden of persuasion. ()

b. The burden of coming forward with evidence is divided between the applicant and the protestant as follows: ()

i. The applicant shall bear the initial burden of coming forward with evidence for the evaluation of criteria (a) through (d) of Section 42-203A(5), Idaho Code; ()

ii. The applicant shall bear the initial burden of coming forward with evidence for the evaluation of criterion (e) of Section 42-203A(5), Idaho Code, as to any factor affecting local public interest of which he is knowledgeable or reasonably can be expected to be knowledgeable. The protestant shall bear the initial burden of coming forward with evidence for those factors relevant to criterion (e) of Section 42-203A(5), Idaho Code, of which the protestant can reasonably be expected to be more cognizant than the applicant. ()

iii. The protestant shall bear the initial burden of coming forward with evidence for the evaluation of the public interest criteria of Section 42-203C(2), Idaho Code, and of demonstrating a significant reduction, except that the applicant shall provide details of the proposed design, construction, and operation of the project and directly associated operations to allow the impact of the project to be evaluated. ()

c. The applicant has the ultimate burden of persuasion for the criteria of Section 42-203A, Idaho Code, and the protestant has the ultimate burden of persuasion for the criteria of Section 42-203C, Idaho Code. ()

d. For unprotested applications or permits to be reprocessed, the Director will evaluate the application, information submitted pursuant to Subsection 040.05.c. and information in the files and records of the department, and the results of any studies the department may conduct to determine compliance with the appropriate criteria. ()

e. In protested matters the Director will take official notice of information as described in the department's adopted Rules of Procedure, and will, prior to considering, circulate to the parties information from department studies and field examinations concerning the protested application or permit being reprocessed, if such information has not otherwise been made a part of the hearing record. ()

05. Additional Information Requirements. ()

a. For unprotested applications and permits being reprocessed, the additional information required by Subsection 040.05.c. shall be submitted within thirty (30) days after the Director notifies the applicant that the application or permit is being reviewed for decision. The Director may extend the time within which to submit the information upon request by the applicant and upon a showing of good cause. Failure to submit the required information within the time period allowed will be cause for the Director to void an application or to advance the priority of a permit being reprocessed by the number of days that the information submittal is late. The Director will provide opportunity for hearing as provided in Section 42-1701A, Idaho Code. ()

b. For protested applications or protested permits being reprocessed, the information required by Subsection 040.05.c. may be requested by the Director to be submitted within thirty (30) days after notification by the Director, may be made a part of the record of the hearing held to consider the protest, or may be made available in accordance with any pre-hearing discovery procedures. Failure to submit the required information within the time period allowed will be cause for the Director to void an application or to advance the priority of a permit being reprocessed by the number of days that the information submittal is late. ()

c. The following information shall be submitted for applications to appropriate unappropriated water or trust water and for permits being reprocessed for trust water. The additional information submittal requirements of this rule are waived for filings which seek to appropriate five (5) cfs or less or storage of five hundred acre-feet (500 AF) or less and for filings seeking reallocation of trust water which the Director determines will reduce the flow of the Snake River measured at Murphy Gauge by not more than two (2) acre-feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than two hundred (200) acres will be irrigated. However, the Director may specifically request submittal of any of the following information for any filing, as he determines necessary. Information relative to the effect on existing water rights, Section 42-203A(5)(a), Idaho Code, shall be submitted as follows: ()

i. For applications appropriating springs or surface streams with five (5) or fewer existing users, either the identification number, or the name and address of the user, and the location of the point of diversion and nature of use for each existing water right shall be submitted. ()

ii. For applications appropriating groundwater, a plat shall be submitted locating the proposed well relative to all existing wells and springs and permitted wells within a one-half mile radius of the proposed well. ()

iii. Information shall be submitted concerning any design, construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights. ()

d. Information relative to sufficiency of water supply, Section 42-203A(5)(b), Idaho Code, shall be submitted as follows: ()

i. Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be

diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year. ()

ii. Information shall be submitted on the quantity of water available from the source applied for, including, but not limited to, information concerning flow rates for surface water sources available during periods of peak and average project water demand, information concerning the properties of the aquifers that water is to be taken from for groundwater sources, and information on other sources of supply that may be used to supplement the applied for water source. ()

e. Information relative to good faith, delay, or speculative purposes of the applicant, Section 42-203A(5)(c), Idaho Code, shall be submitted as follows: ()

i. The applicant shall submit copies of deeds, leases, easements or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtained by eminent domain proceedings the applicant must show that appropriate actions are being taken to obtain the interest. Applicants for hydropower uses shall also submit information required to demonstrate compliance with Sections 42-205 and 42-206, Idaho Code. ()

ii. The applicant shall submit copies of applications for other needed permits, licenses and approvals, and must keep the department apprised of the status of the applications and any subsequent approvals or denials. ()

f. Information Relative to Financial Resources, Section 42-203A(5)(d), Idaho Code, shall be submitted as follows: ()

i. The applicant shall submit a current financial statement certified to show the accuracy of the information contained therein, or a financial commitment letter along with the financial statement of the lender or other evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply it to the beneficial use proposed. ()

ii. The applicant shall submit plans and specifications along with estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications. ()

g. Information Relative to Conflict with the Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows: The applicant shall seek comment and shall submit all letters of comment on the effects of the construction and operation of the proposed project from the governing body of the city and/or county and tribal reservation within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, and any irrigation district or canal company within which the proposed project is located and from other entities as determined by the Director. ()

h. The following information Relative to the Public Interest Criteria of Section 42-203C(2), Idaho Code, shall be submitted by an applicant seeking reallocation of trust water for a project which the Director determines will reduce the flow of the Snake River by more than two (2) acre-feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than two hundred (200) acres will be irrigated. The Director may request any or all of the following information for any filing seeking the reallocation of trust water. ()

i. A project design and estimate of cost of development shall be submitted. For applications appropriating more than twenty-five (25) cfs, or ten thousand (10,000) AF of storage, or generating more than five (5) megawatts, the information shall be prepared and submitted by a qualified engineer licensed under the provisions of Chapter 12, Title 54, Idaho Code, unless waived by the Director. The design shall be definite enough to reflect the project's impacts and implications as required in subsequent rules. ()

ii. If the project proposes development for irrigation purposes, information shall be submitted on crop rotation, including acreages, for lands when newly developed. ()

iii. Information shall be submitted concerning the number and kinds of jobs that will be created or eliminated as a direct result of project development including both the construction and operating phases of the project. If jobs are seasonal, the estimated number of months per year of employment shall be submitted. ()

iv. For applications or permits being reprocessed for more than twenty-five (25) cfs, or more than ten thousand (10,000) AF of storage, or more than five (5) megawatts, information shall be submitted concerning the changes to community services that will be required during the construction and operation phases of the project including, but not limited to, changes to schools, roads, housing, public utilities and public health and safety facilities, if any. ()

v. Information shall be submitted concerning the source of energy for diverting and using water for the project, the estimated instantaneous demand and total amount of energy that will be used, the efficiency of use, and energy conservation methods. ()

vi. Information shall be submitted concerning the location, amount, and quality of return flow water, and any water conservation features of the proposed project. ()

vii. If the project proposes irrigation as a use, information shall be submitted concerning the kinship, if any, of the operator of the land to be irrigated by the project to the applicant, the location and acreage of other irrigated lands owned, leased, or rented by the applicant, the names, addresses and number of shares held by each shareholder if the applicant is a corporation, evidence of tax-exempt status if a corporation is so claiming, a soil survey prepared in accordance with the U.S. Soil Conservation Service irrigatable land classification system, and a schedule for bringing into production the project lands. ()

041. -- 044. (RESERVED)

045. EVALUATION CRITERIA (RULE 45).

01. Criteria for Evaluating All Applications to Appropriate Water. The Director will use the following criteria in evaluating whether an application to appropriate unappropriated water or trust water should be approved, denied, approved for a smaller amount of water or approved with conditions. ()

a. Criteria for determining whether the proposed use will reduce the quantity of water under existing water rights. A proposed use will be determined to reduce the quantity of water under an existing water right (i.e., injure another water right) if: ()

i. The amount of water available under an existing water right will be reduced below the amount recorded by permit, license, decree or valid claim or the historical amount beneficially used by the water right holder under such recorded rights, whichever is less. ()

ii. The holder of an existing water right will be forced to an unreasonable effort or expense to divert his existing water right. Protection of existing groundwater rights are subject to reasonable pumping level provisions of Section 42-226, Idaho Code; or ()

iii. The quality of the water available to the holder of an existing water right is made unusable for the purposes of the existing user's right, and the water cannot be restored to usable quality without unreasonable effort or expense. ()

iv. An application that would otherwise be denied because of injury to another water right may be approved upon conditions which will mitigate losses of water to the holder of an existing water right, as determined by the Director. ()

v. The provisions of Subsection 045.01.a.v. are not intended to require compensation or mitigation for loss of flow to holders of subordinated hydropower rights or those from which trust water is reallocated. ()

b. Criteria for determining whether the water supply is insufficient for the proposed use. The water supply will be determined to be insufficient for the proposed use if water is not available for an adequate time interval

in quantities sufficient to make the project economically feasible (direct benefits to applicant must exceed direct costs to applicant), unless there are noneconomic factors that justify application approval. In assessing such noneconomic factors, the Director will also consider the impact on other water rights if the project is abandoned during construction or after completion, the impact on public resource values, and the cost to local, state and federal governments of such an abandonment. ()

c. Criteria for determining whether the application is made in good faith. The criteria requiring that the Director evaluate whether an application is made in good faith or whether it is made for delay or speculative purposes requires an analysis of the intentions of the applicant with respect to the filing and diligent pursuit of application requirements. The judgment of another person's intent can only be based upon the substantive actions that encompass the proposed project. Speculation for the purpose of this rule is an intention to obtain a permit to appropriate water without the intention of applying the water to beneficial use with reasonable diligence. Speculation does not prevent an applicant from subsequently selling the developed project for a profit or from making a profit from the use of the water. An application will be found to have been made in good faith if: ()

i. The applicant shall have legal access to the property necessary to construct and operate the proposed project, has the authority to exercise eminent domain authority to obtain such access, or in the instance of a project diverting water from or conveying water across land in state or federal ownership, has filed all applications for a right-of-way. Approval of applications involving Desert Land Entry or Carey Act filings will not be issued until the United States Department of Interior, Bureau of Land Management has issued a notice classifying the lands suitable for entry; and ()

ii. The applicant is in the process of obtaining other permits needed to construct and operate the project; and ()

iii. There are no obvious impediments that prevent the successful completion of the project. ()

d. Criteria for determining whether the applicant has sufficient financial resources to complete the project. ()

i. An applicant will be found to have sufficient financial resources upon a showing that it is reasonably probable that funding is or will be available for project construction or upon a financial commitment letter acceptable to the Director. This showing is required as described in Subsection 040.05.c. or at the time the hearing provided by Subsection 040.05.c. is conducted. ()

ii. A governmental entity will be determined to have satisfied this requirement if it has the taxing, bonding or contracting authority necessary to raise the funds needed to commence and pursue project construction in accordance with the construction schedule. ()

e. Criteria for determining whether the project conflicts with the local public interest. The Director will consider the following, along with any other factors he finds to be appropriate, in determining whether the project will conflict with the local public interest: ()

i. The effect the project will have on the economy of the local area affected by the proposed use as determined by the employment opportunities, both short and long term, revenue changes to various sectors of the economy, short and long term, and the stability of revenue and employment gains; ()

ii. The effect the project will have on recreation, fish and wildlife resources in the local area affected by the proposed use; and ()

iii. An application which the Director determines will conflict with the local public interest will be denied unless the Director determines that an over-riding state or national need exists for the project or that the project can be approved with conditions to resolve the conflict with the local public interest. ()

02. Criteria for Evaluating Whether a Proposed Use of Trust Water Will Cause a Significant Reduction. Reference: Section 42-203C(1), Idaho Code and Subsection 025.02.b. For purposes of reallocating trust water made available by the Snake River water rights agreement, an application for permit or a permit being

reprocessed, will be presumed to not cause a significant reduction if the Director determines that it complies with both the individual and cumulative tests for evaluating significant reduction as provided in Subsections 045.02.a. and 045.02.b. ()

a. Individual test for evaluating significant reduction. A proposed use will be presumed to not cause a significant reduction if when fully developed and its impact is fully felt, the use will individually reduce the flow of the Snake River measured at Murphy Gauge by not more than two (2) acre-feet per day. An irrigation project of two hundred (200) acres or less located anywhere in the Snake River Basin above Murphy Gauge proposing to use trust water is presumed to not reduce the flow at Murphy Gauge by more than two (2) acre-feet per day. The presumption of this section is not applicable to applications or permits to be reprocessed which the Director determines to be part of a larger development. ()

b. Cumulative test for evaluating significant reduction. A proposed use will be presumed to not cause a significant reduction, if the use, when fully developed and its impact is fully felt and when considered cumulatively with other existing uses and other uses reasonably likely to exist within twelve (12) months of the proposed use, will not deplete the flow of Snake River measured at Murphy Gauge by more than: ()

i. Forty thousand (40,000) acre-feet per calendar year when considered with all other uses approved for development of trust water during that calendar year; ()

ii. Forty thousand (40,000) acre-feet per calendar year using a four (4) year moving average when considered with all other uses approved for development of trust water during that four (4) year period; and ()

iii. Twenty thousand (20,000) acre-feet per calendar year from filings approved for reallocation of trust water which meet the criteria of Subsection 045.02.a. ()

c. The Director will determine on a case-by-case basis from available information whether a permit to be reprocessed or an application for trust water which exceeds the flow depletion limits of Subsection 045.02, or one which meets the flow depletion limits but has been protested, will cause a significant reduction. In making this determination, the Director will consider: ()

i. The amount of the reduction in hydropower generation that the proposed use will cause individually and cumulatively with other uses expected to be developed within twelve (12) months of the proposed use as compared to the existing hydropower generation output of the affected facility or facilities. ()

ii. The relative importance of the affected hydropower facility or facilities to other sources of electrical power generation available to the holder of the facility or facilities. ()

iii. The timing of the reduction in hydropower generation both on an annual basis and on a long-term basis considering the lag time between the beginning of diversion by the proposed use and the resulting reduction in hydropower generation. ()

iv. The effect of the reduction in hydropower generation on the unit cost of hydropower from the facility or facilities and the average cost of electrical power offered by the holder of the facility. ()

v. The terms of contracts, mortgages, or regulatory permits and licenses which require the holder of the hydropower generation facility to retain the capability to produce hydroelectric power at a specific level. ()

d. Other provisions of these rules notwithstanding, applications or permits to be reprocessed proposing a direct diversion of water for irrigation purposes from the Snake River between Milner Dam and Swan Falls Dam or from tributary springs in this reach are presumed to cause a significant reduction. ()

e. Other provisions of these rules notwithstanding, applications or permits to be reprocessed for DCMCI purposes are presumed to not cause a significant reduction. ()

03. Criteria for Evaluating Public Interest. If the Director determines that a proposed use of trust water held by the state pursuant to Section 42-203B(5), Idaho Code, will cause a significant reduction, the Director

will consider the criteria of Section 42-203C(2), Idaho Code, before acting on the application or permit being reprocessed. The Director shall consider and balance the relative benefits and detriments for each factor required to be weighed under Section 42-203C(2), Idaho Code, to determine whether a proposed reduction of the amount of water available for power production serves the greater public interest. The Director shall evaluate whether the proposed use sought in the permit being reprocessed or the application will provide the greater benefit to the people of the state of Idaho when balanced against other uses for the same water resource. In evaluating the public interest criteria, the Director will use the following guidelines: ()

a. The Director will consider the potential benefits both direct and indirect, and that the proposed use would provide to the state and local economy. The economic appraisal shall be based upon generally accepted economic analysis procedures which uniformly evaluate the following factors within the state of Idaho and the county or counties directly affected by the project: ()

i. Direct project benefits. ()

ii. Indirect benefits including net revenues to the processing, transportation, supply, service and government sectors of the economy. ()

iii. Direct project costs, to include the opportunity cost of previous land use. ()

iv. Indirect project costs, including verifiable costs to government in net lost revenue and increased regulation costs, verifiable reductions in net revenue resulting from losses to other existing instream uses, and the increased cost of replacing reduced hydropower generation from unsubordinated hydropower generating facilities. ()

b. The Director will consider the impact the proposed use would have upon the electric utility rates in the state of Idaho, and the availability, foreseeability and cost of alternative energy sources to ameliorate such impact. These evaluations will include the following considerations: ()

i. Projections of electrical supply and demand for Idaho and the Pacific Northwest made by the Bonneville Power Administration and the Northwest Power Planning Council and information available from the Idaho Public Utilities Commission or from the electric utility from whose water right trust water is being reallocated. ()

ii. The long term reliability of the substitute source and the cost of alternatives including the resulting impact on electrical rates. ()

c. The Director will consider whether the proposed use will promote the family farming tradition in the state of Idaho. For purposes of this evaluation, the Director will use the following factors. ()

d. If the total land to be irrigated by the applicant, including currently owned and leased irrigated land and land proposed to be irrigated in the application and other applications and permits of the applicant, do not exceed nine hundred sixty (960) acres, the application will be presumed to promote the family farming tradition. ()

e. If the requirement of Subsection 045.03.c.i. is not met, the Director will consider the extent the applicant conforms to the following characteristics: ()

i. The farming operation developed or expanded as a result of the application is operated by the applicant or a member of his family (spouse, parents or grandparents, lineal descendants, including those that are adopted, lineal descendants of parents; and spouse of lineal descendants); ()

ii. In the event the application is filed in the name of a partnership, one or more of the partners shall operate the farming operation; and ()

iii. If the application is in the name of a corporation, the number of stockholders does not exceed fifteen (15) persons, and one or more of the stockholders operates the farming operation unless the application is submitted by an irrigation district, drainage district, canal company or other water entity authorized to appropriate

water for landowners within the district or for stockholders of the company all of whom shall meet the family farming criteria. ()

f. The Director will consider the promotion of full economic and multiple use development of the water resources of the state of Idaho. In this regard, the extent to which the project proposed complies with the following factors will be considered: ()

- i. Promotes and conforms with the adopted State Water Plan; ()
- ii. Provides for coordination of proposed and existing uses of water to maximize the beneficial use of available water supplies; ()
- iii. Utilizes technology economically available to enhance water and energy use efficiency; ()
- iv. Provides multiple use of the water, including multipurpose storage; ()
- v. Allows opportunity for reuse of return flows; ()
- vi. Preserves or enhances water quality, fish, wildlife, recreation and aesthetic values; ()
- vii. Provides supplemental water supplies for existing uses with inadequate supplies. ()

g. The Director will consider whether a proposed use, which includes irrigation, will conform to a staged development policy of up to twenty thousand (20,000) acres per year or eighty thousand (80,000) acres in any four (4) year period in the Snake River drainage above Murphy Gauge. In applying this criteria, the Director will consider the following: ()

i. “Above Murphy gauge” means the Snake River and any of its surface or groundwater tributaries upstream from Murphy gauge which gauge is located on the Snake River approximately four (4) miles downstream from Swan Falls Dam from which trust water is to be reallocated; ()

ii. Twenty thousand (20,000) acres per year or eighty thousand (80,000) acres per four (4) year period is a four (4) year moving average of Twenty thousand (20,000) acres/year of permits issued during a calendar year for irrigation development. If permits for development of less than twenty-thousand (20,000) acres are issued in a year, additional development in excess of twenty-thousand (20,000) acres can be permitted in succeeding years. Likewise, if more than twenty thousand (20,000) acres is permitted in one year (recognizing that a single large project could exceed twenty thousand (20,000) acres) the permitted development in succeeding years must be correspondingly less to maintain no greater than a twenty thousand (20,000) acres/year average for any four (4) year period; ()

iii. The criteria of Subsection 045.03.g. applies to multiple-use projects with irrigation as a principal purpose. Projects which use irrigation as only an incidental purpose, such as the land treatment of waste, shall not be included within this policy; and ()

iv. An application determined by the Director to be otherwise approvable but found to exceed the acreage limitations, when considered with other applications approved for development, may be approved with conditions providing for the construction of project works and beneficial use of water to be commenced in a future year. ()

h. No single public interest criterion will be entitled to greater weight than any other public interest criterion. ()

i. Until such time as the studies prescribed in Policy 32 I of the State Water Plan are completed and accepted by the Idaho Water Resource Board, applications and permits reprocessed which propose to divert water to surface storage from the Snake River and surface tributaries upstream from Murphy Gauging Station shall be presumed to satisfy the public interest criteria of Section 42-203C(2), Idaho Code. Applications or reprocessed permits which are approved prior to completion of the studies, will not be subject to additional reprocessing. ()

j. Applications for permit for trust water sources filed prior to July 1, 1985, for projects for which diversion and beneficial use was complete prior to October 1, 1984, are presumed to satisfy the public interest criteria of Section 42-203C(2), Idaho Code. ()

k. Applications or permits to be reprocessed proposing a direct diversion of water for irrigation purposes from the Snake River between Milner Dam and Swan Falls Dam or from tributary springs in this reach are presumed not to be in the public interest as defined by Section 42-203C, Idaho Code. Such proposals, are presumed to prevent the full economic and multiple use of water in the Snake River Basin and to adversely affect hydropower availability and electrical energy rates in the state of Idaho. ()

l. Proposed DCMI uses which individually do not have a maximum consumptive use of more than two acre-feet/day are presumed to meet the public interest criteria of Section 42-203C(2), Idaho Code, unless protested. ()

046. -- 049. (RESERVED)

050. CONDITIONS OF APPROVAL (RULE 50).

01. Issuance of Permits with Conditions. The Director may issue permits with conditions to insure compliance with the provisions of Title 42, Chapter 2, Idaho Code, other statutory duties, the public interest, and specifically to meet the criteria of Section 42-203A, Idaho Code, and to meet the requirements of Section 42-203C, Idaho Code, to the fullest extent possible including conditions to promote efficient use and conservation of energy and water. ()

02. Requirements to Mitigate Impact of Flow Depletion. Permits to be reprocessed or applications approved to appropriate water from the main stem of the Snake River between Milner and Murphy gauging station for diversion to off-stream storage during the period November 1 to March 31 shall include requirements to mitigate, in accordance with the State Water Plan, the impact of flow depletions on downstream generation of hydropower. ()

03. Applications and Existing Permits That Are Junior and Subordinate. Applications and existing permits approved for hydropower generation shall be junior and subordinate to all rights to the use of water, other than hydropower, within the state of Idaho that are initiated later in time than the priority of the application or existing hydropower permit. A subordinated permit shall not give rise to any right or claim against future rights to the use of water, other than hydropower, within the state of Idaho initiated later in time than the priority of the application or existing hydropower permit. A permit issued for hydropower purposes shall contain a term condition on the hydropower use in accordance with Section 42-203B(6), Idaho Code. ()

04. Permanent Flow Measuring Device Requirement. Applications approved for on-stream storage reservoirs will, unless specifically waived by the Director, require permanent flow measuring devices both upstream and downstream from the reservoir. ()

05. Well Spacing and Well Construction Requirements. Applications approved for diversion of groundwater may include conditions requiring well spacing and well construction requirements. ()

06. Reprocessed Permits. Permits reprocessed pursuant to Section 42-203D, Idaho Code, may be cancelled, modified or conditioned by the Director to make the permit comply in every way with any permit that would be issued for the same purpose based upon a new application processed under these rules. ()

07. Voiding Approval of Permit. Permits may be conditioned to authorize the Director to void the approval of the permit if he determines that the applicant submitted false or misleading information on the application or supporting documents. ()

08. Retention of Jurisdiction. The Director may condition permits to retain jurisdiction to insure compliance with the design, construction and operation provisions of the permit. ()

09. Insuring Minimum Stream Flows and Prior Rights. The Director may condition permits to

insure that established minimum stream flows and prior rights including prior rights reserved by federal law are not injured. ()

10. Insuring Compliance with Water Quality Standards. The Director may condition permits to insure compliance with Idaho's water quality standards. ()

11. Insuring Assignment of Interest. The Director may condition a permit issued for trust water to require that any amendment (Section 42-211, Idaho Code), transfer (Section 42-222, Idaho Code), or assignment of interest in the permit by any method whatsoever shall not result in the project failing to meet the public interest criteria of Section 42-203C, Idaho Code except, however, lenders obtaining title to the project through default will have a reasonable period of time, as determined by the Director, to meet such criteria or to convey the project to a person or entity that does meet the criteria. ()

051. -- 054. (RESERVED)

055. MORATORIUM (RULE 55).

01. Applications for Permit. ()

a. The Director may cease to approve applications for permit in a designated geographical area upon finding a need to: ()

i. Protect existing water rights; ()

ii. Insure compliance with the provisions of Chapter 2, Title 42, Idaho Code; and ()

iii. Prevent reduction of flows below a minimum stream flow which has been established by the Director or the board pursuant to applicable law. ()

b. Notice of the Director's action to cease application approval will be by: ()

i. Summary Order served by certified mail upon the then existing affected applicants; and ()

ii. Publication of the order for three (3) consecutive weeks in a newspaper or newspapers of general circulation in the area affected. ()

c. Objections to the Director's action shall be considered under the department's adopted Rules of Procedure and applicable law. ()

02. Permits. ()

a. To the extent a permit has not been developed, the Director may cancel, or modify permits for which proof of beneficial use has not been submitted in a designated geographical area as an extension of Subsection 055.01. ()

b. Notice of the Director's action to cancel or modify permits shall be by: ()

i. Summary Order served by certified mail upon the affected permit holders in the designated area. ()



ii. Publication of the order for three (3) consecutive weeks in a newspaper or newspapers of general circulation in the area. ()

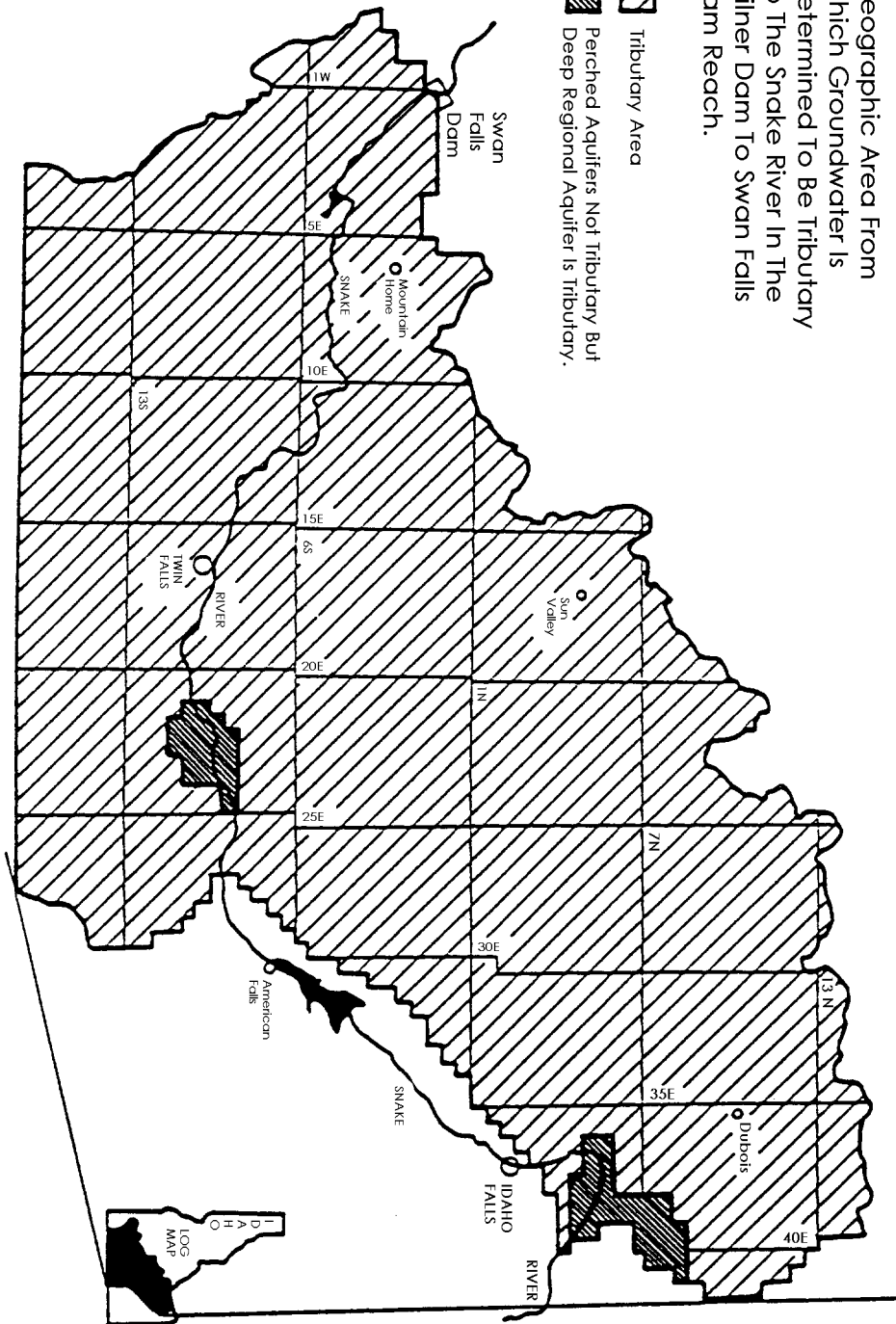
c. Objections to the Director's action shall be considered under the department's adopted Rules of Procedure and applicable law. ()

056. -- 999. (RESERVED)

APPENDIX A

Geographic Area From Which Groundwater Is Determined To Be Tributary To The Snake River In The Milner Dam To Swan Falls Dam Reach.

-  Tributary Area
-  Perched Aquifers Not Tributary But Deep Regional Aquifer Is Tributary.

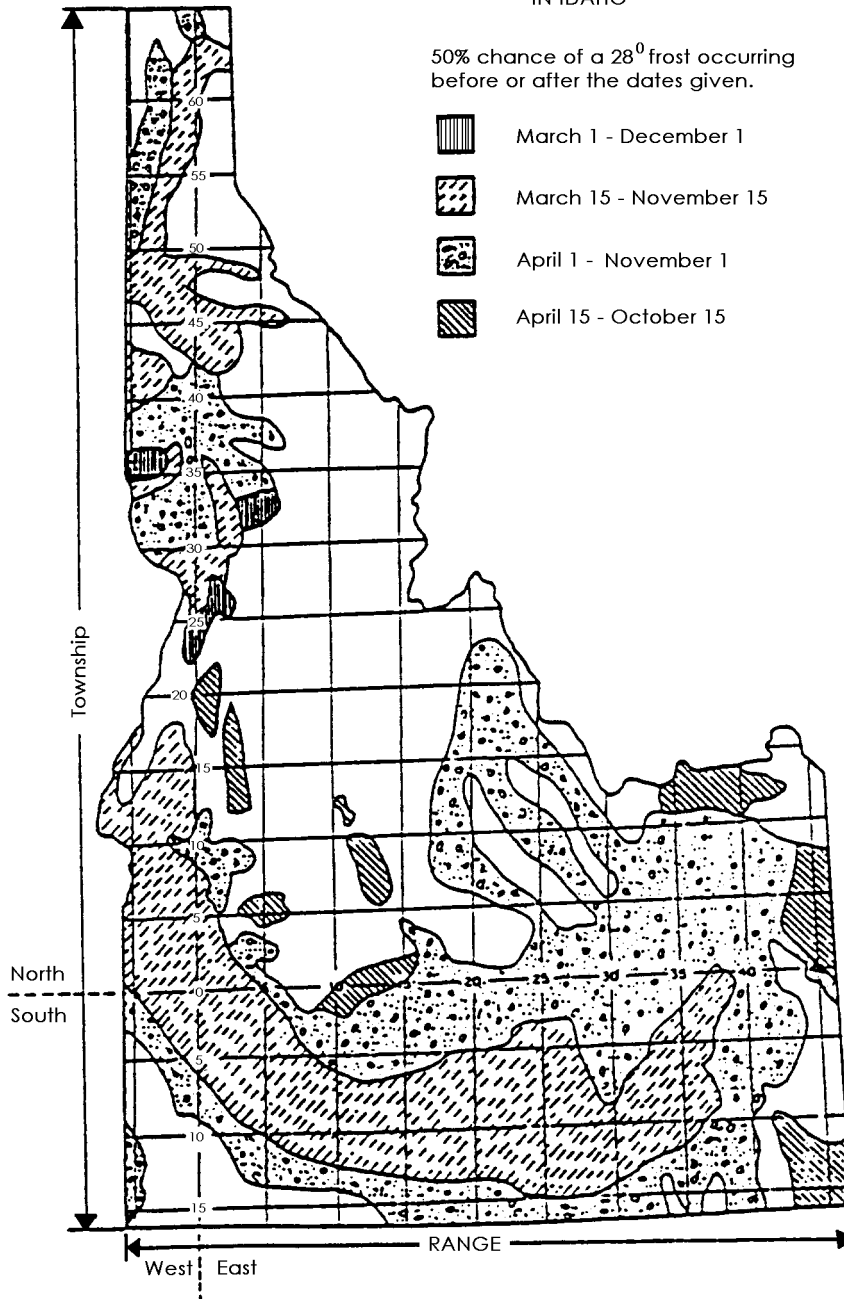


APPENDIX B

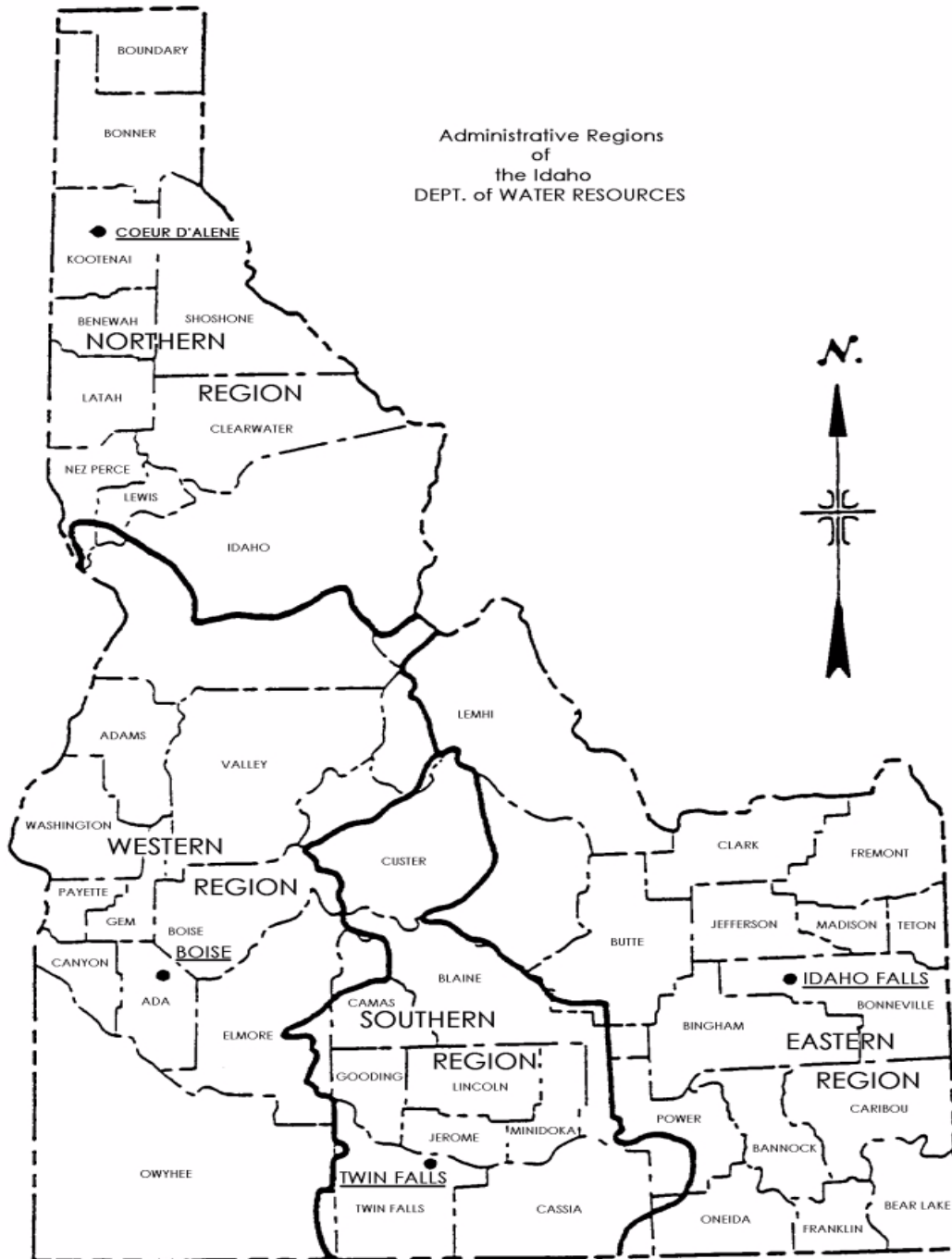
SUGGESTED IRRIGATION SEASONS
IN IDAHO

50% chance of a 28⁰ frost occurring
before or after the dates given.

-  March 1 - December 1
-  March 15 - November 15
-  April 1 - November 1
-  April 15 - October 15



APPENDIX C



37.03.09 – WELL CONSTRUCTION STANDARDS RULES

000. LEGAL AUTHORITY (RULE 0).

The Idaho Water Resource Board adopts these administrative rules with the authority provided by Section 42-238(12), Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

01. Title. These rules are cited as IDAPA 37.03.09, “Well Construction Standards Rules.” ()

02. Scope. The Department of Water Resources has statutory responsibility for the statewide administration of the rules governing well construction. These rules establish minimum standards for the construction of all new wells and the modification and decommissioning (abandonment) of existing wells. The intent of the rules is to protect the ground water resources of the state against waste and contamination. These rules are applicable to all water wells, monitoring wells, low temperature geothermal wells, injection wells, cathodic protection wells, closed loop heat exchange wells, and other artificial openings and excavations in the ground that are more than eighteen (18) feet in vertical depth below land surface as described in these rules pursuant to Section 42-230 Idaho Code. Some artificial openings and excavations do not constitute a well. For the purposes of these rules, artificial openings and excavations not defined as wells are described in Subsection 045.03 of these rules. Any time that such an artificial opening or excavation is constructed, modified, or decommissioned (abandoned) the intent of these rules must be observed. If waste or contamination is attributable to this type of artificial opening or excavation, the artificial opening or excavation must be modified, or decommissioned (abandoned) as determined by the Director. ()

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

Unless the context otherwise requires, the following definitions apply to these rules. ()

01. Approved Seal or Seal Material. Seal material must consist of bentonite chips, pellets, or granules, bentonite grout, neat cement, or neat cement grout as defined by these rules. No other materials may be used unless specifically authorized by the Director ()

02. Annular Space. The space, measured as one-half (1/2) the difference in diameter between two (2) concentric cylindrical objects, one of which surrounds the other, such as the space between the walls of a drilled hole (borehole) and a casing or the space between two (2) strings of casing. ()

03. Aquifer. Any geologic formation(s) that will yield water to a well in sufficient quantities to make the production of water from the formation feasible for beneficial use. ()

04. Area of Drilling Concern. An area designated by the Director in which drillers must comply with additional standards to prevent waste or contamination of ground or surface water due to such factors as aquifer pressure, vertical depth of the aquifer, warm or hot ground water, or contaminated ground or surface waters, in accordance with Section 42-238(7), Idaho Code. ()

05. Artesian Water. Any water that is confined in an aquifer under pressure so that the water will rise in the well casing or drilled hole above the elevation where it was first encountered. This term includes water of flowing and non-flowing wells. ()

06. Artificial Filter Pack. Clean, rounded, smooth, uniform, sand or gravel placed in the annular space around a perforated well casing or well screen. A filter pack is frequently used to prevent the movement of finer material into the well casing and to increase well efficiency. ()

07. Bentonite. A commercially processed and packaged, low permeability, sodium montmorillonite clay certified by the NSF International for use in well construction, sealing, plugging, and decommissioning (abandonment). All bentonite products used in the construction or decommissioning (abandoning) of wells must have a permeability rating not greater than 10^{-7} (ten to the minus seven) cm/sec. ()

a. Chips. Bentonite composed of pieces ranging in size from one-quarter (1/4)-inch to one (1) inch on their greatest dimension. ()

b. Granules (also Granular). Bentonite composed of pieces ranging in size from one thirty-seconds (1/32) inch (#20 standard mesh) to seven thirty-seconds (7/32) inch (#3 standard mesh) on their greatest dimension. ()

- c.** Bentonite Grout. A mixture of bentonite specifically manufactured for use as a well sealing or plugging material and potable water to produce a grout with an active solids content not less than twenty-five percent (25%) by weight e.g., (twenty-five percent (25%) solids content by weight = fifty (50) pounds bentonite per eighteen (18) gallons of water). ()
- d.** Pellets. Bentonite manufactured for a specific purpose and composed of uniform sized, one-quarter (1/4) inch, three-eighths (3/8) inch, or one-half (1/2) inch pieces on their greatest dimension. ()
- 08. Board.** The Idaho Water Resource Board. ()
- 09. Bore Diameter.** The diameter of the hole in the formation made by the drill bit or reamer. ()
- 10. Borehole (also Well Bore).** The subsurface hole created during the drilling process. ()
- 11. Bottom Hole Temperature of an Existing or Proposed Well.** The temperature of the ground water encountered in the bottom of a well or borehole. ()
- 12. Casing.** The permanent conduit installed in a well to provide physical stabilization, prevent caving or collapse of the borehole, maintain the well opening and serve as a solid inner barrier to allow for the installation of an annular seal. Casing does not include temporary surface casing, well screens, liners, or perforated casing as otherwise defined by these rules. ()
- 13. Cathodic Protection Well.** Any artificial excavation in excess of eighteen (18) feet in vertical depth constructed for the purpose of protecting certain metallic equipment in contact with the ground. Commonly referred to as cathodic protection. ()
- 14. Closed Loop Heat Exchange Well.** A ground source thermal exchange well constructed for the purpose of installing any underground system through which fluids are circulated but remain isolated from direct contact with the subsurface or ground water. ()
- 15. Conductor Pipe.** The first and largest diameter string of permanent casing to be installed in a low temperature geothermal resource well. ()
- 16. Confining Layer.** A subsurface zone of low-permeability earth material that naturally acts to restrict or retard the movement of water or contaminants from one zone to another. The term does not include topsoil. ()
- 17. Consolidated Formations.** Naturally-occurring geologic formations that have been lithified (turned to stone) such as sandstone and limestone, or igneous rocks such as basalt and rhyolite, and metamorphic rocks such as gneiss and slate. ()
- 18. Contaminant.** Any physical, chemical, ion, radionuclide, synthetic organic compound, microorganism, waste, or other substance that does not occur naturally in ground water or that naturally occurs at a lower concentration. ()
- 19. Contamination.** The introduction into the natural ground water of any physical, chemical, biological or radioactive material that may: ()
- a.** Cause a violation of Idaho Ground Water Quality Standards; or ()
- b.** Adversely affect the health of the public; or ()
- c.** Adversely affect a designated or beneficial use of the State’s ground water. Contamination includes the introduction of heated or cooled water into the subsurface that will alter the ground water temperature and render the local ground water less suitable for beneficial use, or the introduction of any contaminant that may cause a violation of IDAPA 58.01.11, “Ground Water Quality Rule.” ()

- 20. Decommissioned (Abandoned) Well.** Any well that has been permanently removed from service and filled or plugged in accordance with these rules so as to meet the intent of these rules. A properly decommissioned well will not: ()
- a.** Produce or accept fluids; ()
 - b.** Serve as a conduit for the movement of contaminants inside or outside the well casing; or ()
 - c.** Allow the movement of surface or ground water into unsaturated zones, into another aquifer, or between aquifers. ()
- 21. Decontamination.** The process of cleaning equipment intended for use in a well in order to prevent the introduction of contaminants into the subsurface and contamination of natural ground water. ()
- 22. Department.** The Idaho Department of Water Resources. ()
- 23. Dewatering Well.** A well constructed for the purpose of improving slope stability, drying up borrow pits, or intercepting seepage that would otherwise enter an excavation. ()
- 24. Director.** The Director of the Idaho Department of Water Resources or his duly authorized representatives. ()
- 25. Disinfection.** The introduction of chlorine or other agent or process approved by the Director in sufficient concentration and for the time required to inactivate or kill fecal and Coliform bacteria, indicator organisms, and other potentially harmful pathogens. ()
- 26. Draw Down.** The difference in vertical distance between the static water level and the pumping water level. ()
- 27. Drive Point (also known as a Sand Point).** A conduit pipe or casing through which ground water of any temperature is sought or encountered created by joining a “drive point unit” to a length of pipe and driving the assembly into the ground. ()
- 28. Exploratory Well.** A well drilled for the purpose of discovering or locating new resources in unproven areas. They are used to extract geological, hydrological, or geophysical information about an area. ()
- 29. Global Positioning System (GPS).** A global navigational receiver unit and satellite system used to triangulate a geographic position. ()
- 30. Hydraulic Conductivity.** A measurement of permeability. ()
- 31. Hydraulic Fracturing.** A process whereby water or other fluid is pumped under high pressure into a well to further fracture the reservoir rock or aquifer surrounding the production zone of a well to increase well yield. ()
- 32. Injection Well.** Any excavation or artificial opening into the ground which meets the following three (3) criteria: ()
- a.** It is a bored, drilled or dug hole, or is a driven mine shaft or driven well point; and ()
 - b.** It is deeper than its largest straight-line surface dimension; and ()
 - c.** It is used for or intended to be used for subsurface placement of fluids. ()
- 33. Intermediate String or Casing.** The casing installed and sealed below the surface casing within a low temperature geothermal resource well to isolate undesirable water or zones below the bottom of the surface

casing. Such strings may either be lapped into the surface casing or extend to land surface. ()

34. Liner. ()

a. A conduit pipe that can be removed from the borehole or well that is used to serve as access and protective housing for pumping equipment and provide a pathway for the upward flow of water within the well. ()

b. Liner does not include casing required to prevent caving or collapse, or both, of the borehole or serve as a solid inner barrier to allow for the installation of an annular seal. ()

35. Mineralized Water. Any naturally-occurring ground water that has an unusually high amount of chemical constituents dissolved within the water. Water with five thousand (5000) mg/L or greater total dissolved solids is considered mineralized. ()

36. Modify. To deepen a well, increase or decrease the diameter of the casing or the well bore, install a liner, place a screen, perforate existing casing or liner, alter the seal between the casing and well bore, or alter the well to not meet well construction standards. ()

37. Monitoring Well. Any well more than eighteen (18) feet in vertical depth constructed to evaluate, observe or determine the quality, quantity, temperature, pressure or other characteristics of the ground water or aquifer. ()

38. Neat Cement. A mixture of water and cement in the ratio of not more than six (6) gallons of water to ninety-four (94) pounds of Portland cement (neat cement). Other cement grout mixes may be used if specifically approved by the Director. ()

39. Neat Cement Grout. Up to five percent (5%) bentonite by dry weight may be added per sack of cement (neat cement grout) and the water increased to not more than six and one-half (6.5) gallons per sack of cement. Other neat cement mixes may be used if specifically approved by the Director. These grouts must be mixed and installed in accordance with the American Petroleum Institute Standards - API Class A through H. As found in API RP10B, "Recommended Practice for Testing Oil Well Cements and Cement Additives," current edition or other approved standards. ()

40. Oxidized Sediments. Sediments, characterized by distinct coloration, typically shades of brown, red, or tan, caused by the alteration of certain minerals in an environment with a relative abundance of oxygen. ()

41. Perforated Well Casing. Well casing that has been modified by the addition of openings created by drilling, torch cutting, saw cutting, mechanical down-hole perforator, or other method. ()

42. Pitless Adaptor or Pitless Unit. An assembly of parts designed for attachment to a well casing which allows buried pipe to convey water from the well or pump and allows access to the interior of the well casing for installation or removal of the pump or pump appurtenances, while maintaining a water tight connection through the well casing and preventing contaminants from entering the well. ()

43. Potable Water. Water of adequate quality for human consumption. ()

44. Pressure Grouting (Grouting). The process of pumping and placing an approved grout mixture into the required annular space, by positive displacement from bottom to top using a tremie pipe, Halliburton method, float shoe, or other method approved by the Director. ()

45. Production Casing. The casing or tubing through which a low temperature geothermal resource is produced. This string extends from the producing zone to land surface. ()

46. Public Water System. A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service

connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: ()

a. Any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and ()

b. Any collection or pretreatment storage facilities not under such control that are used primarily in connection with such system. ()

c. Such term does not include any “special irrigation district.” ()

d. A public water system is either a “community water system” or a “non-community water system.” ()

47. **Reduced Sediments.** Sediments, characterized by distinct coloration, typically shades of blue, black, gray, or green, caused by the alteration of certain minerals in an oxygen poor environment. ()

48. **Remediation Well.** A well used to inject or withdraw fluids, vapor, or other solutions approved by the Director for the purposes of remediating, enhancing quality, or controlling potential or known contamination. Remediation wells include those used for air sparging, vapor extraction, or injection of chemicals for remediation or in-situ treatment of contaminated sites. ()

49. **Sand.** Any sediment particle retained on a U.S. standard sieve #200 (Seventy-five hundredths (0.075) mm to two (2) mm). ()

50. **Screen (Well Screen).** A commercially produced structural tubular retainer with standard sized openings to facilitate production of sand free water. ()

51. **Seal or Sealing.** The placement of approved seal material in the required annular space between a borehole and casing, between casing strings, or as otherwise required to create a low permeability barrier and prevent movement or exchange of fluids. Seals are required in the construction of new wells, repair of existing wells, and in the decommissioning (abandonment) of wells. Seals are essential to the prevention of waste and contamination of ground water. ()

52. **Start Card.** An expedited drilling permit process for the construction of cold water, single-family residential wells. ()

53. **Static Water Level.** The height at which water will rise in a well under non-pumping conditions. ()

54. **Surface Casing.** The first string of casing in a low temperature geothermal resource well which is set and sealed after the conductor pipe to anchor blow out prevention equipment and to case and seal out all existing cold ground water zones. ()

55. **Temporary Surface Casing.** Steel pipe used to support the borehole within unstable or unconsolidated formations during construction of a well that will be removed following the installation of the permanent well casing and prior to or during placement of an annular seal. ()

56. **Thermoplastic/PVC Casing.** Plastic piping material meeting the requirements of ASTM F 480 and specifically designed for use as well casing. ()

57. **Transmissivity.** The capacity of an aquifer to transmit water through its entire saturated thickness. ()

58. **Tremie Pipe.** A small-diameter pipe used to convey grout, dry bentonite products, or filter pack materials into the annular space, borehole, or well from the bottom to the top of a borehole or well. ()

59. Unconfined Aquifer. An aquifer in which the water table is in contact with and influenced by atmospheric pressure through pore spaces in the overlying formation(s). ()

60. Unconsolidated Formation. A naturally-occurring earth formation that has not been lithified. Alluvium, soil, sand, gravel, clay, and overburden are some of the terms used to describe this type of formation. ()

61. Unstable Unit. Unconsolidated formations, and those portions of consolidated formations, that are not sufficiently hard or durable enough to sustain an open borehole without caving or producing obstructions without the aid of fluid hydraulics or other means of chemical or physical stabilization. ()

62. Unusable Well. Any well that can not be used for its intended purpose or other beneficial use authorized by law. ()

63. Waiver. Approval in writing by the Director of a written request from the well driller and the well owner proposing specific variance from the minimum well construction standards. ()

64. Waste. The loss, transfer, or subsurface exchange of a ground water resource, thermal characteristic, or natural artesian pressure from any aquifer caused by improper construction, misuse, or failure to properly maintain a well. Waste includes: ()

a. The flow of water from an aquifer into an unsaturated subsurface zone; ()

b. The transfer or mixing, or both, of waters from one aquifer to another (aquifer commingling); or ()

c. The release of ground water to the land surface whenever such release does not comply with an authorized beneficial use. ()

65. Water Table. The height at which water will rise in a well; also the upper surface of the zone of saturation in an unconfined aquifer. This level will change over time due to changes in water supply and aquifer impacts. ()

66. Well. ()

a. An artificial excavation or opening in the ground more than eighteen (18) feet in vertical depth below land surface by which ground water of any temperature is sought or obtained. The depth of a well is determined by measuring the maximum vertical distance between the land surface and the deepest portion of the well. Any water encountered in the well is considered to be obtained for the purpose of these rules; or ()

b. Any waste disposal and injection well, as defined in Section 42-3902, Idaho Code. ()

c. Well does not mean: ()

i. A hole drilled for mineral exploration; or ()

ii. Holes drilled for oil and gas exploration which are subject to the requirements of Section 47-320, Idaho Code; or ()

iii. Holes drilled for the purpose of collecting soil samples above the water table. ()

67. Well Development. The act of bailing, jetting, pumping, or surging water in a well to remove drilling fluids, fines, and suspended materials from within a completed well and production zone in order to establish the optimal hydraulic connection between the well and the aquifer. ()

68. Well Driller or Driller. Any person who operates drilling equipment, or who controls or

supervises the construction of a well, and is licensed under Section 42-238, Idaho Code ()

69. Well Drilling or Drilling. The act of constructing a new well or modifying or changing the construction of an existing well. ()

70. Well Owner. Any person, firm, partnership, co-partnership, corporation, association, or other entity, or any combination of these, who owns the property on which the well is or will be located or has secured ownership of the well by means of a deed, covenant, contract, easement, or other enforceable legal instrument for the purpose of benefiting from the well. ()

71. Well Rig (Drill Rig). Any power driven percussion, rotary, boring, digging, jetting or auguring machine used in the construction of a well. ()

011. -- 024. (RESERVED)

025. CONSTRUCTION OF COLD WATER WELLS (RULE 25).

All persons constructing wells must comply with the requirements of Section 42-238, Idaho Code, and IDAPA 37.03.10, "Well Driller Licensing Rules." The standards specified in Rule 25 apply to all wells with a bottom hole temperature of eighty-five (85) degrees Fahrenheit or less. Wells with a bottom hole temperature greater than eighty-five (85) degrees Fahrenheit, but less than two hundred twelve (212) degrees Fahrenheit, must meet the requirements of Rule 30 in addition to meeting the requirements of Rule 25. These standards also apply to any waste disposal and injection well as defined in Section 42-3902, Idaho Code. ()

01. General. The well driller must construct each well as follows: ()

a. In accordance with these rules and with the conditions of approval of any drilling permit issued pursuant Section 42-235, Idaho Code, and in a manner that will prevent waste and contamination of the ground water resources of the state of Idaho. The adopted standards are minimum standards which must be adhered to in the construction of all new wells, and in the modification or decommissioning (abandonment) of existing wells. The well driller is charged with the responsibility of preventing waste or contamination of the ground water resources during the construction, modification or abandonment of a well. The Director may add conditions of approval to a drilling permit issued pursuant to Rule 45 of these rules to require that a well be constructed, modified, or decommissioned (abandoned) in accordance with additional standards when necessary to protect ground water resources and the public health and safety from existing contamination and waste or contamination during the construction, modification or decommissioning (abandonment) of a well. ()

b. In consideration of the geologic and ground water conditions known to exist or anticipated at the well site. ()

c. Such that it is capable of producing, where obtainable, the quantity of water to support the allowed or approved beneficial use of the well, subject to law; ()

d. Meet the siting and separation distance requirements in the table in this Subsection (025.01.d.). Additional siting and separation distance requirements are set forth by the governing district health department and the Idaho Department of Environmental Quality rules at IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules," and IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems".

Separation of Well from:	Minimum Separation Distance (feet)
Existing Public Water Supply well, separate ownership	- 50
Other existing well, separate ownership	- 25
Septic drain field	- 100

Separation of Well from:	Minimum Separation Distance (feet)
Septic tank	- 50
Drainfield of system with more than 2,500 GPD of sewage inflow	- 300*
Sewer line - main line or sub-main, pressurized, from multiple sources	- 100
Sewer line - main line or sub-main, gravity, from multiple sources	- 50
Sewer line - secondary, pressure tested, from a single residence or building	- 25
Effluent pipe	- 50
Property line	- 5
Permanent buildings, other than those to house the well or plumbing apparatus, or both	- 10
Above ground chemical storage tanks	- 20
Permanent (more than six months) or intermittent (more than two months) surface water	- 50
Canals, irrigation ditches or laterals, & other temporary (less than two months) surface water	- 25
*This distance may be less if data from a site investigation demonstrates compliance with IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules," separation distances.	

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02. Waivers. In unique cases where the Director concludes that the ground water resources will be protected against waste and contamination and the public health and safety are not compromised, a waiver of specific standards required by these rules may be approved prior to constructing, decommissioning, or modifying a well.

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a. To request a waiver the well driller and well owner must:

()

i. Jointly submit a detailed plan and written request identifying a specific Rule or Rules proposed to be waived. Additionally, the plan must detail the well construction process that will be employed in lieu of complete Rule compliance:

()

ii. Prior to submittal, the well driller and the well owner must sign the plan and written request acknowledging concurrence with the request; and

()

iii. Submit the plan and request by facsimile, e-mail, or letter.

()

b. The Director will evaluate and respond to the request within ten (10) business days of receiving the request.

()

i. If the request for waiver is approved, the intent of the rules will be served and all standards not waived will apply. Waivers approved by the Director will not supersede requirements of other regulatory agencies without specific concurrence from that agency. Work activity related to a waiver request will not proceed until a written or verbal approval is granted by the Director.

()

ii. Any verbal approval will be followed by a written approval.

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03. Records. In order to enable a comprehensive survey of the extent and occurrence of the state's ground water resource, the coordinates of every newly constructed, modified or decommissioned (abandoned) well location must be identified by latitude and longitude with a global positioning system (GPS) and recorded on the

driller’s report in degrees and decimal minutes and within the nearest 40 acre parcel using the Public Land Survey System. Every well driller must maintain records as described in IDAPA 37.03.10 “Well Driller Licensing Rules,” pursuant to Section 42-238(11), Idaho Code, and provide the well owner with a copy of the approved well drilling permit and a copy of the well driller’s report when submitted to the Director. ()

04. Casing. The well driller must install casing in every well. Steel or thermoplastic casing may be installed in any well with a bottom hole temperature of eighty-five (85) degrees Fahrenheit or less. Thermoplastic pipe must not be installed in a well with a bottom hole temperature greater than eighty-five (85) degrees Fahrenheit. All casing to be installed must be new or in like-new condition, free of defects, and clearly marked by the manufacturer with all specifications required by these rules. For all wells the casing must extend at least twelve (12) inches above land surface and finished grade and to a minimum depth below land surface as required by these rules. Concrete slabs around a well casing will be considered finished grade (Figure 01, Appendix A). The well driller must install casing of sufficient strength to withstand calculated and anticipated subsurface forces and corrosive effects. The well driller must install casings sufficiently plumb and straight to allow the installation or removal of screens, liners, pumps and pump columns without causing adverse effects on the operation of the installed pumping equipment. ()

a. Steel Casing. When steel casing lengths are joined together, they must be joined by welded joints or screw-couple joints. All connection must be water tight. If steel casing joints are welded, the weld must be at least as thick as the well casing and fully penetrating. Welding rods or flux core wire of at least equal quality to the casing metal must be used. Casing ends to be joined by welding must be properly prepared, beveled and gapped to allow full penetration of the weld. All stick welded joints must have a minimum of two (2) passes including a “root” pass and have minimal undercut when complete. ()

i. In addition to meeting these standards, all wells that are constructed for public water systems must meet all of the casing wall thickness requirements set forth by the Idaho Department of Environmental Quality Rules, IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems.” ()

ii. The well driller must install steel casing that meets or exceeds the American Society of Testing and Materials (ASTM) standard A53, Grade B or American Petroleum Institute (API) 5L Grade B, and that meets the following specifications for wall thickness:

Minimum Single-Wall Steel Well Casing Thickness¹ for Selected Diameters (inches)													
Nominal Diameter (in.)³	6²	8	10	12	14	16	18	20	22	24	26	28	30
Depth (ft.)	Nominal Wall Thickness (in.)¹												
<100	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250
100-200	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250
200-300	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250
300-400	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.375	0.375	0.375	0.375
400-600	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.375	0.375	0.375	0.375	0.375
600-800	0.250	0.250	0.250	0.250	0.250	0.250	0.375	0.375	0.375	0.375	0.375	0.375	0.375
800-1000	0.250	0.250	0.250	0.250	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375
1000-1500	0.280	0.322	0.365	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375
1500-2000	0.280	0.322	0.365	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375

Minimum Single-Wall Steel Well Casing Thickness ¹ for Selected Diameters (inches)													
Nominal Diameter (in.) ³	6 ²	8	10	12	14	16	18	20	22	24	26	28	30
<p>1 Compliance with the minimum nominal wall thicknesses listed is required for any depth or location where casing is used to prevent caving or collapse, or both, of the borehole or serves as a solid inner barrier to allow for the installation of an annular seal.</p> <p>2 For nominal casing diameters less than six (6) inches, the minimum nominal wall thickness must be equivalent to ASTM Schedule 40.</p> <p>3 For any other casing diameter not addressed herein, prior approval by the Director is required.</p>													

()

b. Thermoplastic Casing. Thermoplastic casing may be used in monitoring wells and cold water wells if drilling of the borehole confirms its suitability for use. ()

i. Thermoplastic casing must conform to ASTM F 480 and NSF-WC. The well driller must not use thermoplastic casing under any condition where the manufacturer’s resistance to hydraulic collapse pressure (RHCP) or total depth specifications are exceeded. Thermoplastic casing extending above-ground must be protected from physical and ultraviolet light damage by enclosing it within steel casing extending at least twelve (12) inches above land surface and finished grade and to a minimum depth of eighteen (18) feet below land surface or five (5) feet below land surface for monitoring wells. ()

ii. Thermoplastic pipe used in wells as casing or liner must have a minimum rating of SDR-21. For nominal diameters of four (4) inches or less, a minimum rating of Schedule 40 is required. If used as casing within unconsolidated or unstable consolidated formations, thermoplastic pipe must be centralized and fully supported throughout the unstable zone(s) with filter pack or seal material as required by these rules. ()

iii. All thermoplastic casing and liner must be installed in accordance with the manufacturer’s recommendations and specifications, and as required by these rules. The well driller will not treat thermoplastic pipe in any manner that would adversely affect its structural integrity. The well driller must: ()

(1) Ensure that the weight of the pump assembly, if secured to the thermoplastic pipe, does not exceed the weight limitations per manufacturer’s recommendations or cause damage to the pipe resulting in breaks or leaks. ()

(2) Not use Type III (high-early strength) Portland cement-based seal materials in direct contact with thermoplastic pipe unless approved by the Director. ()

(3) Not drive, drop, force, or jack thermoplastic pipe into place. Thermoplastic pipe must be lowered or floated into an oversized, obstruction-free borehole. ()

c. Perforated Well Casing. Perforated well casing may be used in the construction or decommissioning of a well when such application does not violate any standards required by these rules. ()

05 Liner. In addition to well casing, liners may be installed in wells to prevent damage to pumping equipment. Steel or thermoplastic pipe may be installed as liner in a well with a bottom hole temperature of eighty-five (85) degrees Fahrenheit or less. Thermoplastic liner must conform to ASTM F 480 and NSF-WC. Thermoplastic liners must not be used in unconsolidated formations or unstable units. ()

06. Screen. Well screens must be used in constructing a well when necessary to avoid sand production (see sand production, Rule 25, Subsection 025.24). Well screens must be commercially manufactured, be slotted, louvered or wire wrapped, and be installed according the manufacturers specifications. ()

a. Screens may require a filter pack consisting of sand or gravel to further reduce the quantity of sand produced from the well. ()

b. The well driller will not install well screens, perforated casing or filter pack across a confining layer(s) separating aquifers of different pressure, temperature, or quality. ()

07. Use of Approved Sealing Materials and Required Annular Space. Well casings must be sealed in the required annular space with approved material to prevent the possible downward movement of contaminated surface waters or other fluids in any annular space around the well casing (Figure 02, Appendix A). Proper sealing is also required to prevent the movement of groundwater either upward or downward from zones of different pressure, temperature or quality within the well or outside the casing. The well driller must notify by phone the Department's appropriate Region Office at least four (4) hours in advance of placing any annular seal to provide Department staff the opportunity to observe seal placement. ()

a. All casing to be sealed must be adequately centralized to ensure uniform seal thickness around the well casing. Surface seals must extend to not less than thirty-eight (38) feet below land surface for well depths greater than thirty-eight (38) feet. For well depths less than thirty-eight (38) feet, seals must extend to depths as hereafter required. ()

b. Seals are required at depths greater than thirty-eight (38) feet in artesian wells or to seal through confining layers separating aquifers of differing pressure, temperature, or quality in any well. ()

c. When a well is modified and the existing casing is moved or the original seal is damaged, or a well driller discovers that a seal was not installed or has been damaged, the well driller must repair, replace, or install a seal around the permanent casing that is equal to or better than required when the well was originally constructed. ()

d. Manufactured packers and shale traps may be used as devices to retain approved seal material when installing a required annular seal. Whenever these devices are used to retain seal material, the well driller must comply with the manufacturer's recommendations for installation. ()

e. If a temporary casing has been installed, upon completion of the drilling, the annular space must be filled with approved seal material and kept full while withdrawing the temporary casing. Bentonite chips should be used with caution when the annular space between a temporary casing and permanent casing is filled with water. ()

i. When attempts at removing a temporary casing are unsuccessful, the casing must be sealed in place by a method approved by the department. ()

ii. The well driller must notify the department whenever a temporary casing can not be removed and propose a plan to adequately seal the casing to prevent waste and contamination of the ground water. The plan must detail how the casing will be sealed on the outside to a sufficient depth below land surface in addition to placement of any required formation seals through the interval at which the casing will remain. ()

f. For mixed grout seals the minimum annular space required must provide for a uniform seal thickness not less than one (1) inch on all sides of the casing or a borehole at least two (2) inches larger than the outside diameter (OD) of the casing to be sealed (Figure 02, Appendix A). (Note: a seven and seven-eighths (7 7/8) inch diameter (eight (8) inch nominal) borehole around a six and five-eighths (6 5/8) inch OD (six (6) inch nominal casing does not satisfy the minimum annular space requirements). ()

i. When placing grout seals with a removable tremie pipe between casing strings or between a borehole and casing, the required annular space must be at least one (1) inch or equal to the OD of the tremie pipe whichever is greater. Permanent tremie pipes will be considered as a casing string and subject to minimum annular space requirements in addition to the annular space requirements around the well casing (Figure 03, Appendix A). ()

ii. All grout seals must be placed from the bottom up, by using an approved method. Bentonite grout

must not be used above the water table unless specifically designed and manufactured for such use and approved by the Director in advance. ()

iii. If cement-based grout (neat cement or neat cement grout) is used to create a seal, the casing string sealed must not be moved or driven after the initial set. Construction must not resume for a minimum of twenty-four (24) hours following seal placement; ()

g. For dry bentonite seals the minimum annular space required must provide for a uniform seal thickness not less than one and five-eighths (1 5/8) inches on all sides of the casing or a borehole at least four (4) inches larger than the “nominal diameter” of the casing to be sealed. e.g., (six and five-eighths (6 5/8) inch OD (six (6) inch nominal) casing requires a ten and three fourths (10 3/4) inch OD (ten (10) inch nominal) temporary casing or a nine and seven-eighths (9 7/8) inch (ten (10) inch nominal) minimum borehole). Listed below are additional annular space requirements and limitations for placement of dry bentonite seals: ()

i. All dry bentonite seals must be tagged during placement and consider volumetric calculations to verify placement. ()

ii. Installation of dry bentonite seals must be consistent with the manufacturers’ recommendations and specifications for application and placement. ()

iii. Granular bentonite must not be placed through water. ()

iv. If a granular bentonite seal is placed deeper than two hundred (200) feet, the minimum annular space must be increased by at least one (1) inch e.g., (six and five-eighths (6 5/8) inch OD (six (6) inch nominal) casing requires a twelve and three fourths (12 3/4) inch OD (twelve (12) inch nominal) temporary casing or an eleven and seven eights (11 7/8) inch (twelve (12) inch nominal) minimum borehole). ()

v. Bentonite chips may be placed through water or drilling fluid of appropriate viscosity. Bentonite chip seals placed through more than fifty (50) feet of water or drilling fluid will require the minimum annular space to be increased by at least one (1) inch e.g., (six and five-eighths (6 5/8) inch OD (six (6) inch nominal) casing requires a twelve and three fourths (12 3/4) inch OD (twelve (12) inch nominal) temporary casing or an eleven and seven eights (11 7/8) inch (twelve (12) inch nominal) minimum borehole). ()

08. Sealing of Wells. Sealing requirements described herein are minimum standards that apply to all wells. The Director may establish alternate minimum sealing requirements in specific areas when it can be determined through detailed studies of the local hydrogeology that a specific alternate minimum will provide protection of the ground water from waste and contamination. ()

a. Consolidated Formations. When a water well is drilled into and acquires water from an aquifer that consists of consolidated formations that are above the water table, casing must be installed so that it extends and is sealed to a depth not less than thirty-eight (38) feet (Figure 04, Appendix A). If the well depth is less than thirty-eight (38) feet from land surface, well casing must be installed and sealed five (5) feet into the consolidated formation or to a depth of eighteen (18) feet, whichever is greater. ()

b. Unconsolidated Formations without Confining Layers of Clay. When a water well is drilled into and acquires water from an unconfined aquifer that is overlain with unconsolidated formations, such as sand and gravel without confining layers of clay, well casing must extend to at least five (5) feet below the water table and be sealed to a depth not less than thirty-eight (38) feet (Figure 05, Appendix A). If the well depth is less than thirty-eight (38) feet well casing must extend to at least five (5) feet below the water table or eighteen (18) feet, whichever is greater, and be sealed to a depth of at least eighteen (18) feet. ()

i. The extensive (for example, one hundred fifty (150) feet thick or more) unconsolidated, non-stratified, sand and gravel of the Rathdrum Prairie are characterized by extremely high transmissivity and hydraulic conductivity. Under these conditions, sealing wells to depths greater than eighteen (18) feet may not be additionally protective. When a water well is drilled within the boundaries of the Rathdrum Prairie, (shown in Figure 06, Appendix A of these rules), well casing must extend to at least five (5) feet below the water table and be sealed to a depth not less than eighteen (18) feet (Figure 07, Appendix A). ()

c. Unconsolidated Formations with Confining Layers of Clay. When a well is drilled into and acquires water from an aquifer that is overlain by unconsolidated deposits such as sand and gravel, and there are confining layers of clay above the water table, well casing must be installed from the land surface to the confining layer immediately above and in contact with the production zone and sealed to a depth not less than thirty-eight (38) feet (Figure 08, Appendix A). If the well depth is less than thirty-eight (38) feet from land surface, well casing must extend and be sealed into the first confining layer or to a depth of eighteen (18) feet, whichever is greater. ()

09. Sealing Artesian Wells. ()

a. Unconsolidated Formations. When artesian water is encountered in unconsolidated formations, the production zone or open interval must be limited to zones of like pressure, temperature, and quality. Water encountered in oxidized sediments must not be comingled with water encountered in reduced sediments. Well casing must extend from land surface into the lower most confining layer above the production zone, and must be sealed: ()

i. From land surface to a depth of at least thirty-eight (38) feet; and ()

ii, Through all confining layer(s); and ()

(1) A minimum of five (5) feet of seal material must be placed into or through the lower most confining layer above the production zone (Figure 09, Appendix A); or ()

(2) Five (5) feet into or through the lowermost confining layer above the production zone and continuously to land surface (Figure 09, Appendix A). ()

iii. If the well depth is less than thirty-eight (38) feet, the well must be cased and sealed from land surface to the confining layer in direct contact with the production zone or to a depth of eighteen (18) feet, whichever is greater. ()

b. Consolidated Formations. When artesian water is encountered in a consolidated formation, well casing must be installed and sealed from land surface to a depth of at least thirty-eight (38) feet; and ()

i. If the consolidated formation is overlain by a permeable formation(s) and water will rise above the consolidated formation, well casing must extend and be sealed at least five (5) feet into the confining portion of the consolidated formation (Figure 10, Appendix A). ()

ii. If the well depth is less than thirty-eight (38) feet, the well must be cased and sealed from land surface five (5) feet into the confining consolidated formation or to a depth of eighteen (18) feet, whichever is greater. ()

c. Control Device. Pursuant to Section 42-1603, Idaho Code, if the well flows at land surface, it must be equipped with a control device approved by the Director, so that the flow can be completely stopped. If leaks occur around the well casing or adjacent to the well, the well must be completed with seals, casing or cement grout to eliminate the leakage. ()

i. Flowing artesian wells must be equipped with an approved pressure gage fitting that will allow access for measurement of shut-in pressure of a flowing well. All pressure gage fittings must include control valves such that the pressure gage can be removed without resulting in artesian flow from the well. ()

ii. The well driller must not move his well drilling rig from the site until all requirements have been satisfied. Some mixing of water may be allowed to develop an adequate water well; however, the mixing must be restricted to water zones of similar pressure, temperature and quality. The driller must take precautions to case and seal out zones which may lead to waste or contamination. ()

10. Alternative Methods for Sealing Wells. To accommodate for new technology, and in consideration of the wide variety of drilling equipment used to construct wells, other methods of sealing wells not

specifically addressed in these rules may be allowed. The Director may consider specific proposals for alternative methods of sealing on a case by case basis. Director approval or acceptance of such procedures will not constitute a “waiver” of any requirements of these rules. In such cases, the well driller must provide sufficient information for the Director to determine that the full intent of the sealing requirements will be satisfied if an alternative method is employed. If it is determined that a specific alternate method will provide protection of the ground water from waste and contamination, the Director may issue a statement of acceptance qualifying the use and implementation of such methods. ()

11. Injection Wells. In addition to meeting the requirements of Rule 25 of these rules, the construction, modification, or decommissioning (abandonment) of all injection wells over eighteen (18) feet in vertical depth must also comply with the IDAPA 37.03.03, “Rules for the Construction and Use of Injection Wells,” and the injection well permit. Drillers must obtain from the Director a certified copy of the permit authorizing construction or modification of an injection well before beginning work. ()

12. Cathodic Protection Wells. All cathodic protection wells must be constructed by a licensed well driller in compliance with these rules. A detailed construction plan must be included with the drilling permit application. ()

13. Monitoring and Remediation Wells. All monitoring wells and remediation wells must be constructed and maintained in a manner that will prevent waste or contamination and as otherwise required by these rules. When a monitoring well or a remediation well is no longer useful or needed, the owner or operator of the well must decommission (abandon) the well in accordance with Rule 25, Subsection 025.16 of these rules. No person may divert ground water from a monitoring well or a remediation well for any purpose not authorized by the Director. The application for a permit for all monitoring wells and all remediation wells must include a design proposal prepared by a licensed engineer or registered geologist pursuant to Section 42-235, Idaho Code. Blanket permits for monitoring well and remediation well networks may be approved for site-specific monitoring and remediation programs. The designs and specification for monitoring wells and remediation wells must demonstrate that: ()

- a. The ground water resources are protected against waste and contamination; ()
- b. The well(s) will inject or withdraw only fluids, gases or solutions approved by the Director; ()
- c. The well(s) will be constructed so as to prevent aquifer commingling; and ()
- d. The well(s) will be properly decommissioned (abandoned) upon project completion and in accordance with these rules. ()

14. Closed Loop Heat Exchange Wells. The well driller must construct closed loop heat exchange wells consistent with these rules. The well driller is not required to install steel casing in such wells. When constructing a closed loop heat exchange well, the well driller must: ()

- a. Construct each borehole of sufficient size to provide the annular space required by these rules. ()
- b. Seal the annular space of each borehole with approved seal material in accordance with these rules; ()
- c. Install fluid-tight circulating pipe, composed of high-density polyethylene, grade PE3408, minimum cell classifications PE355434C or PE345434C conforming to ASTM Standard D3350, or other Director-approved pipe; ()
- d. Join pipe using thermal fusion techniques according to ASTM Standards D-3261 or D-2683. All personnel creating such system joints must be trained in the appropriate thermal fusion technologies; ()
- e. Use only propylene glycol, or other circulating fluid approved by the Director; ()
- f. Ensure that any other system additive is NSF approved and has prior approval from the Director; ()

- ()

g. Pressure test each loop with potable water prior to grout installation; ()
- h. Pressure test the system with potable water prior to installation of the circulating fluid at one hundred percent (100%) of the designed system operating pressure for a minimum duration of twenty-four (24) hours; and ()
- i. Properly repair or decommission (abandon) all loops failing the test by pressure pumping approved seal material through the entire length of each failed loop. After grouting, loop ends must be fused together or capped. ()

15. Access Port or Pressure Gage. Upon completion of a well and before removal of the well rig from the site, the well must be equipped with an access port that will allow for measurement of the depth to water or an approved pressure gage fitting that will allow access for measurement of shut-in pressure of an artesian flowing well. All pressure gage fittings must include control valves such that the pressure gage can be removed. Approved access ports are illustrated in Figure 11, APPENDIX A, together with approved locations for pressure gage fittings. Air lines are not a satisfactory substitution for an access port. Nonflowing domestic and stock water wells that are to be equipped with a sanitary seal with a built-in access port are exempt from this requirement. ()

16. Decommissioning (Abandoning) of Wells. ()

a. The well owner is charged with maintaining and properly decommissioning (abandoning) a well in a manner that will prevent waste or contamination, or both, of the ground water. No person is allowed to decommission a well in Idaho without first obtaining a driller's license or receiving a waiver of the license requirement from the Director of the Department of Water Resources. Authorization is required from the Director prior to decommissioning any well. Upon decommissioning, the person who decommissioned the well must submit to the Director a report describing the procedure. ()

b. The Director may require decommissioning of a well in compliance with the provisions of these rules, if the well: ()

- i. Does not meet minimum well construction standards; ()
- ii. Meets the definition of an unusable well; ()
- iii. Poses a threat to human health and safety; ()
- iv. Is in violation of IDAPA 58.01.11, "Ground Water Quality Rule"; or ()
- v. Has no valid water right or other authorization acceptable to the Director for use of the well. ()

c. When required by the Director, decommissioning must be done in accordance with the following: ()

i. Cased wells and boreholes without a continuous seal from the top of the intakes or screen to the surface. The well driller must use one (1) of the following methods as applicable: ()

(1) The Director may require that well casing be perforated every five (5) feet from the bottom of the casing to within five (5) feet of the surface. Perforations made must be adequate to allow the free flow of seal material into any voids outside the well casing. There must be at least four equally spaced perforations per section circumference. Approved grout must be pressure pumped to fill any voids outside of the casing. A sufficient volume must be used to completely fill the well and annular space; or ()

(2) Fill the borehole with approved seal material as the casing is being removed. ()

ii. Cased wells and boreholes with full-depth seals. If the well is cased and sealed from the top of the screen or production zone to the land surface, the well must be completely filled with approved seal material. ()

iii. Uncased wells must be completely filled with approved seal material. ()

iv. Dry hole wells or wells from which the quantity of water to meet a beneficial use cannot be obtained must be decommissioned with cement grout, concrete or other approved seal material in accordance with these rules. ()

17. Completion of a Well. The Director will consider that every well is completed when the well drilling equipment has been removed, unless written notice has been given to the Director by the well driller that he intends to return and do additional work on the well within a specified period of time. Upon completion of the well, the well must meet all of the required standards. ()

a. Upon completion of drilling and prior to removal of well drilling equipment from a water well site, the top of the casing must be completely covered with: ()

i. A one-fourth inch (1/4") thick solid, new or like-new steel plate with a three-fourths inch (3/4) threaded and plugged access port, welded to and completely covering the casing (Figure 12, Appendix A); or ()

ii. A threaded cap, or a commercially manufactured watertight sanitary well cap (Figure 12, Appendix A); or ()

iii. A commercially manufactured water-tight, snorkel-vented or non-vented well cap on any well susceptible to submergence; or ()

iv. A control device approved by the Director per Section 42-1603, Idaho Code, on any well that flows at land surface (Figure 11, Appendix A). ()

b. Upon the completion of every well, the well driller must permanently affix the stainless steel well tag to the steel surface casing in a manner and location that maintains tag legibility. For closed loop heat exchange wells, the well driller must obtain approval for the well tag placement and method of attachment. The well driller must secure each tag by: ()

i. A full-length weld across the top and down each side of the tag; or ()

ii. Using one (1) stainless steel, closed-end domed rivet near each of the four (4) corners of the tag. ()

iii. Prior to welding or riveting, the tag must be pre-shaped to fit the casing such that both sides to be welded or riveted touch the casing and no gaps exist between the tag and casing. ()

18. Pitless Adapters. When a pitless adaptor is used (Figure 12, Appendix A), the adaptor should be of the type approved by the NSF International testing laboratory or the approval code adopted by the Pitless Adaptor Division of the Water Systems Council. The pitless adaptor, including the cap or cover, casing extension, and other attachments, must be so designed and constructed to be water tight and to prevent contamination of the potable water supply from external sources. If a permanent surface or outer casing is installed and is cut off or breached to install the pitless adaptor on an inner well casing or liner, the space between the permanent outer casing and the liner or inner casing must be sealed. The well owner or person installing the pitless adaptor must then seal the excavation surrounding the pitless adaptor using an approved seal material. ()

19. Pump Installation. No person is allowed to install a pump into any well that would cause a violation of Rule 25, of these rules or other applicable rules or state law. ()

20. Explosives. Explosives used in well construction must never be detonated inside the required well

casing. Approved explosive casing perforators may be exempted by the Director. ()

21. Hydraulic Fracturing. Hydraulic fracturing must be performed only by well drillers licensed in Idaho. The pressure must be transmitted through a drill string and must not be transmitted to the well casing. The driller must provide a report to the Director of the fracturing work which must include well location, fracturing depth, fracturing pressures and other data as requested by the Director. ()

22. Drilling Fluids or Drilling Additives. The well driller must use only potable water and drilling fluids or drilling additives that are manufactured for use in water wells, are NSF International, American Petroleum Institute (API), or ASTM/ANSI approved; and do not contain a concentration of any substance in excess of Primary Drinking Water Standards, as set forth in IDAPA 58.01.08, "Rules for Public Drinking Water Systems," according to manufacturer's specifications. The well driller may seek approval from the Director to use specific, non-certified products on a case-by-case basis. In addition, the well driller must ensure the containment of all drilling fluids and materials used or produced to the immediate drilling site, and will not dispose of such fluids or materials into any streams, canals, boreholes, wells, or other subsurface pathways. ()

23. Disinfection and Decontamination. Upon completion of a well, the driller is responsible for adding the appropriate amount of disinfecting chemical compound and distributing it throughout the well to achieve a uniform concentration for "in place" disinfection of the well. Chlorine compounds used in accordance with the table listed below will satisfy this requirement. Other methods may be used if approved by the Director in advance.

Amount of Chlorine Needed Per 100 Feet of Water in Well			
Casing Diameter (in.)	Gallons of water in casing per 100 ft. of water depth	Amount of 5.25% Sodium Hypochlorite (Unscented Laundry Bleach)	Amount of 65% Calcium Hypochlorite (Chlorine Granules)
6	147	2 ¼ cups	3 tbsp
8	261	4 cups	5 tbsp
10	408	6 ¼ cups	½ cup
12	588	9 cups	¾ cup
16	1044	1 gal	1 ¼ cup
Note: 1 gal = 4 qt = 8 pt = 16 cups; 1 cup = 16 tbsp			
Chlorine granules or tablets must be dissolved and placed into the well as a solution.			
If another concentration of hypochlorite solution is used, the following equation should be used for calculating amounts.			
$(\text{Volume of water in gallons}) \times (0.08) / \% \text{ Hypochlorite (e.g. } 50\% = 50) = \text{cups of hypochlorite}$			
Example: To treat 147 gallons of water using a 50% concentration of hypochlorite solution: $(147 \text{ gallons water}) \times (0.08) / 50 = .23$ (or approximately 1/4) cup of 50% Hypochlorite solution			

()

24. Sand Production. The maximum sand content produced from a well after initial well development must not exceed fifteen (15) ppm. For the purpose of this rule, sand is considered to be any sediment particle retained on a U.S. standard sieve #200 (seventy-five hundredths (0.075) mm to two (2) mm). ()

a. When necessary to mitigate sand production the well driller must: ()

i. Construct each well with properly sized casing, screen(s) or perforated intake(s); and ()

- ii. Install properly sized filter pack(s); or ()
 - iii. Install pre-packed well screens; or ()
 - iv. Employ other methods approved by the Director. ()
- b.** The Director may grant a waiver exempting a well producing water that exceeds the maximum sand content only if the well driller has met the requirements of Rule 25, Subsection 025.24.a. ()
- c.** Sand production in public water system wells. Wells used in connection with a public water system have more stringent requirements. See IDAPA 58.01.08, "Idaho Rules for Public Water Systems." ()

25. Well Development and Testing. For each well the well driller must measure and record the static (non-pumping) water level and the pumping water level, and the production rate. The production rate will be determined by a pump, bailer, air-lift, or other industry approved test of sufficient duration to establish production from the well. For wells with no returns the driller must report no returns and the static water level. This information must be documented on the well driller's report. ()

026. -- 029. (RESERVED)

030. CONSTRUCTION OF LOW TEMPERATURE GEOTHERMAL RESOURCE WELLS AND BONDING (RULE 30).

01. General. Drillers constructing low temperature geothermal resource wells (bottom hole temperature more than eighty-five (85) degrees Fahrenheit and less than two hundred twelve (212) degrees Fahrenheit) must be qualified under the Well Driller Licensing Rules. All low temperature geothermal resource wells must be constructed in such a manner that the resource will be protected from waste due to lost artesian pressure and temperature. The owner or well driller is required to provide bottom hole temperature data, but the Director may make the final determination of bottom hole temperature, based upon information available to him. ()

a. All standards and guidelines for construction and decommissioning (abandonment) of cold water wells apply to low temperature geothermal resource wells except as modified by Rule 30, Subsections 030.03, 030.04, and 030.06. ()

b. A drilling prospectus must be submitted to and approved by the Director prior to the construction, modification, deepening or decommissioning (abandonment) of any low temperature geothermal resource well. The well owner and the well driller are responsible for the prospectus and subsequent well construction. ()

02. Well Owner Bonding. The owner of any low temperature geothermal resource well must file a surety bond or cash bond as required by Section 42-233, Idaho Code, with the Director in an amount not less than five thousand dollars (\$5,000) nor more than twenty thousand dollars (\$20,000) payable to the Director prior to constructing, modifying or deepening the well after July 1, 1987. The bond amount will be determined by the Director within the following guidelines. The bond will be kept in force for one (1) year following completion of the well or until released in writing by the Director, whichever occurs first. ()

a. Any well less than three-hundred (300) feet deep with a bottom hole temperature of less than one hundred twenty (120) degrees Fahrenheit and a shut-in pressure of less than ten (10) pounds per square inch gage (psig) at land surface must maintain a bond of five thousand dollars (\$5,000). ()

b. The owner of any well three hundred (300) feet to one thousand (1,000) feet deep with a bottom hole temperature of less than one hundred fifty (150) degrees Fahrenheit and a shut-in pressure of less than fifty (50) psig at land surface must maintain a bond of ten thousand dollars (\$10,000). ()

c. The owner of any low temperature geothermal resource well not covered by Rule 30, Subsections 030.02.a. and 030.02.b. must maintain a bond of twenty thousand dollars (\$20,000). ()

d. The Director may decrease or increase the bonds required if it is shown to his satisfaction that well

construction or other conditions merit an increase or decrease. ()

e. The bond requirements of Section 42-233, Idaho Code, are applicable to wells authorized by water right permits or licenses having a priority date earlier than July 1, 1987, if the well authorized by the permit or license was not constructed prior to July 1, 1987 or if an existing well constructed within the terms of the permit or license is modified, deepened or enlarged on or after July 1, 1987. ()

03. Casing. Low temperature geothermal resource wells must be properly cased and sealed to protect from cooling by preventing intermingling with cold water aquifers. ()

a. Steel casing which meets or exceeds the minimum specifications for permanent steel casing of Rule 25, Subsection 025.04 must be installed in every well. The Director may require a more rigid standard for collapse and burst strength as depths or pressures may dictate. Every low temperature geothermal resource well which flows at land surface must have a minimum of forty (40) feet of conductor pipe set and cemented its entire length. ()

b. Casing must be installed from twelve (12) inches above land surface into the overlying confining strata of the thermal aquifer. The casing schedule may consist of several different casing strings (i.e. conductor pipe, surface casing, intermediate casing, production casing) which may all extend to land surface or may be overlapped and sealed or packed to prevent fluid migration out of the casing at any depth (Figure 13, Appendix A). ()

i. Low temperature geothermal resource wells less than one thousand (1,000) feet deep and which encounter a shut-in pressure of less than fifty (50) psig at land surface must have two (2) strings of casing set and cemented to land surface. Conductor pipe must be a minimum of forty (40) feet in length or ten percent (10%) of the total depth of the well whichever is greater. Surface casing must extend into the confining stratum overlying the aquifer. ()

ii. Low temperature geothermal resource wells one thousand (1,000) feet or more in depth or which will likely encounter a shut-in pressure of fifty (50) psig or more at land surface require prior approval of the drilling plan by the Director and must have three strings of casing cemented their total length to land surface. Conductor pipe must be a minimum length of forty (40) feet. Surface casing must be a minimum of two hundred (200) feet in length or ten percent (10%) of the total depth of the well, whichever is greater. Intermediate casing must extend into the confining stratum overlying the aquifer. ()

c. Subsection 030.03.b. may be waived if it can be demonstrated to the Director through the lithology, electrical logs, geophysical logs, injectivity tests or other data that formations encountered below the last casing string set, will neither accept nor yield fluids at anticipated pressure to the borehole. ()

d. A nominal borehole size of two (2) inches in diameter larger than the Outside Diameter (O.D.) of the casing or casing coupler (whichever is larger) must be drilled. All casing designations must be by O.D. and wall thickness and must be shown to meet a given specification of the American Petroleum Institute, the American Society for Testing and Materials, the American Water Works Association or the American National Standards Institute. The last string of casing set during drilling operations must, at the Director's option, be flanged and capable of mounting a valve or blow out prevention equipment to control flows at the surface before drilling resumes. ()

04. Sealing of Casing. All casing must be sealed its entire length with cement or a cement grout mixture unless waived by the Director. The seal material must be placed from the bottom of the casing to land surface either through the casing or tubing or by use of a tremie pipe. The cement or cement grout must be undisturbed for a minimum of twenty-four (24) hours or as needed to allow adequate curing. ()

a. A caliper log may be run for determining the volume of cement to be placed with an additional twenty-five (25%) percent on site ready for mixing. If a caliper log is not run, an additional one hundred (100%) percent of the calculated volume of cement must be on site ready for placement. ()

b. If there is no return of cement or cement grout at the surface after circulating all of the cement mixture on site, the Director will determine whether remedial work should be done to insure no migration of fluids around the well bore. ()

c. The use of additives such as bentonite, accelerators, retarders, and lost circulation material must follow manufacturer's specifications. ()

05. Blow Out Prevention Equipment. The Director may require the installation of gate valves or annular blow out prevention equipment to prevent the uncontrolled blow out of drilling mud and geothermal fluid. ()

06. Repair of Wells. The well driller must submit a drilling prospectus to the Director for review and approval prior to the repair or modification of a low temperature geothermal resource well. ()

07. Decommissioning (Abandoning) of Wells. Proper decommissioning (abandonment) of any low temperature geothermal resource well requires the following: ()

a. All cement plugs must be pumped into the hole through drill pipe or tubing. ()

b. All open annuli must be completely filled with cement. ()

c. A cement plug at least one hundred (100) feet in vertical depth must be placed straddling (fifty (50) feet above and fifty (50) feet below) the zone where the casing or well bore meets the upper boundary of each ground water aquifer. ()

d. A minimum of one hundred (100) feet of cement must be placed straddling each drive shoe or guide shoe on all casing including the bottom of the conductor pipe. ()

e. A surface plug of either cement grout or concrete must be placed from at least fifty (50) feet below the top of the casing to the top of the casing. ()

f. A cement plug must extend at least fifty (50) feet above and fifty (50) feet below the top of any liner installed in the well. The Director may waive this rule upon a showing of good cause. ()

g. Other decommissioning (abandonment) procedures may be approved by the Director if the owner or operator can demonstrate that the low temperature geothermal resource, ground waters, and other natural resources will be protected. ()

h. Approval for decommissioning (abandonment) of any low temperature geothermal well must be in writing by the Director prior to the beginning of any decommissioning (abandonment) procedures. ()

031. -- 034. (RESERVED)

035. HEALTH STANDARDS (RULE 35).

01. Public Water System Wells. In addition to meeting these standards, all wells that are constructed for public supply of domestic water must meet all of the requirements set forth by the Idaho Department of Environmental Quality Rules, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems." ()

02. Special Standards for Construction of Wells When Mineralized or Contaminated Water Is Encountered. Any time in the construction of a well that mineralized or contaminated water is encountered, the well driller must take the appropriate steps necessary to prevent the poor quality waters from entering the well or moving up or down the annular space around the well casing. The method employed to case and seal out this water will be determined by the well driller, provided all other minimum standards are met. The well driller will take special precautions in the case of filter-packed wells to prevent water of inferior quality from moving vertically in the filter packed portions of the well. All actions taken will be clearly documented on the well driller's report. ()

03. Distances From Contaminant Sources. All water wells constructed for domestic use must comply with minimum distances from septic tanks, drain fields, drainfield replacement area and other siting requirements as set forth in Rule 25, Subsection 025.01.d. ()

036. OWNERS RESPONSIBILITIES FOR WELL USE AND MAINTENANCE (RULE 36).

After a well is completed the well owner is responsible for water quality testing, properly maintaining the well, and reporting problems with a well to the Director. All wells must be capped, covered and sealed such that debris cannot enter the well, persons or animals cannot fall into the well, and water cannot enter the well around the outside of the casing. Pursuant to Section 42-1603, Idaho Code, the owner of any artesian well that will flow at land surface is required to apply to the Director for approval of a flow control device. ()

01. Use. The well owner must not operate any well in a manner that causes waste or contamination of the ground water resource. Failure to operate, maintain, knowingly allow the construction of any well in a manner that violates these rules, or failure to repair or properly decommission (abandon) any well as herein required will subject the well owner to civil penalties as provided by statute. ()

02. Maintenance. The well owner must: ()

a. Not allow modification to wells under their control without first obtaining an approved Idaho Department of Water Resources (IDWR) permit, pursuant to Section 42-235, Idaho Code; ()

b. Maintain the minimum casing height of twelve (12) inches above land surface and finished grade; ()

c. Maintain the appropriate well cap, and control device if required, according to these Rules; and ()

d. Not install or allow the installation of any well pump that would cause a violation of the sand production requirements in accordance with these Rules or allow the well to pump in excess of that allowed by a valid water right or domestic exemption. ()

e. Maintain the well to prevent waste or contamination of ground waters through leaky casings, pipes, fittings, valves, pumps, seals or through leakage around the outside of the casings, whether the leakage is above or below the land surface. Any person owning or controlling a non-compliant well must have the well repaired by a licensed well driller under a permit issued by the Director in accordance with these Rules. ()

03. New Construction. The well owner must not construct or allow construction of any permanent building, except for buildings to house a well or plumbing apparatus, or both, closer than ten (10) feet from an existing well. ()

04. Maintain All Other Separation Distances. The well owner must not construct or install, or allow the construction or installation of any object listed in a location closer than that allowed by the table of Rule 25, Subsection 025.01.d. ()

05. Unusable Wells. The well owner must have any unusable well repaired or decommissioned (abandoned) by a licensed well driller under a permit issued by the Director in accordance with these Rules. ()

06. Wells Posing a Threat to Human Health and Safety or Causing Contamination of the Ground Water Resource. The well owner must have any well shown to pose a threat to human health and safety or cause contamination of the ground water resource immediately repaired or decommissioned (abandoned) by a licensed well driller under a permit issued by the Director in accordance with these Rules. ()

037. -- 039. (RESERVED)

040. AREAS OF DRILLING CONCERN (RULE 40).

01. General. ()

a. The Director may designate an "area of drilling concern" to protect public health, or to prevent waste and contamination of ground or surface water, or both, because of factors such as aquifer pressure, vertical depth to the aquifer, warm or hot ground water, or contaminated ground or surface waters. ()

b. The designation of an area of drilling concern does not supersede or preclude designation of part or all of an area as a Critical Ground Water Area (Section 42-233a, Idaho Code), Ground Water Management Area (Section 42-233b, Idaho Code), or Geothermal Resource Area (Sections 42-4002 and 42-4003, Idaho Code). ()

c. The designation of an area of drilling concern can include certain aquifers or portions thereof while excluding others. The area of drilling concern may include low temperature geothermal resources while not including the shallower cold ground water systems. ()

02. Bond Requirement. ()

a. The minimum bond to be filed by the well driller with the Director for the construction or modification of any well in an area of drilling concern is ten thousand dollars (\$10,000) unless it can be shown to the satisfaction of the Director that a smaller bond is sufficient. ()

b. The Director may determine on a case-by-case basis if a larger bond is required based on the estimated cost to repair, complete or properly decommission (abandon) a well. ()

03. Additional Requirements. ()

a. A driller must demonstrate to the satisfaction of the Director that he has the experience and knowledge to adequately construct or decommission (abandon) a well which encounters warm water or pressurized aquifers. ()

b. A driller must demonstrate to the satisfaction of the Director that he has, or has immediate access to, specialized equipment or resources needed to adequately construct or decommission (abandon) a well. ()

041. -- 044. (RESERVED)

045. DRILLING PERMIT REQUIREMENTS (RULE 45).

01. General Provisions. ()

a. Drilling permits are required pursuant to Section 42-235, Idaho Code, prior to construction or modification of any well. ()

b. Drilling permits will not be issued for construction of a well which requires another separate approval from the department, such as a water right permit, transfer, amendment or injection well permit, until the other separate permitting requirements have been satisfied. ()

c. The Director may allow the use of a start card permit or give verbal approval to a well driller for the construction of cold water single family domestic wells. Start cards must be received by the Department at least two office hours prior to commencing construction of the well. ()

d. The Director may give verbal approval to a well driller for the construction of a well for which other permitting requirements have been met, provided that the driller or owner has filed the drilling permit application and appropriate fee. ()

e. The Director will not give a verbal approval or allow the use of a start card permit for wells constructed in a designated Area of Drilling Concern, Critical Ground Water Area, or Ground Water Management Area. ()

f. A well driller will not construct, drill or modify any well until a drilling permit has been issued, or verbal approval granted. ()

02. Effect of a Permit. ()

a. A drilling permit authorizes the construction or modification of a well in compliance with these rules and the conditions of approval on the permit. ()

b. A drilling permit does not constitute a water right, injection well permit or other authorization which may be required, authorizing use of water from a well or discharge of fluids into a well. ()

c. A drilling permit may not be assigned from one owner to another or from one driller to another. ()

d. A drilling permit authorizes the construction of one (1) well, except for blanket monitoring well and blanket remediation well drilling permits. ()

03. Exclusions. For the purposes of these Rules, artificial openings and excavations that do not constitute a well and are not subject to the drilling permit requirements must be modified, constructed, or decommissioned (abandoned) in accordance with minimum well construction standards. The Director may require decommissioning (abandonment) of artificial openings and excavations constructed pursuant to Rule 45, Subsection 045.03 of these rules, when the use ceases or if the holes may contribute to waste or contamination of the ground water. The following types of artificial openings and excavations are not considered wells: ()

a. Artificial openings and excavations with total depth less than eighteen (18) feet. ()

b. Artificial openings and excavations for collecting soil or rock samples, determining geologic properties, or mineral exploration or extraction, including gravel pits. ()

c. Artificial openings and excavations for oil and gas exploration for which a permit has been issued pursuant to Section 47-320, Idaho Code. ()

d. Artificial openings and excavations constructed for de-watering building or dam foundation excavations. ()

04. Converting an Artificial Openings or Excavations Not Constructed as a Well for Use as a Well. Artificial openings and excavations that were not constructed as a well pursuant to a drilling permit, if subsequently converted to obtain water, monitor water quantity or quality, or to dispose of water or other fluids, must be reconstructed by a licensed driller in compliance with well construction standards and drilling permit requirements. ()

05. Fees. ()

a. Drilling permit fees are as prescribed by Section 42-235, Idaho Code. ()

b. The difference between the drilling permit fee required by Section 42-235 Idaho Code as applicable, must be paid when an existing well constructed on or after July 1, 1987, for which the lower drilling permit fee was paid, is authorized by the Director for a use which would require the larger drilling permit fee. ()

046. -- 049. (RESERVED)

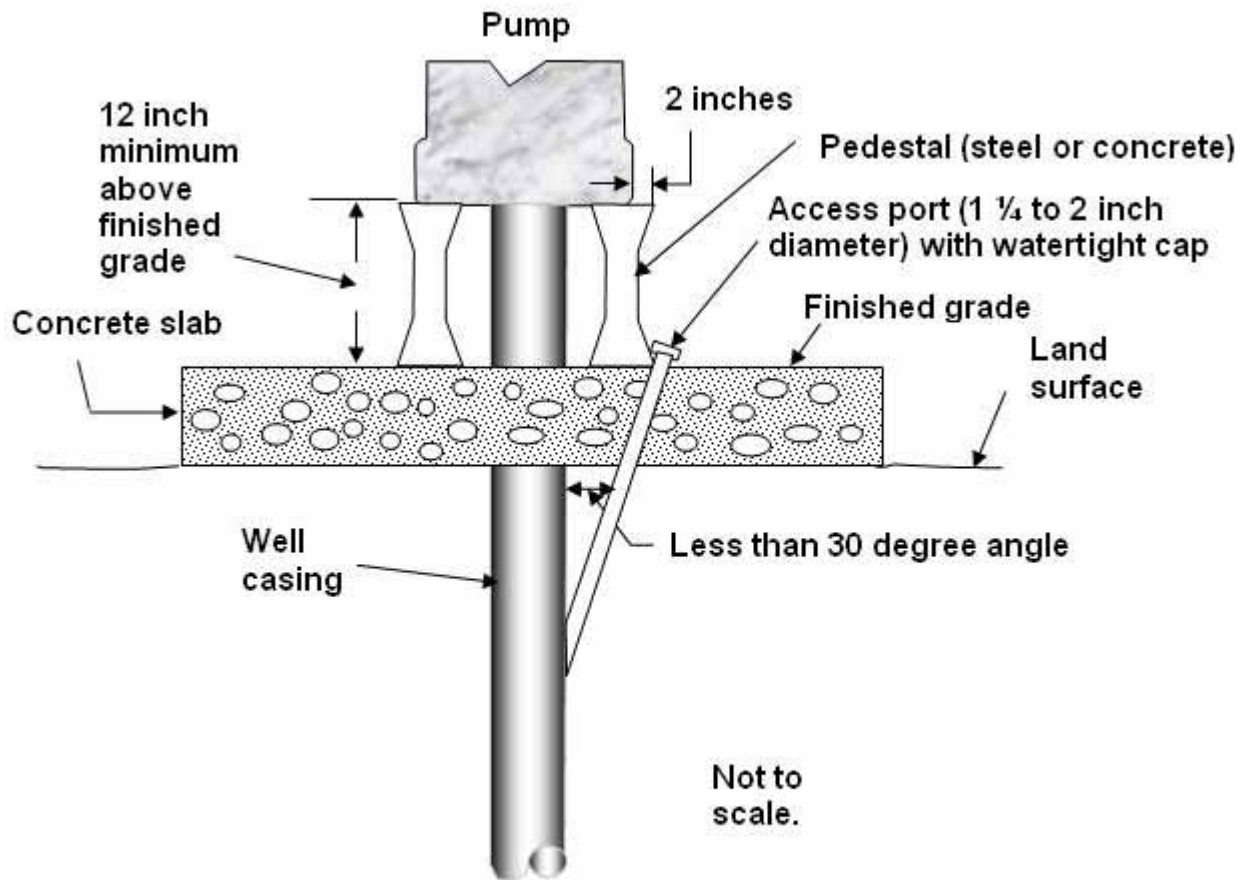
050. PENALTIES (RULE 50).

A person owning or controlling a well that allows waste or contamination of the state's ground water resources or causes a well not to meet the construction standards provided in these Rules is subject to the civil penalties as provided by statute. A driller who violates the foregoing provisions of these well construction standards Rules is subject to enforcement action and the penalties as provided by Statute. ()

051. -- 999. (RESERVED)

APPENDIX A

Figure 01. Concrete Slabs and Finished Grade



Note. Pedestal shall not extend more than two (2) inches past pump base in horizontal direction.

Figure 02. Annular Space and Overbore

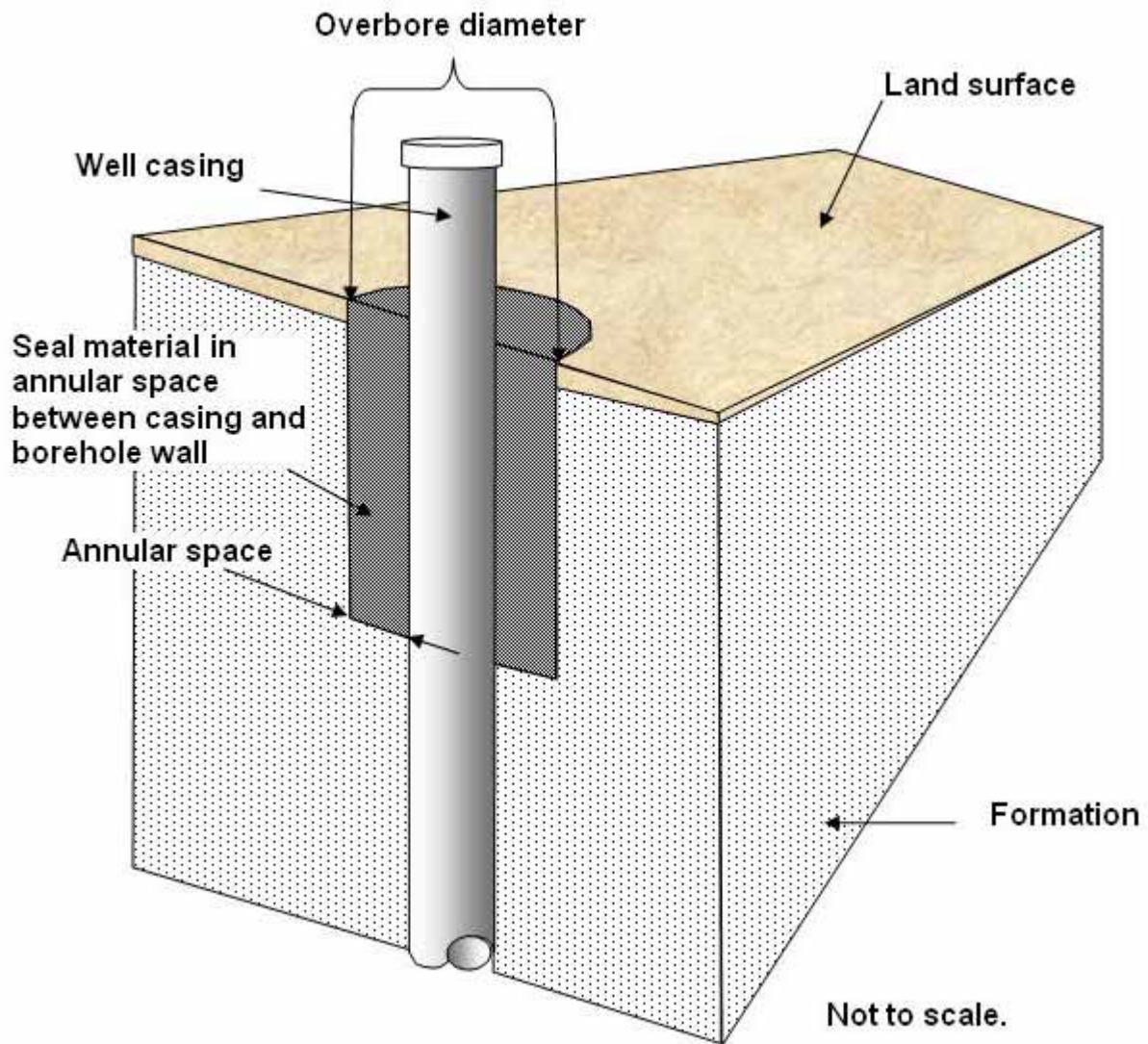


Figure 03. Overbore Requirements When a Tremie Pipe is Left in Place and A Grout Seal Installed

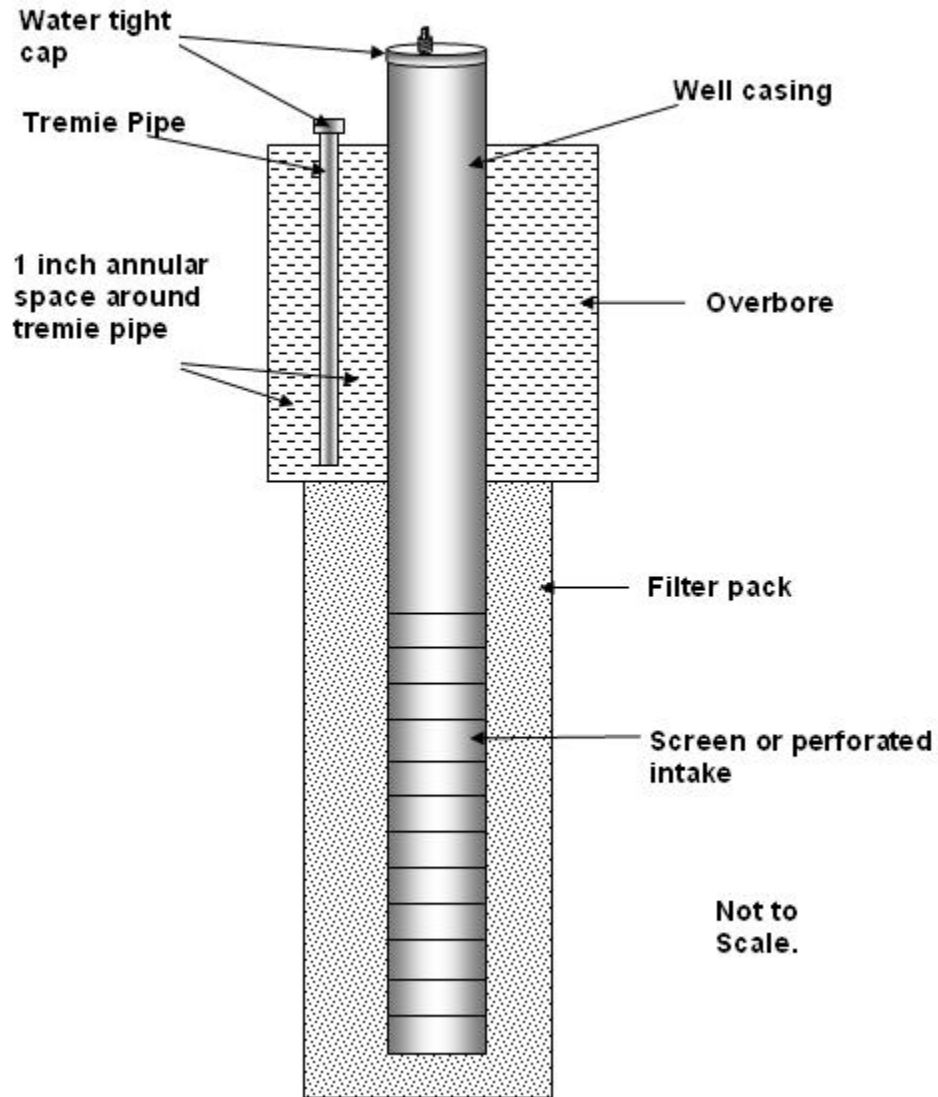


Figure 04. Sealing Requirements in Consolidated Formations

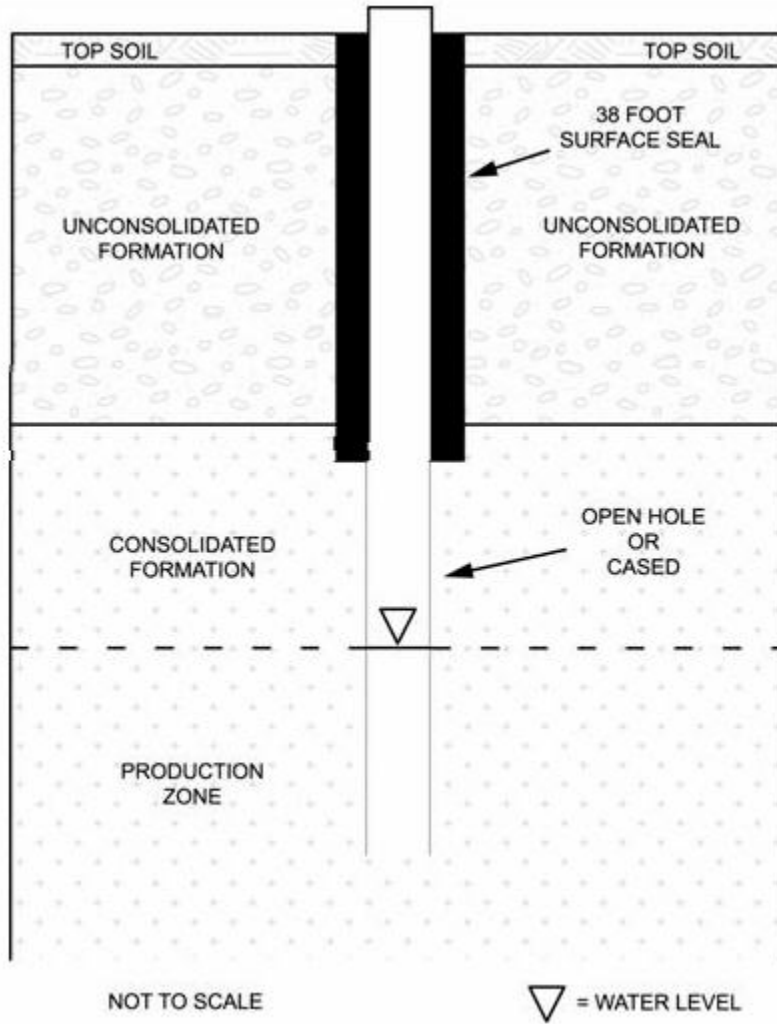


Figure 05. Sealing Requirements in Unconsolidated Formation without Confining Layers

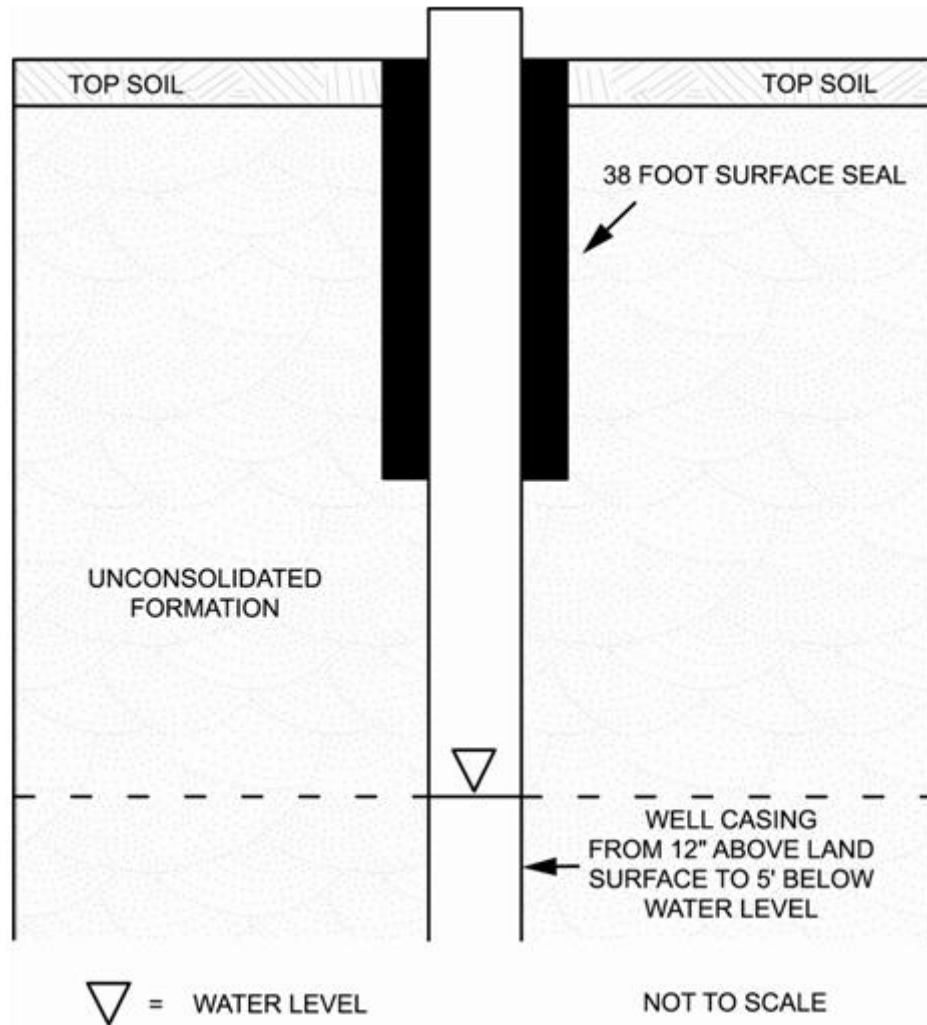


Figure 06. Rathdrum Prairie Boundary

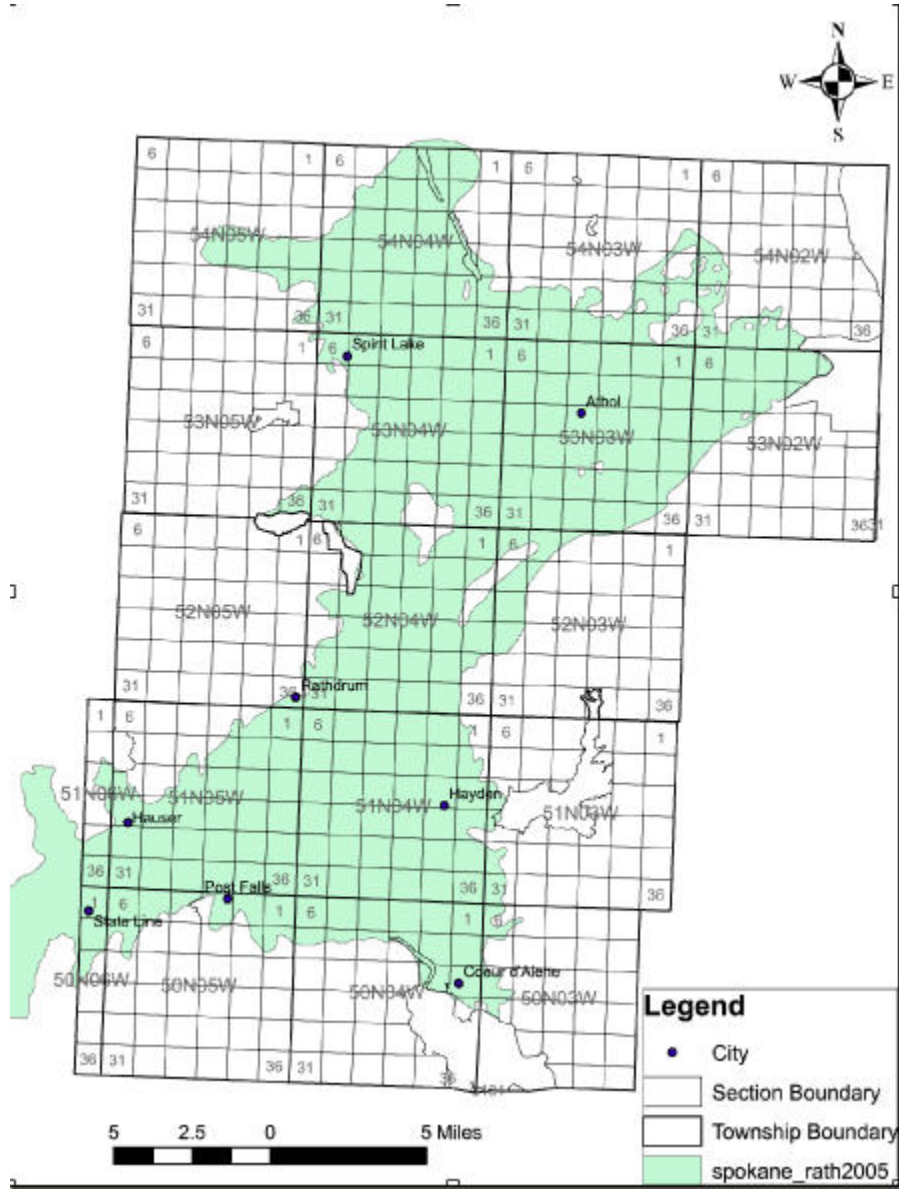


Figure 07. Sealing Requirements in the Rathdrum Prairie

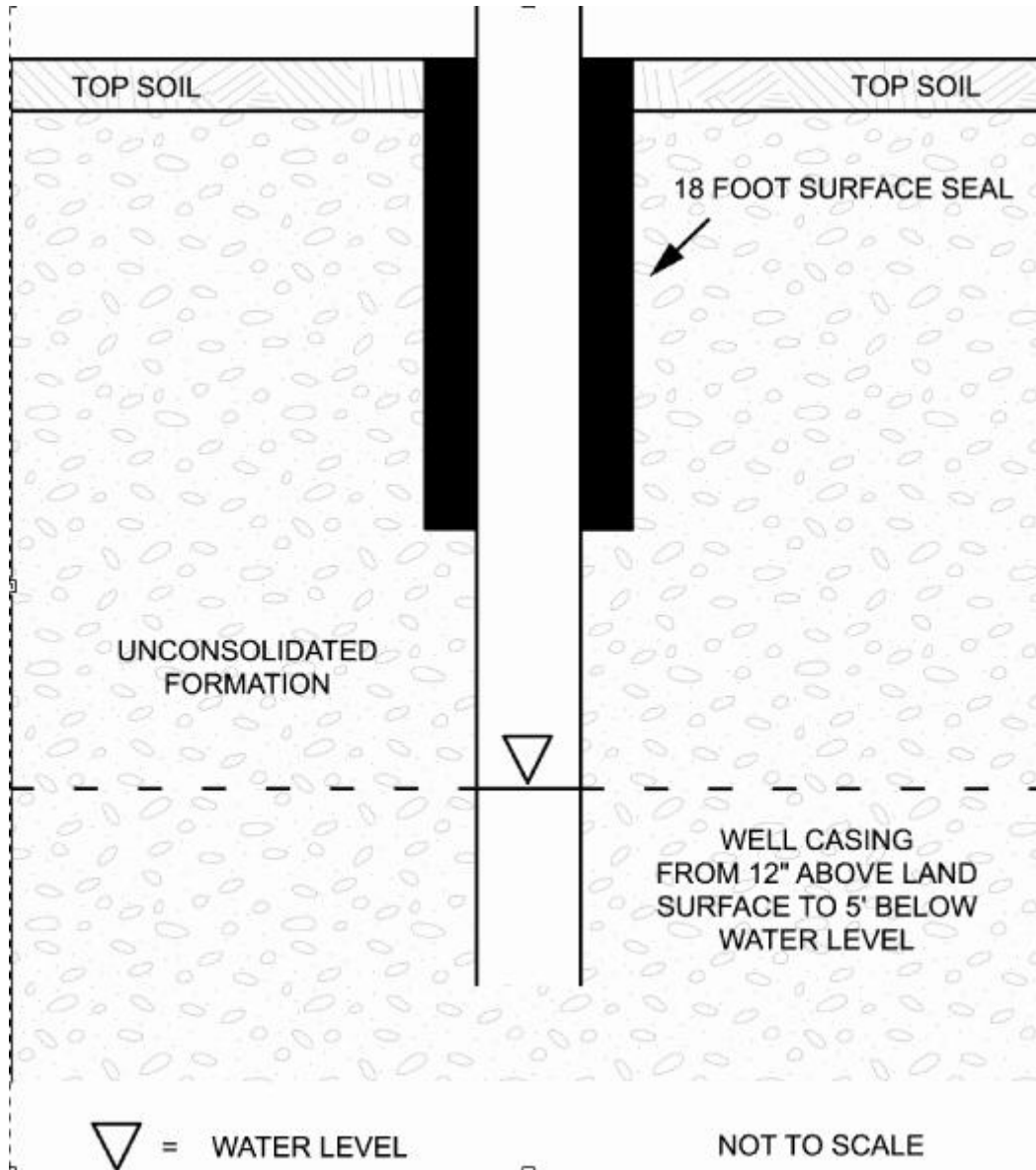


Figure 08. Sealing Requirements in Unconsolidated Formations with Confining Layers

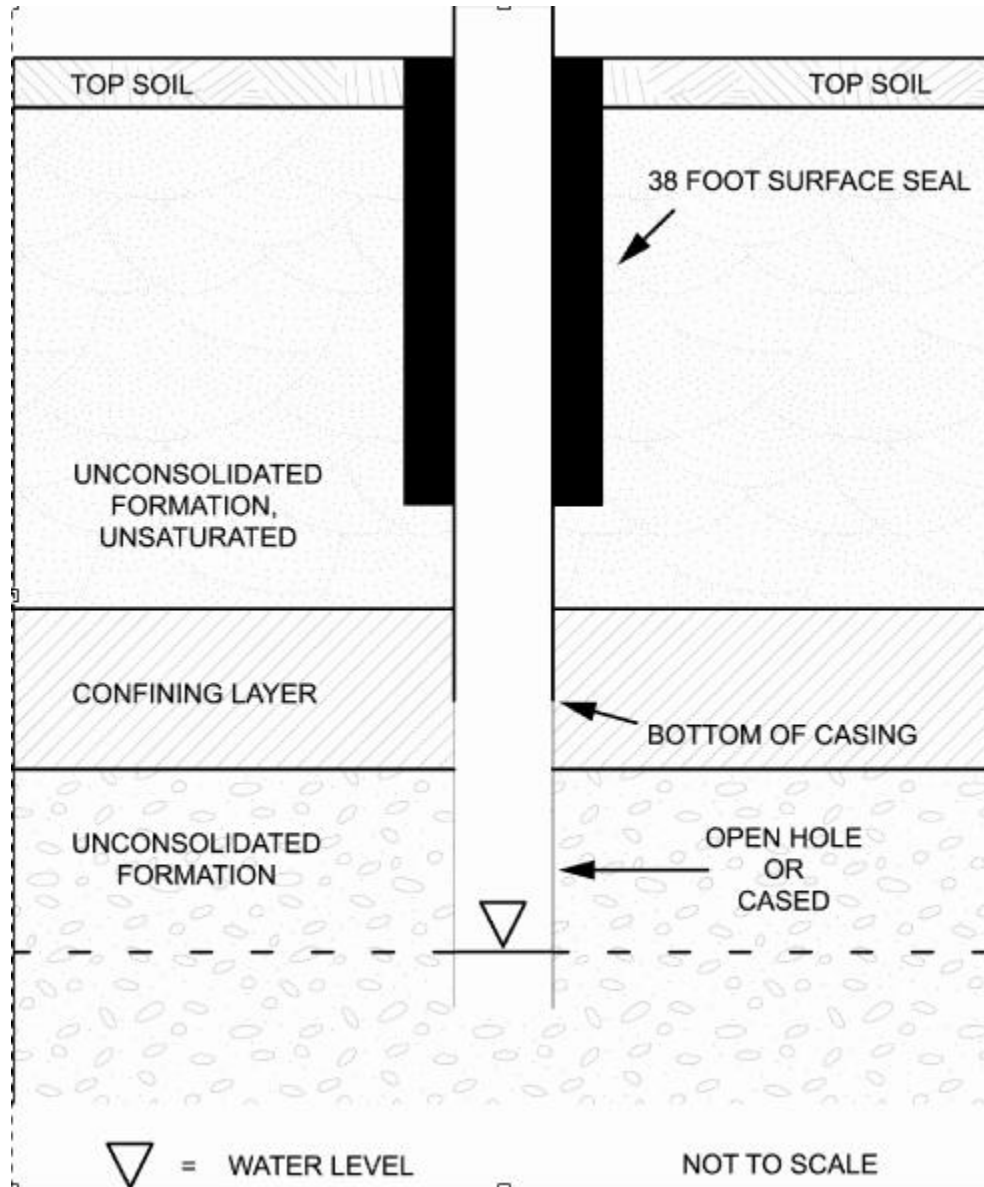


Figure 09. Sealing Requirements for Artesian Wells in Unconsolidated Formations

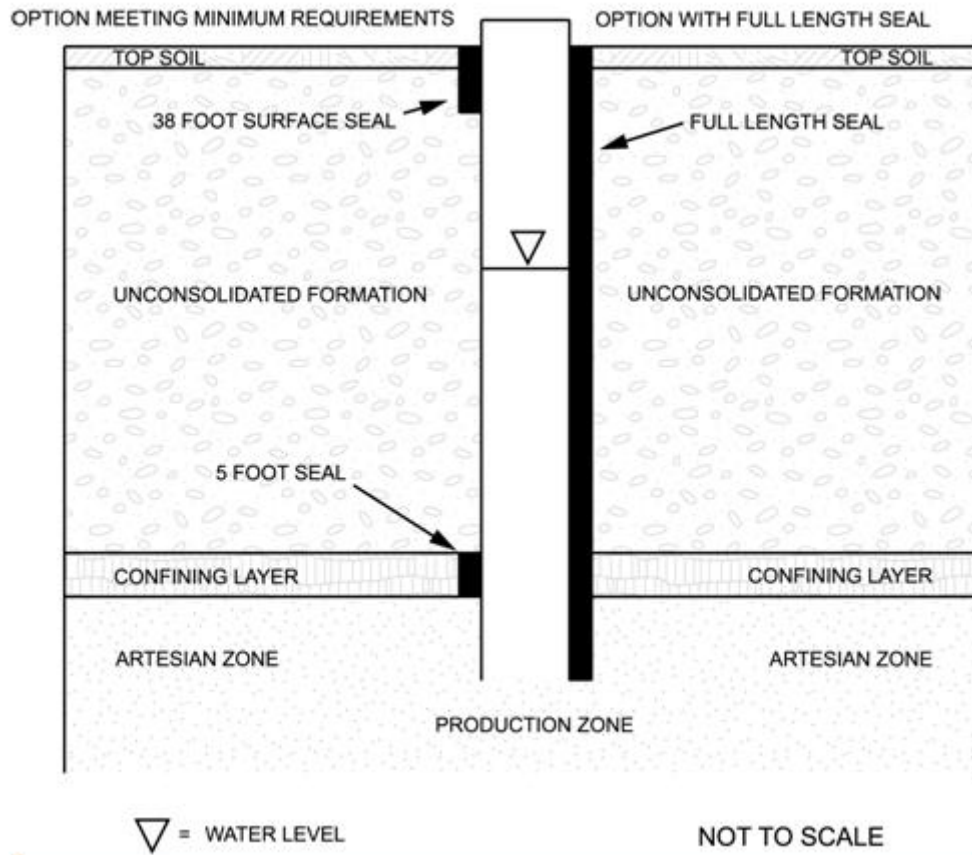


Figure 10. Sealing Requirements for Artesian Wells in Consolidated Formations

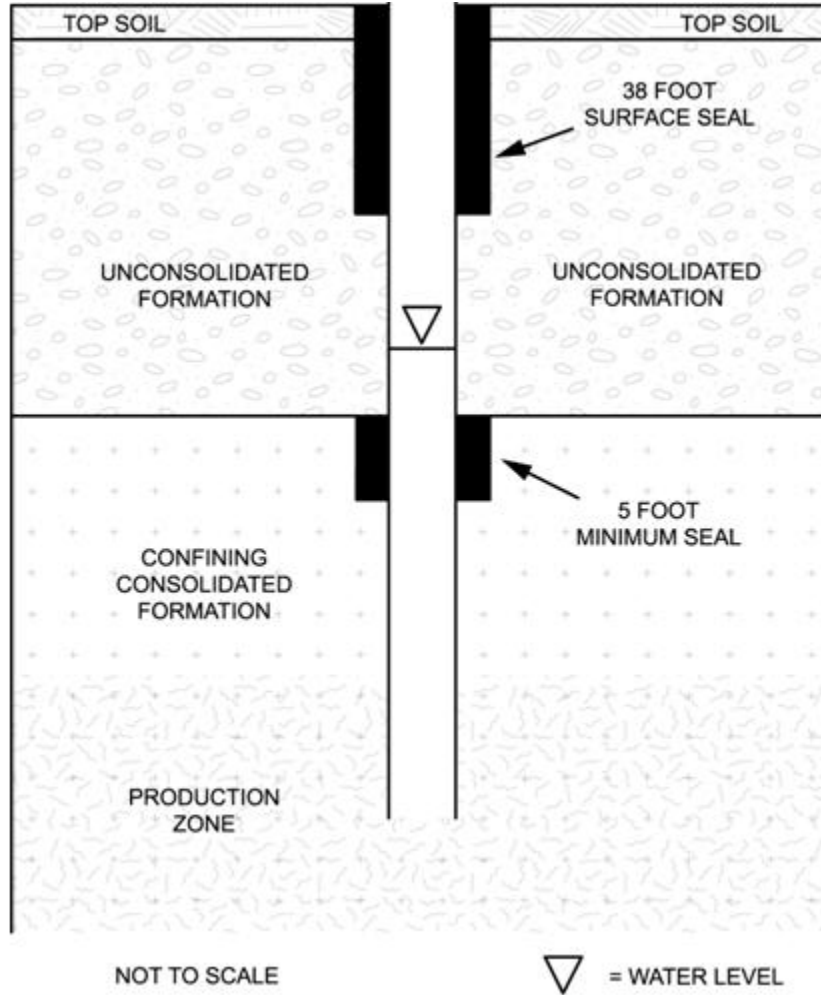
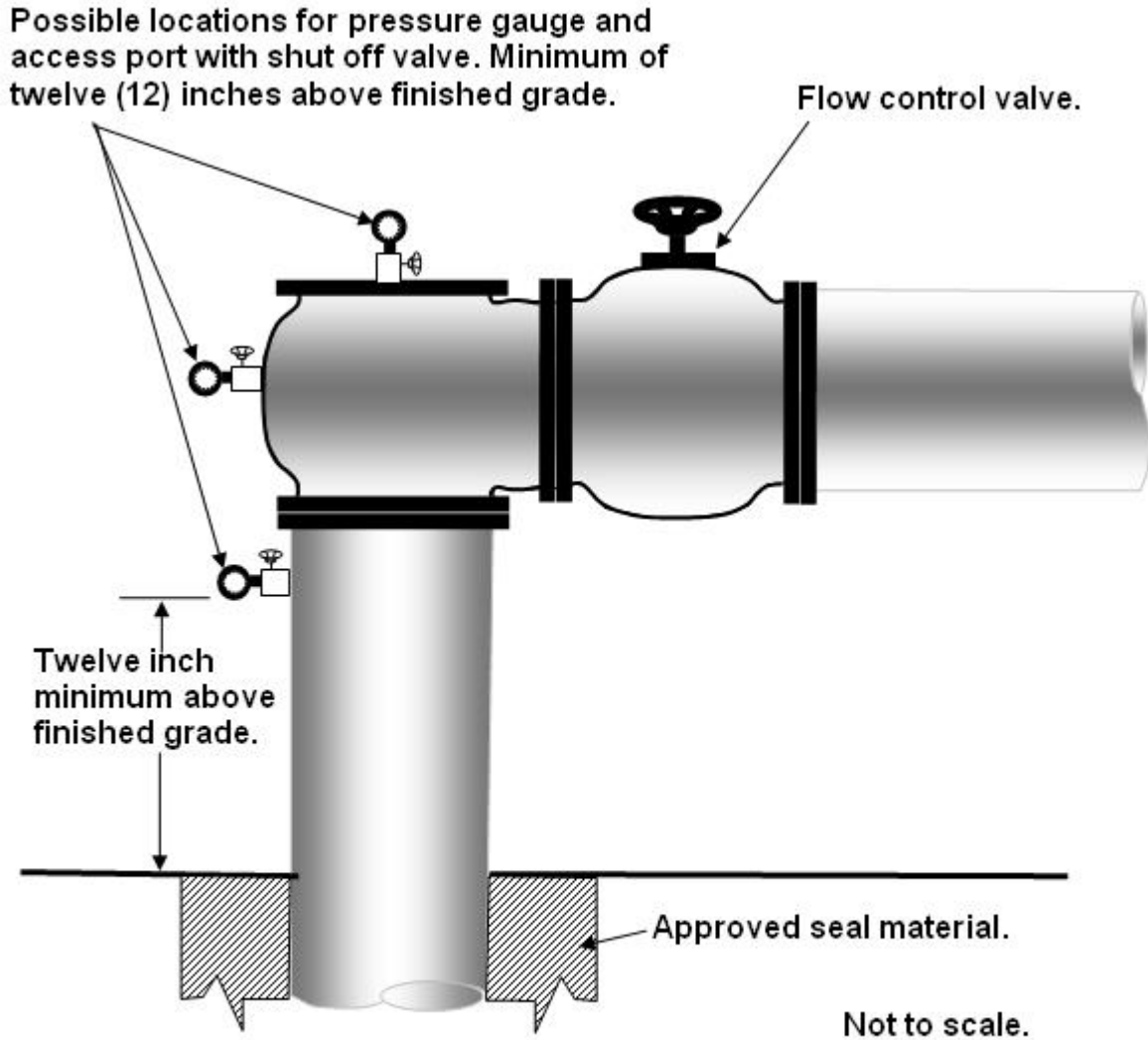


Figure 11. Access Ports, Pressure Gauges, and Control Valves



Note. Application and approval of control device is required on any flowing artesian well per Section 42-1603, Idaho Code.

Figure 12. Well Cap and Access Port

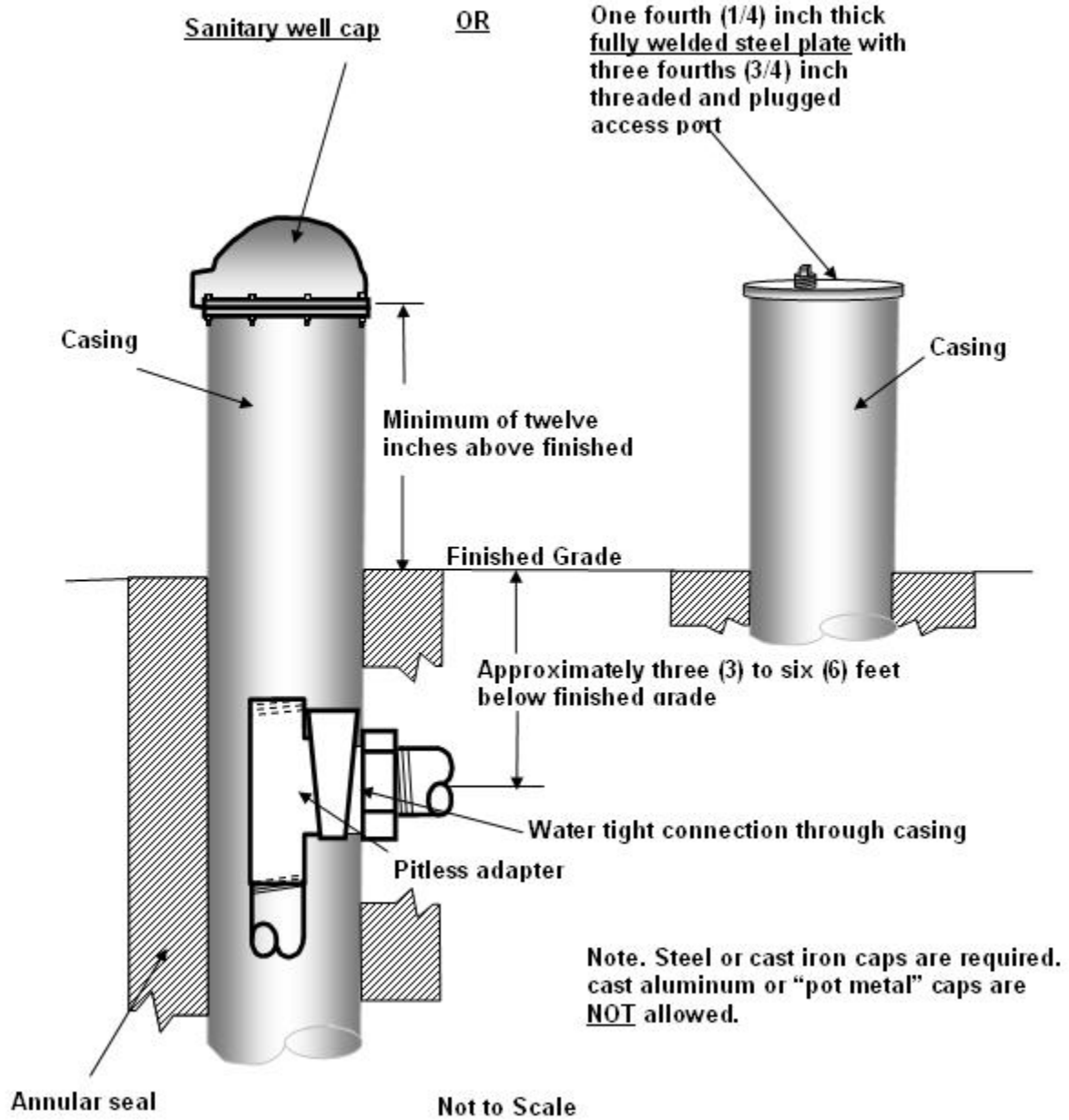
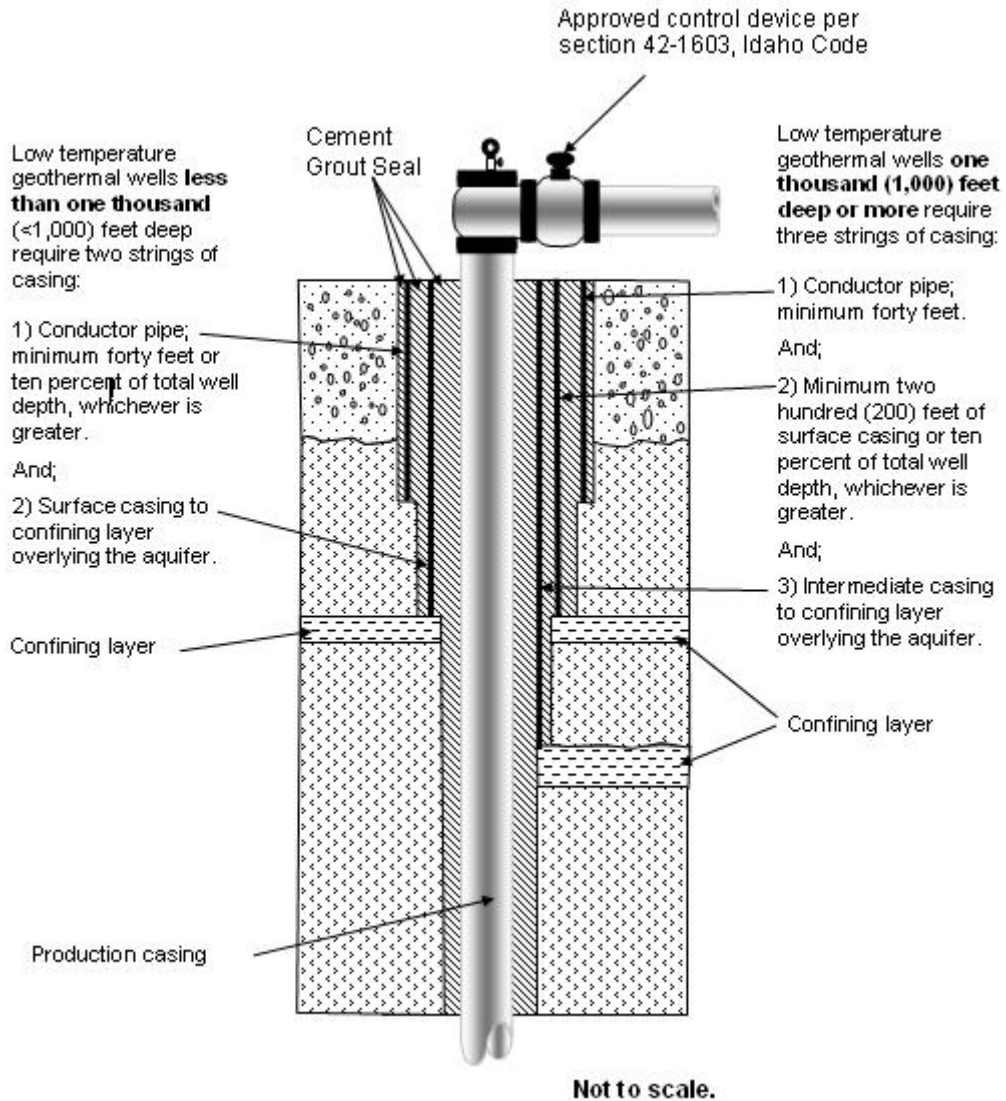


Figure 13. Casing Requirements for Low Temperature Geothermal Wells



37.03.10 – WELL DRILLER LICENSING RULES

000. LEGAL AUTHORITY (RULE 0).

The Idaho Water Resource Board adopts these rules under the authority provided by Section 42-238, Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

01. **Title.** The title of this chapter is “Well Driller Licensing Rules.” ()

02. **Scope.** These rules establish the requirements and procedures for obtaining and renewing authorization to drill wells in the state of Idaho. The rules also establish the requirements and procedures for obtaining authorization to operate drilling equipment under the supervision of a licensed driller. The licensing rules are applicable to all individuals and companies drilling or contracting to drill wells. ()

002. OTHER AUTHORITIES REMAIN APPLICABLE (RULE 2).

Nothing in these rules limits the director’s authority to take alternative or additional actions relating to the licensing of well drillers and permitting of operators as provided by Idaho law. ()

003. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

Unless the context otherwise requires, the following definitions govern these rules. ()

01. **Abandonment.** See Decommissioned Well. ()

02. **Adequate Supervision.** Inspection and observation of each drilling operation and the associated drilling site by the licensed driller that has responsible charge during the critical phases of drilling to assure compliance with well construction standards and drilling permit conditions. ()

03. **Applicant.** An individual that submits to the department a complete application for a license or operator’s permit or a company that submits a complete application for a license. ()

04. **Area of Drilling Concern.** An area designated by the director in accordance with Section 42-238, Idaho Code, within which special drilling procedures and equipment are needed to prevent waste or contamination of the ground water. ()

05. **Auxiliary Equipment.** Powered equipment, other than the drill rig, used for grouting, installing or advancing casing, welding casings and screens, and other tasks necessary for drilling a well. ()

06. **Board.** The Idaho Water Resource Board. ()

07. **Bond.** A cash or surety bond obtained by a licensed driller or company payable to the director to provide funding for abandonment or repair should the driller fail to comply with well construction standards, and to allow information to be collected concerning the drilling of the well if the driller fails to submit a timely, accurate driller’s report. ()

08. **Bottom Hole Temperature of an Existing or Proposed Well.** The temperature of the ground water encountered in the bottom of a well or borehole. ()

09. **Company.** A firm, co-partnership, corporation or association licensed in accordance with these rules to drill or contract to drill wells. ()

10. **Compliance History.** An applicant’s record of compliance with the laws and rules of Idaho and other states relating to drilling of wells. The record includes, but is not limited to, the applicant’s record of obtaining and complying with drilling permits; filing accurate and complete well driller’s reports on time; adhering to well construction standards and other rules relating to drilling; and the number, nature and resolution of violations of laws, rules and conditions on licenses, operator’s permits and drilling permits. ()

11. **Continuing Education.** Education or training pertinent to the drilling industry and the construction, modification or decommissioning of wells. ()

12. **Continuing Education Committee (CEC).** A committee whose purpose is to review and approve

- activities related to continuing education credit. ()
- 13. Credit Unit.** The unit of measurement for continuing education requirements. ()
- 14. Critical Phases of Drilling.** Drilling tasks that require the added experience of a licensed driller to assure completion of the well in accordance with the well construction standards and conditions of drilling permits. These tasks include, but are not limited to, placement of required casings and seals, testing of casings and seals, and resolving problems such as casing or joint failures, heaving formations, lost circulation, and encountering high pressure or high temperature water. ()
- 15. Decommissioned (Abandoned) Well.** Any well which has been permanently removed from service and filled or plugged in accordance with these rules so as to meet the intent of these rules. A properly decommissioned well will not: ()
- a.** Produce or accept fluids; ()
 - b.** Serve as a conduit for the movement of contaminants inside or outside the well casing; or ()
 - c.** Allow the movement of surface or ground water into unsaturated zones, into another aquifer, or between aquifers. ()
- 16. Department.** The Idaho Department of Water Resources. ()
- 17. Director.** The director of the Idaho Department of Water Resources or his duly authorized representative. ()
- 18. Drilling or Well Drilling.** The act of constructing a new well, or modifying, changing the construction, or decommissioning an existing well. ()
- 19. Drilling Permit.** Authorization by the department to drill a well as provided in Section 42-235, Idaho Code. ()
- 20. Drilling Site.** The location of the drill rig and immediate area where the drill rig and auxiliary equipment are set up to drill a well. ()
- 21. Global Positioning System (GPS).** A global navigational receiver unit and satellite system used to triangulate a geographic position. ()
- 22. License.** A certificate issued by the director to an individual or a company upon meeting the requirements of Section 42-238, Idaho Code, and these rules authorizing the drilling of wells permitted in accordance with Section 42-235, Idaho Code. ()
- 23. Licensed Driller.** An individual having a license to drill wells and is authorized and required to supervise operators in the state of Idaho. ()
- 24. Modify.** To deepen a well, increase or decrease the diameter of the casing or the well bore, install a liner, place a screen, perforate existing casing or liners, alter the seal between the casing and the well bore, or alter the well to not meet well construction standards. ()
- 25. Operator.** An individual holding either a class I or class II operator's permit issued in accordance with these rules. ()
- 26. Operator's Permit.** A certificate issued by the director upon meeting the requirements of Section 42-238, Idaho Code, and these rules allowing the holder to operate a drill rig as provided in these rules. ()
- 27. Principal Driller.** A licensed driller in responsible charge of a company's drilling activities, which has been designated the principal driller by the company with the department. ()

28. Responsible Charge. The responsibility for direction and control of a drilling operation to meet the requirements of these rules including, but not limited to, the following activities: ()

- a. Contracting to drill a well; ()
- b. Coordinate with property owner to locate a well to comply with applicable well construction standards; ()
- c. Setting up drilling equipment at the drilling site; ()
- d. Drilling operations; and ()
- e. Testing the adequacy of casing and seal; ()
- f. Properly completing the well. ()

29. Start Card. An expedited drilling permit process for the construction of cold water Single Family residential wells. ()

30. Well. An artificial excavation or opening in the ground more than eighteen (18) feet in vertical depth below land surface by which ground water of any temperature is sought or obtained. The depth of a well is determined by measuring the maximum vertical distance between the land surface and the deepest portion of the well. Any water encountered in the well is considered to be obtained for the purpose of these rules. Well also means any waste disposal and injection well as defined by Section 42-3902, Idaho Code. ()

31. Well Construction Standards. IDAPA 37.03.09, "Well Construction Standards Rules," adopted by the board. ()

32. Well Driller's Report or Driller's Report. A report required by Section 42-238, Idaho Code, describing drilling of the well and supplying information required on forms provided by the department. ()

33. Well Log. A diary maintained at the drilling site consistent with Section 42-238, Idaho Code. ()

34. Well Rig or Drill Rig. Any power-driven percussion, rotary, boring, digging, jetting, or augering machine used in the drilling of a well. ()

011. -- 019. (RESERVED)

020. APPLICABILITY OF LICENSING REQUIREMENTS (RULE 20).

01. Licensing Requirements. A well shall only be drilled by or under the responsible charge of a licensed driller except that a property owner, who is not licensed, can construct a well on his property for his own use without the aid of power-driven mechanical equipment. ()

02. Driller to Have Responsible Charge of Other Workers. A licensed driller shall have responsible charge of all others engaged in a well drilling operation. ()

03. Operators to Have Permits. An individual assisting a licensed driller whose duties include operation of a drill rig or auxiliary equipment shall possess an operator's permit as provided in these rules. If the driller is not present at the well site at all times that drilling operations are being conducted, one or more of those operating the equipment in the driller's absence shall have a class II operator's permit. The driller shall provide adequate supervision of class II operators. An individual having a class I operator permit shall be supervised by a licensed driller or a class II operator at all times when operating the drill rig or auxiliary equipment. ()

04. Laborer Exempted. An individual whose duties at the drilling site do not include operation of the drill rig or auxiliary equipment at any time is not required to have either a driller's license or an operator's permit.

()

05. Company to be Licensed. No company shall drill or contract to drill a well or wells unless the company has been issued a license and has employed a principal driller as described in accordance with these rules.

()

06. Drillers to Decommission (Abandon) Wells. Only licensed drillers may decommission (abandon) wells, except that wells may be decommissioned (abandoned) by the owner after receiving a specific waiver from the Director.

()

021. CONSTRUCTION AND USE OF HOLES THAT ARE NOT WELLS (RULE 21).

01. When a License Is Not Required. A person drilling a hole that does not meet the definition of a well does not need a driller's license or operator's permit.

()

02. Holes Not Defined as Wells. The following list describes the types of holes that are not wells for purposes of these rules:

()

a. Holes with total depth less than eighteen (18) feet.

()

b. Holes for collecting soil or rock samples, determining geologic properties, or mineral exploration or extraction, including gravel pits.

()

c. Holes for oil and gas exploration for which a permit has been issued pursuant to Section 47-320, Idaho Code.

()

d. Holes for constructing building foundations or de-watering building or dam foundation excavations.

()

e. Holes for the installation of standpipes or piezometers to monitor the saturation of dam embankments or foundations or to measure uplift forces on buildings, dams and other structures.

()

03. Converting a Hole Not Constructed as a Well for Use as a Well. A hole that was not constructed as a well by or under the responsible charge of a driller, if subsequently converted to obtain water, to monitor water quantity or quality, or to dispose of water or other fluids, shall be reconstructed by a driller to comply with well construction standards and drilling permit conditions. The owner shall obtain a drilling permit, a water right or other approval if needed, and have the hole inspected and modified by a licensed driller as necessary to meet well construction standards. The driller shall file a driller's report for the well.

()

022. -- 029. (RESERVED)

030. OBTAINING A LICENSE FOR AN INDIVIDUAL DRILLER (RULE 30).

01. Application Requirements. An individual desiring a license shall file with the department a completed application on a form provided by the department accompanied by the following:

()

a. The application fee required by Section 42-238, Idaho Code.

()

b. Written documentation of drilling experience, compliance history, and the names and addresses of three (3) references to confirm the applicant's drilling experience.

()

c. A list of all drill rigs used by or under the responsible charge of the applicant providing the make, model, and type.

()

d. The names and addresses of all licensed drillers and permitted operators that will work under the responsible charge of the applicant.

()

02. Experience Requirements. ()

a. An applicant shall have a minimum of twenty-four (24) months of drilling experience. An applicant will be credited with one (1) month of drilling experience for each one hundred sixty (160) hours of employment as a driller or operator, or the equivalent, as determined by the director. Experience drilling monitoring wells, geothermal wells or other cased wells will be credited as experience by the Director if the equipment and drilling methods are applicable to water well construction. ()

b. An applicant for driller's license shall submit evidence to establish that the applicant, as an operator or driller, has successfully constructed a sufficient number of wells within the preceding twenty-four (24) months to demonstrate competency. Evidence of this experience can be demonstrated by the submission of driller's reports bearing the applicant's signature, well reports upon which the driller having responsible charge attests that the applicant drilled the wells or other documentation acceptable to the director. ()

c. Twelve (12) of the twenty-four (24) months drilling experience must have occurred within the five (5) year period immediately preceding the filing of the application. ()

d. Successful completion of classroom study in geology, well drilling, map reading, and other related subjects may be substituted for up to, but not exceeding, twelve (12) months of drilling experience. The director will determine the number of months of classroom study, up to twelve (12), to be credited as experience. ()

03. Examination. An applicant determined by the director to have adequate experience and an acceptable compliance history, as confirmed by references acceptable to the director, is eligible to take a written examination. The examination may include separate sections and shall test the applicant's knowledge of the following: ()

a. Idaho statutes and rules relating to appropriation and use of ground water, well drilling, construction and use of injection wells and geothermal wells, and well driller licensing under the provisions of Title 42, Idaho Code. ()

b. Land description by government lot, quarter-quarter, section, township and range, and the use of portable GPS units. ()

c. Geologic material identification including the use of correct terminology in describing the geologic material. ()

d. Well construction principles relating to the proper design, construction, development, and abandonment of wells. ()

e. The occurrence, nature, and movement of ground water. ()

f. The use of various types of drill rigs and auxiliary equipment. ()

031. OBTAINING A LICENSE FOR A COMPANY (RULE 31).

01. Application Requirements. A company shall file with the department a complete application for a company license upon a form provided by the department to be accompanied by the following: ()

a. The names and addresses of three (3) persons not affiliated with the company, whom the department can contact for information regarding the company's past well drilling operations, if any, and related business activities. ()

b. A complete record of the compliance history of the company and the owners and employees of the company. ()

c. Designation of a principal driller who shall be a full time employee of the company and shall drill wells only for the company. A licensed driller who renders only occasional, part-time or consulting drilling services to or for a company may not be designated as the principal driller. ()

- d. The names and addresses of drillers and operators presently employed. ()
 - e. A list of all drill rigs and other related equipment owned or used by the company providing the make, model, and type. ()
- 02. Application Processing.** Applications received under this rule will be processed in accordance with Rule 33. ()

032. OBTAINING AN OPERATOR’S PERMIT (RULE 32).

01. Application for Class I Operator’s Permit. A licensed driller or company proposing to employ a class I operator shall submit a completed application on a form provided by the director. The application shall: ()

- a. Be accompanied by the fee required by Section 42-238, Idaho Code. ()
- b. Be signed by the individual seeking the operator’s permit and the licensed driller or principal driller of the company proposing to employ the operator. ()

02. Application for Class II Operator’s Permit. A licensed driller or company proposing to employ an individual who does not currently hold a class II operator’s permit shall submit the following: ()

- a. A completed application on a form provided by the department. ()
- b. The fee required by Section 42-238, Idaho Code. No fee is required if the applicant is presently permitted as a class I operator, but the expiration date of the permit when converted to a class II operator’s permit will remain as originally issued. ()
- c. Documentation that the operator has successfully constructed a sufficient number of wells, or has constructed wells for a sufficient length of time, or a combination of both to demonstrate competency. ()

03. Written Examination. An examination is not required for a class I operator’s permit. An otherwise qualified applicant for a class II operator’s permit shall obtain a satisfactory score on an examination as provided in Rule 34. The examination may be comprised of separate sections and shall test the applicant's knowledge of the following: ()

- a. Idaho statutes and rules relating to appropriation and use of ground water, well drilling, construction and use of injection wells and geothermal wells, and well driller licensing under the provisions of Title 42, Idaho Code. ()
- b. Land description by government lot, quarter-quarter, section, township, and range, and the use of portable GPS units. ()
- c. Geologic material identification including the use of correct terminology in describing geologic material. ()
- d. Well drilling principles relating to proper design, construction, development, and abandonment of wells. ()
- e. The occurrence, nature, and movement of ground water. ()

04. Operator Drills Only for Licensed Driller or Company. An operator shall only drill for the licensed driller or company approved by the director. If an operator changes employment to another licensed driller or company, an application for an operator’s permit shall be filed as provided in this rule. ()

05. Processing an Application for Operator’s Permit. The department will process an application

for operator's permit in accordance with Rule 33. ()

033. PROCESSING APPLICATION FOR A DRILLER'S LICENSE OR OPERATOR'S PERMIT (RULE 33).

01. Incomplete Application. If an application is incomplete, not properly signed, or does not include the information required by these rules, the department will advise the applicant in writing of the deficiency. If the deficiencies are not satisfied within ninety (90) days of sending the notice of the deficiency, the application will be void. The application fee is not refundable. ()

02. Issuance of License. If the director, upon review of the application, determines that an applicant for license is qualified and the driller has subsequently taken and passed an examination, a notice will be sent to the applicant requesting a bond in an amount determined in accordance with Rule 60 be filed with the department. Upon receipt of a satisfactory bond, the director will issue a license to the applicant. ()

03. Issuance of Operator's Permits. If the director determines that an applicant is qualified and has passed an examination, if required, the department will mail a notice and operator's permit card to the principal driller on behalf of the applicant. ()

04. Driller's License or Operator's Permit Issued With Conditions or Denial of License or Operator's Permit. The Director may issue a license or operator's permit with specific conditions or limitations based on the applicant's experience and compliance history. The Director may refuse to issue or renew a driller's license permanently or for a designated period of time if the driller has previously constructed wells improperly or constructed a well without a valid driller's license. If the Director determines that the applicant is not qualified, the Director will deny the application. Notice of a denied application or a conditioned license or operator's permit will be given to the applicant in accordance with IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources." ()

034. EXAMINATION PROCEDURES (RULE 34).

01. Written Examination. Written examinations will be offered at department offices on the first Monday of each quarter. If the first Monday is a legal holiday, written examination will be offered on the first Tuesday. Re-examination may be taken at a regularly scheduled examination date during a following quarter and shall be scheduled with the department office originally testing the applicant. ()

02. Oral Examination. Successful passage of an oral examination may satisfy all or a part of the written testing requirements under the following circumstances: ()

a. The applicant requests an oral rather than a written examination and shows cause acceptable to the director why the examination should be oral rather than written. Applicants desiring to take the examination orally shall request that an oral examination be scheduled allowing at least fifteen (15) days to set an examination date. ()

b. The director determines that because of the applicant's compliance history, additional testing is needed to determine the applicant's qualifications. ()

03. Examination Scoring. The applicant shall pass each section of the examination with a score of seventy percent (70%) or higher. ()

04. Assistance Must Be Authorized. The use of written materials, equipment or other individuals to assist an applicant during an examination is prohibited unless specifically authorized by the department. An applicant receiving unauthorized assistance during an examination may be disqualified and the application may be rejected. An application filed by a disqualified applicant will not be processed for a period of up to one (1) year from the time of disqualification. ()

035. EXPIRATION AND RENEWAL OF LICENSE (RULE 35).

01. Expiration of Licenses. All licenses expire at the end of the licensing period for which they are issued. The licensing period begins April 1 and ends March 31 of the second year following issuance. ()

02. Renewal Application. A license may be renewed by submitting a license renewal application including the following: ()

a. A completed application on a form provided by the department. An application to renew a license for an individual licensed driller shall be signed by the individual and an application to renew a license for a company shall be signed by the principal driller. ()

b. The renewal fee required by Section 42-238, Idaho Code. ()

c. A new bond or continuation certificate for an existing bond covering the licensed driller or company. ()

d. If the application is for renewal of a license held by an individual, the application shall include verification that the applicant has obtained the required continuing education credits. ()

03. Continuing Education Requirements. Fourteen (14) credit units are required for renewal of a license for an individual for any licensing period beginning on or after April 1, 2011. ()

04. Welding Competency. A driller that has been issued a Notice of Violation for welding that does not comply with the well construction standards may be required to obtain a certificate of welding competency from the American Welding Society or similar organization. ()

036. EXPIRATION AND RENEWAL OF AN OPERATOR'S PERMIT (RULE 36).

01. Expiration of Operator's Permits. Class I and class II operator's permits shall expire on March 31 of the same year that the license of the licensed driller and company employing the operator expires. ()

02. Renewal Application. An operator's permit may be renewed by submitting to the department an application for renewal including the following: ()

a. A completed application on a form provided by the department. The operator seeking renewal and the driller under whose responsible charge the operator works shall sign the form. ()

b. The renewal fee required by Section 42-238, Idaho Code. ()

c. For renewal of a class II operator's permit, verification of the required continuing education credit units. ()

03. Continuing Education Required for Renewals. Fourteen (14) credit units are required for renewal of a class II operator's permit for a licensing period beginning on or after April 1, 2011. ()

04. Welding Competency. An operator's work that has resulted in a Notice of Violation for welding that does not comply with the Well Construction Standards may be required to obtain a certificate of welding competency from the American Welding Society or similar organization. ()

037. PROCESSING APPLICATION TO RENEW LICENSE OR OPERATOR'S PERMIT (RULE 37).

01. Processing Applications for Renewal. Applications for renewal will be processed in the order received by the department. The department shall receive a complete application for renewal no later than March 15 to assure that the license or operator's permit will remain in force without interruption. If the director determines that the application is complete and the applicant is qualified, the license or operator's permit will be renewed for the period ending on March 31 of the second year after approval of the renewal. ()

02. Regulatory Compliance Required for Renewals. A license or operator's permit will not be renewed if the applicant has not submitted all required driller's reports, applications for drilling permits, fees, agreed

civil penalties, has not complied with all orders requiring repair or abandonment of improperly constructed wells or is not otherwise in compliance with Sections 42-235 and 42-238, Idaho Code, and the applicable rules. ()

03. Compliance History. If the Director determines that the applicant has exhibited an unacceptable compliance history, the Director may deny renewal, refuse renewal for a specified time, or renew with conditions, including but not limited to an increased bond amount. ()

04. Renewal of Expired Licenses or Operator's Permits. A license or an operator's permit which has expired or otherwise not been in effect for a period not exceeding three (3) years shall be renewed in accordance with the requirements of Rule 35 or Rule 36 as appropriate. An applicant for renewal shall provide verification of earned credit units required for the entire period since the license or class II operator's permit was last issued. If a license or operator's permit has been expired or otherwise not effective for a period of more than three (3) years, an application for a new license shall be submitted in accordance with Rule 30 for an individual license, Rule 31 for a company or Rule 32 for an operator's permit. The director may waive the examination requirement if the applicant has been previously licensed or permitted in the state of Idaho. ()

05. Reuse of Identification Numbers. The identification number assigned to a license by the department will not be reused if the license has been expired or otherwise not in effect for three (3) years or more except, at the director's discretion, the number may be reissued to the original owner. ()

06. Condition or Denial of an Application for Renewal. If the Director determines that the applicant has not or cannot fully comply with these rules, a license or operator's permit may be issued with conditions. If the Director determines that the applicant is not qualified, the Director will deny the application. When there are documented violations of well drilling laws and/or rules, including well construction standards, the Director may consult with the Driller's Advisory Committee, created in accordance with Rule 80, prior to making a decision to issue a conditional license or operator's permit or to deny an application based on the applicant's compliance history. Notice of a denied application or a conditioned license will be given as provided in IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources." ()

038. -- 049. (RESERVED)

050. DUTIES AND RESPONSIBILITIES OF DRILLERS, COMPANIES AND OPERATORS (RULE 50).

01. Licensed Drillers and Principal Drillers. All licensed drillers and principal drillers shall: ()

a. Allow drilling only by those authorized by and under the supervision required by these rules and according to any conditions of the license or permit. ()

b. Complete each well in compliance with IDAPA 37.03.09, "Well Construction Standards Rules," and drilling permit conditions. ()

c. Have a valid cash or surety bond in effect, as defined in Rule 60. ()

d. Have the license number displayed in a conspicuous place on the drill rig using a metal identification plate provided by the department or other permanent marking approved by the director. The displayed license number shall represent the company or individual driller license under which the well is being drilled. One plate will be issued upon initial licensure with replacement and additional plates available for a fee. ()

e. Keep current the department's list of operators and drillers employed by the licensed driller or company, including current addresses for the company, drillers, and operators. The licensed driller or principal driller shall be held responsible for all drilling activity of a driller or operator under their supervision until such notification has been submitted in writing to the department that the driller or operator is no longer employed by the licensed driller or company. ()

f. Have at the drilling site the driller's license and drilling permit or other written authorization from the director to drill the well. ()

g. Only drill wells in contaminated areas identified by the department or in areas of drilling concern so designated by the department with specific written authorization of the director. Verbal authorizations to drill and pre-approved drilling permits (start cards) do not authorize drilling in these areas. ()

h. Only drill a public drinking water supply well, as defined in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," low temperature geothermal resource or geothermal resource well with specific written authorization from the director. Verbal authorizations and start card permits (start cards) are not authorized for these uses. ()

i. Monitor and record bottom-hole temperature in areas where low temperature geothermal resources are known or suspected or when the well is being constructed pursuant to IDAPA 37.03.09, Rule 30, as a low temperature geothermal resource well. Bottom-hole temperature of every well being constructed pursuant to IDAPA 37.03.09, Rule 30, must be measured, recorded, and reported on the well drillers report. ()

j. Maintain a daily well log at the drilling site acceptable to the department and as required by Section 42-238(11), Idaho Code. Pertinent data required to be recorded on the daily log must include information sufficient to complete a well drillers report acceptable to the Director. The driller shall retain the well log for at least one (1) year after the driller's report is submitted to the department. ()

k. Submit driller's reports, acceptable to the Director, on forms approved by the department within thirty (30) days following removal of the drill rig from the drilling site at completion of the well. Driller's reports shall be prepared from information recorded on the daily well log. Driller's reports returned to the driller due to deficiencies must be corrected and returned to the department within thirty (30) days of mailing by the department. ()

l. Attach a well tag supplied by the department to every well drilled for which a drilling permit is required. The tag shall be affixed permanently to the casing, or other permanent object attached to the well, by a method approved by the Director prior to removing the well rig from the drilling site. ()

m. Cause all drilling activity under the supervision of the driller to cease when the driller's license expires, becomes invalid, or is suspended or revoked. ()

02. Companies. Companies shall: ()

a. Have a principal driller designated with the department at all times. ()

b. Notify the department within ten (10) days of the principal driller leaving employment with the company. The company's license shall immediately become void and of no effect when the principal driller leaves employment with the company and shall remain so until the department has been notified in writing that a new principal driller has been employed and designated by the company. Failure to designate a principal driller within ninety (90) days of the departure of the designated principal driller is cause for the director to take action to cancel the company's license. ()

c. Maintain a bond in force at all time as required in Rule 60. ()

03. Operators. Operators shall: ()

a. Have in their possession a valid operator's permit while drilling wells. ()

b. Only drill wells as authorized by the operator's permit. ()

c. Maintain a complete and accurate well log at the drilling site. ()

d. Co-sign with the driller a driller's report upon completion of the well. ()

051. -- 059. (RESERVED)

060. BONDING (RULE 60).

01. Bonding Requirements. Each licensed driller or company shall submit a surety bond or cash bond in an amount determined by the director, within the limits of 42-238, Idaho Code, for each driller employed by the company, payable to the director for the licensing period. ()

a. A company shall have a bond, which covers the drilling activities of each driller and operator employed by the company. If the licensed driller drills wells as an individual and not for a company, a separate bond must be filed with the director. ()

b. Drillers proposing to drill wells in an area of drilling concern, monitoring wells, public water supply wells, or wells to obtain or likely to encounter water with a bottom hole temperature greater than eighty-five (85) degrees Fahrenheit, shall submit an upgraded bond, in an amount determined by the director, at the time the drilling permit application is processed. Drillers anticipating drilling such wells may, instead, submit adequate bonding at the time of driller license application or renewal. ()

c. The amount of the bond, within the limits prescribed in Section 42-238, Idaho Code, will be determined by the director based on the applicant's compliance history, the size and depth of wells the applicant proposes to construct and is authorized to drill, the complexity of the wells, the resource to be recovered, the area of operation of the applicant, the number of drillers and operators employed by a company, and other relevant factors. ()

d. All bonds and continuation certificates must be on forms provided or approved by the department. ()

02. Cash Bonds. ()

a. Acceptable Cash Bonds. Cash bonds shall be in a separate account readily accessible to the director for use as provided in these rules. The director will review cash bond proposals made by an applicant. Cash bonds shall be retained in financial institutions within the state of Idaho unless waived by the director. ()

b. Retention. The director will hold cash bonds for two (2) years from the date the driller requests that the bond be released unless replaced by another bond or the director determines that all wells drilled by the driller satisfy well construction standards. The release of a cash bond must be requested in writing. ()

03. License Void Without Bond. If the issuing company cancels a bond, the bond expires or otherwise becomes non-effective during the term of a license, the license shall immediately become void and of no further effect until an adequate replacement bond is received by the department. ()

061. -- 069. (RESERVED)

070. CONTINUING EDUCATION (RULE 70).

01. Requirements. Every licensed driller or permitted operator must have earned at the time of renewal the applicable number of credit units required by these rules. The credit units shall have been obtained during the licensing period preceding the application for renewal. ()

02. Earning Credit Units. Credit units may be earned for time spent in attendance at workshops, seminars, short courses, and other educational opportunities devoted to drilling or related subjects acceptable to the Director and approved by the continuing education committee (CEC) and in compliance with the CEC guidelines. These may include completion of college courses, correspondence courses, videotaped courses, and other endeavors such as authoring appropriate publications. ()

03. Documentation. Documentation to support credit units claimed is the responsibility of the licensed driller and permitted operator. Records required include but are not limited to: ()

a. A log showing the type of activity claimed, sponsoring organization, duration, instructor's name,

and credit units. ()

b. Attendance verification records in the form of completion certificates or other official documents providing evidence of attendance and completion. ()

04. Submittal and Maintenance of Records. Copies of continuing education records for the preceding license period shall be submitted with applications to renew licenses or permits. These records shall be maintained for a period of three (3) years and shall be available for review by the department at the request of the director. ()

05. Insufficient Credit Units. If at the time of renewal, the applicant is unable to provide verification of the required credit units, the director will deny renewal of the driller's license or operator's permit, except as otherwise provided in the following: ()

a. The director may withhold action on an application for renewal for a period not to exceed ninety (90) days to allow the applicant to provide verification of the required credit units. The applicant is not authorized to drill until the verification is provided and the renewal is issued. ()

b. The director may exempt an applicant from all or part of the continuing education requirements if the applicant served on active duty in the armed forces of the United States for one hundred twenty (120) consecutive days or more during the licensing period prior to filing the application for renewal; or the applicant suffered physical disability, serious illness, or other extenuating circumstances that prevented the applicant from earning the required units. ()

c. A licensed driller or operator who has chosen to allow his license or permit to expire or otherwise become of no effect shall be exempt from continuing education requirements unless an application for renewal is filed less than three (3) years after the license or permit expired or otherwise became of no effect. ()

06. Out-of-State Residents. The continuing education requirements for a non-resident applicant for a license or operator's permit shall be the same as for resident applicants. ()

07. Responsibility for Education Development and Implementation. The Idaho Ground Water Association (IGWA) is delegated responsibility to develop and implement a program for continuing education for review and approval by the director. ()

071. CONTINUING EDUCATION COMMITTEE CONTINGENCY PLAN (RULE 71). Should the memorandum of understanding (MOU) and/or the contract between the department and the IGWA be breached, revoked, or not renewed, the CEC shall be organized and administered by the department. ()

072. -- 079. (RESERVED)

080. DRILLER'S ADVISORY COMMITTEE (RULE 80).

01. Selection and Duties. The Director may appoint a driller's advisory committee from the list of drillers holding valid licenses. The Director will solicit appointment recommendations from the IGWA and other licensed drillers. The Director will determine the term of appointment for members of the committee. The committee shall provide recommendations and suggestions concerning revision of these rules, the minimum standards for well construction, significant violations and other matters regarding well drilling. The committee members shall serve on a voluntary basis without compensation. The department will hold meetings at the discretion of the Director. ()

02. Reimbursement. Travel costs shall be paid to members of the advisory committee for travel and per diem and for costs associated with attendance of advisory committee meetings held by the department. Reimbursement shall be based on existing department policy covering travel and per diem expenses. ()

081. -- 089. (RESERVED)

090. ENFORCEMENT (RULE 90).

01. Violations. Violations of these rules or Sections 42-235 or 42-238, Idaho Code, will be enforced as provided in Sections 42-238 and 42-1701B, Idaho Code. ()

02. Enforcement Policy. An administrative policy providing guidelines for enforcement shall be published and maintained by department staff. A copy of the enforcement guidelines is available upon request at no charge. ()

091. -- 999. (REERVED)