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**IDAPA 20
TITLE 03
CHAPTER 15**

20.03.15 - THE ISSUANCE OF GEOTHERMAL RESOURCE LEASES

000. LEGAL AUTHORITY.

These rules are promulgated by the Idaho State Board of Land Commissioners ("Board") pursuant to Title 47, Chapter 16 and Title 67, Chapter 52, Idaho Code, and are intended to satisfy the Board's mandate (Idaho Constitution, Article 9) to maximize the long-term return on state mineral lands by encouraging leasing and development of the geothermal resources while preventing waste and protecting the other natural resources of the state mineral lands. (9-3-91)

001. -- 002. (RESERVED).

003. ADMINISTRATIVE APPEALS.

01. Preference Rights. Where contests arise as to the preference rights of claimants for lands under the control of the Board, it shall have full power to hold a hearing thereon and to direct the taking of evidence concerning the questions involved, either directly or through a subcommittee of the Board or a designated hearing officer. Any hearing shall be recorded in full. The Board shall make findings of fact and conclusions of law, enter its order with respect thereto, and notify the parties to such hearing of its findings, conclusions and order. (9-3-91)

02. Written Protest. No claimant for lands under control of the BoardBoard can appeal for judicial review of a decision of the Board involving any sale, lease or disposition of state lands, or any action relating thereto, unless such claimant files a written protest with respect thereto with the Board within thirty (30) days after the final decision of the Board relating to such matter; or, with respect to decisions rendered prior to the effective date of these rules within thirty (30) days after such effective date. This provision shall not relate to disputes between the Board and any party as to the ownership or title to any lands or geothermal resources. (9-3-91)

03. Appeal to Board. To obtain review of any final action taken by the director himself pursuant to authority contained expressly or impliedly under these rules, any person adversely affected thereby must within thirty (30) days after his action petition the Board in writing for leave to appeal, stating the grounds therefore, which petition will be acted upon by the Board within sixty (60) days after filing with the director or be treated as denied. The Board may dispose of appeals in a summary manner. (9-3-91)

004. -- 009. (RESERVED).

010. DEFINITIONS.

For purposes of these rules, unless otherwise indicated herein by express term or by context, the term: (9-3-91)

01. Accountable Acreage Holdings. An interest in the acres held under lease subject to an agreement to pay a percentage based on production. (9-3-91)

02. Associated By-Products: (9-3-91)

a. Any mineral or minerals (exclusive of oil, hydrocarbon gas, and helium), which are found in solution or developed in association with geothermal resources and which have a value of less than seventy-five percent (75%) of the value of the geothermal resources or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves; and (9-3-91)

b. Commercially demineralized water. (9-3-91)

03. Available State Lands. All state lands except those state lands already leased and those state lands of which the Board has withdrawn from leasing, declared a Known Geothermal Resources Area, (KGRA), or reserved for research and development or other purposes. (9-3-91)

04. Board. The Idaho State Board of Land Commissioners or such representatives as may be

designated by the Board. (9-3-91)

05. Department. The Idaho Department of Lands located at 300 North 6th Street, Suite 103, Boise, Idaho, P.O. Box 83720, Boise, Idaho 83720-0050. (9-3-91)

06. Director. The director of the Idaho Department of Lands or such representative as may be designated by the director. (9-3-91)

07. Geothermal Resources. 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. When used without restriction, it includes associated by-products. (9-3-91)

08. Lease. A lease covering the geothermal resources and associated by-products in state lands. (9-3-91)

09. 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. (9-3-91)

10. 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. (9-3-91)

11. 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. (9-3-91)

12. Person: (9-3-91)

a. A United States citizen of legal age; (9-3-91)

b. Any firm, association, or corporation which is qualified to do business in the state of Idaho, and is not in default under the laws of the state of Idaho, relative to qualifications to do business within this state; or (9-3-91)

c. Any public agency or governmental units, including without limitation, municipalities. (9-3-91)

13. Record Title. The publicly recorded lease which is the evidence of right that a person has to the possession of the leased property. (9-3-91)

14. 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. (9-3-91)

011. APPLICABILITY.

01. State Lands. These rules apply to the exploration and extraction of any and all geothermal resources situated in state-owned mineral lands. (9-3-91)

02. Other Geothermal Resources. These rules apply to all geothermal resources where other rules and regulations are silent or where the geothermal resource is otherwise regulated. (9-3-91)

03. Exclusions. These rules do not apply to the application and leasing of other mineral resources covered by Title 47, Chapter 7, Idaho Code, nor the application and leasing of oil and gas resources covered by Title 47, Chapter 8, Idaho Code. (9-3-91)

012. -- 019. (RESERVED).

020. QUALIFIED APPLICANTS AND LESSEES.

Any person as defined in Subsection 010.12 shall be qualified to lease the geothermal resources in state lands or take or hold an interest therein unless the Board first determines, after notice and hearing, for good cause shown, that a person is disqualified from leasing or taking or holding an interest in geothermal resources in state lands. No member of the Board, the director, or employee of the department may take or hold any such lease or interest in state lands.

(9-3-91)

021. APPLICATION AND PROCESSING - SIMULTANEOUS FILINGS.

01. Filing. An application for a geothermal resources lease shall be submitted to the department in Boise on a department form or exact copies thereof and shall contain the following: name, address, telephone number, and the notarized signature of the applicant; power of attorney if applicant is an agent; legal description of lands applied for; the application fee specified in Section 120; and shall comply with the size requirements of Section 040.

(9-3-91)

02. Simultaneous Filings. Applications for a geothermal resource lease shall be considered in the order in which they are filed. Should two (2) or more applications be received on the same day for the same site, they shall be considered as simultaneous filings.

(9-3-91)

03. Conflicts. Conflicts resulting from simultaneous filings shall be resolved by a competitive auction to be held within thirty (30) days receipt of the simultaneous filings.

(9-3-91)

04. Notice. The department shall give notice to the conflicting applicants by certified mail. The notice shall contain the legal description of the lands in conflict, the date, time and place of the competitive auction.

(9-3-91)

022. -- 029. (RESERVED).

030. TERM.

01. Ten Year Lease. All leases shall be for a primary term of ten (10) years from the effective date of the lease. The effective date of the lease shall be the first day of the month following Board approval.

(9-3-91)

02. Diligent Drilling. If, at the expiration of the primary term of the lease, geothermal resources are not being produced or demonstrably capable of being produced from the leased land, but the lessee is actively engaged in drilling operations one thousand (1,000) feet or deeper, then the lease shall continue in force so long as drilling operations are being diligently and continuously prosecuted on the leased land or upon lands with which the leased land is unitized. Drilling operations shall be considered to be diligently and continuously prosecuted if not more than one hundred twenty (120) days shall elapse between the completion or abandonment of one (1) well and the beginning of operations for the drilling of another well. For good cause shown, the director may extend the time for an additional period, not to exceed one hundred twenty (120) days. A written request must be received by the director at least ten (10) calendar days before the expiration of the initial one hundred twenty (120) day period.

(9-3-91)

03. Continuation of Lease. If geothermal resources are produced or utilized in paying quantities within the primary term of the lease or as extended under Subsection 030.02, that lease shall continue for so long thereafter as geothermal resources are produced or utilized in paying quantities, but the lease shall in no event continue for more than forty (40) years after the end of the primary term. The lessee shall have a preferential right to a renewal of his lease for a second forty (40) year term upon such terms and conditions as the Board deems appropriate after notice and an opportunity to be heard, if at the end of the first forty (40) year term geothermal resources are produced or utilized in paying quantities; provided, however, that the royalty during the second forty (40) year term shall not exceed fifteen percent (15%). Production or utilization of geothermal resources in paying quantities shall be deemed to include the completion of one or more wells producing or capable of producing geothermal resources for delivery to or utilization by a facility or facilities not yet installed, but scheduled for installation.

(9-3-91)

04. Diligence in Utilization. Lessee shall 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 shall continue in force upon payment of rentals for the duration of the primary term or five (5) years after shut-in, whichever is longer. If the director 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 shall continue in force for an additional five (5) years, upon payment of rentals, otherwise the lease may be terminated by the Board. The director shall continue to review shut-in leases every five (5) years until production and payment of royalties takes place or the lease is terminated by the Board for lessee's lack of due diligence or surrendered by the lessee. (9-3-91)

05. By-Products. A lease that has been extended by reason of production or utilization of geothermal resources and which has been determined by the director to be incapable of further commercial production and utilization may be further extended for five (5) years if one or more valuable by-products are produced in commercial quantities. The Board may extend the lease for one or more additional five (5) year terms upon such terms and conditions as the Board deems fit to allow continued production of one or more valuable by-products in commercial quantities. (9-3-91)

031. -- 034. (RESERVED).

035. RENTALS.

01. Advance Annual Rental. Lessee shall pay to the state of Idaho in advance each year an annual rental for each acre or fraction thereof under lease. The annual rental for the first year of the term shall be due and payable and shall be received in the offices of the department in Boise, together with a lease agreement executed by lessee within thirty (30) days of the date of notice of approval or award. The department will notify the applicant or his representative designated in the application to lease by certified or registered mail of the Board's approval of a lease and specify the exact amount of rental due thereon and the bond requirement under Section 100. Failure to return an executed lease together with the first year rental and bond within thirty (30) days shall result in automatic rejection of the application without further action of the director or Board. Second year and subsequent rental payments must be received in the office of the department in Boise on or before the anniversary date of the lease. Failure to pay exact rental shall constitute grounds for immediate termination of the lease by the director who shall note the termination on the official records of the department. (9-3-91)

02. Amount. Annual rentals for each acre or fraction thereof under lease shall be as follows: (9-3-91)

- a.** One dollar (\$1) per acre - for the first five (5) years; (9-3-91)
- b.** Two dollars (\$2) per acre - for the second five (5) years; (9-3-91)
- c.** Three dollars (\$3) per acre - thereafter. (9-3-91)

036. ROYALTIES.

01. Royalty Payments. The lessee shall cause to be paid to the state of Idaho the following royalties on the value of geothermal production from the leased premises: (9-3-91)

a. A royalty of ten percent (10%) of the amount or value of geothermal resources, or any other form of heat or energy derived from production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee, unless used or consumed by lessee in his production operations; (9-3-91)

b. A royalty of five percent (5%) 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, except that no payment of a royalty will be required on such water if it is used in plant operation for cooling or in the generation of electric energy or otherwise. No royalty shall be paid for associated by-products used or consumed by lessee in his production operations. (9-3-91)

02. Calculation of Value. The value of geothermal production from the leased premises for the

purpose of computing royalties shall be the following: (9-3-91)

a. The total consideration accruing to the lessee from the sale thereof in cases where geothermal resources are sold by the lessee to another party in an arms-length transaction; or (9-3-91)

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; or (9-3-91)

c. When a part of the resource only is utilized by the lessee and the remainder sold, the sum of Subsections 036.02.a. and 036.02.b. immediately above. (9-3-91)

03. Notice of Discovery. Lessee shall within fifteen (15) days notify the director of the discovery upon the leased premises of geothermal resources before any such geothermal resources are used or removed for commercial purposes from the leased land or utilized thereon. (9-3-91)

04. Due Date. Royalties will be due and payable monthly in the office of the department in Boise 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. (9-3-91)

05. Disposal of Geothermal Resources. The lessee shall file with the director within thirty (30) days after execution a copy of any contract for the disposal 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 director. 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. (9-3-91)

06. Measurement. The lessee shall measure or gauge all production in accordance with methods approved by the director. The quantity and quality of all production shall be determined in accordance with the standard practices, procedures and specifications generally used in industry. All measuring equipment shall be tested consistent with industry practice and, if found defective, the director will determine the quantity and quality of production from the best evidence available. (9-3-91)

07. By-Product Testing. The lessee shall periodically furnish the director the results of periodic tests showing the content of by-products in the produced geothermal resources. Such tests shall be taken as specified by the director and by the method of testing approved by him, except that tests not consistent with industry practices shall be conducted at the expense of the state of Idaho. (9-3-91)

08. Commingling. The director may authorize a lessee to commingle production from wells on his lease with production from other leases held by him or by other lessees subject to such conditions as he may prescribe, but lessee shall not do so without the director's approval. (9-3-91)

037. -- 039. (RESERVED).

040. SIZE OF A LEASABLE TRACT.

01. Maximum Size. A geothermal resource lease will include all available state lands within a section, at time of lease issuance, with only lands from one (1) section allowed to be included in any one (1) lease. A geothermal resource lease on state lands will therefore be limited to six hundred and forty (640) acres, or one (1) Section, should the entire section be larger than six hundred and forty (640) acres. (9-3-91)

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 accord with Subsection 040.01. Operations in the beds of navigable water courses will not be authorized except in extraordinary circumstances and then only with express written approval of the Board upon such conditions and security as the director deems appropriate. (9-3-91)

041. -- 044. (RESERVED).

045. KNOWN GEOTHERMAL RESOURCE AREAS; PUBLIC AUCTION.

01. KGRA Designation. The director may from time to time designate certain state lands as being within a Known Geothermal Resources Area (KGRA). Geothermal resources leases issued upon lands so designated shall be upon a competitive bid basis at public auction under such terms and conditions as the director sets. Before leasing geothermal resources owned by the state within a KGRA, the director will advertise the availability of these state lands within a KGRA by posting a notice in the offices of the department in Boise and causing the notice to appear at least once in a newspaper of general circulation in Idaho at least thirty (30) days before the date of the public auction, and mailing a copy to interested persons on a geothermal resources mailing list. Failure to give notice by mail shall not prejudice any procedure or award of leases under these rules. Prevailing bidders shall pay the costs of the public auction and advertising in proportion to the cost of acreage leased in said auction. (9-3-91)

02. Consultation. The director will consult with the department of water resources prior to designating state lands as being within a KGRA. Actual production in the vicinity of state lands shall be the primary evidence of a KGRA for purposes of these rules. The director may hold a public hearing prior to determining that state lands are within a KGRA. (9-3-91)

046. -- 049. (RESERVED).

050. LAND SURFACE USE RIGHTS AND OBLIGATIONS.

01. 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 director. 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 without a formally executed lease. Lessee may not enter upon the leased lands for exploration operations using motorized equipment or otherwise engaging in operations which may lead to an appreciable disturbance or damage to lands, timber, other resources or improvements on or adjacent to the leased lands until there is in existence a fully executed lease and the preconditions in Sections 055, 100 and 101 have been satisfied. (9-3-91)

02. Motorized Exploration. Before entering upon the leased lands for exploration operations using motorized equipment or otherwise engaging in operations which may lead to an appreciable disturbance or damage to lands, timber, other resources or improvements on or adjacent to the leased lands, lessee shall file with the director, in writing, notice of the following: (9-3-91)

- a.** Name and address of the operator. (9-3-91)
- b.** The location of the operation and the starting date and estimated completion date. (9-3-91)
- c.** The anticipated size or scope of the operations in terms of manpower and equipment, and the general method of operation. (9-3-91)
- d.** Prior to the initiation of operations to drill a well for any purpose to one-thousand (1,000) feet or deeper, lessee shall file with the director for approval a plan of operations provided in Subsection 055.05 and increase the surety bond to ten thousand dollars (\$10,000) as provided in Section 100. (9-3-91)

03. Use and Occupancy. Lessee shall 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 of 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 director. (9-3-91)

04. Supervision. Uses of state lands within the jurisdiction and control of the Board are subject to the

supervision of the director. Other state lands are subject to the supervision of the appropriate state agency consistent with these rules. (9-3-91)

05. Entry by Director. The director shall be permitted at all reasonable times to go in and upon the leased lands and premises, during the term of a lease, to inspect the operations and the products obtained from the leased premises and to post any notice that the director may deem fit and proper. (9-3-91)

06. Public Access. During operations, the lessee shall regulate public access and vehicular traffic to protect human life, wildlife, livestock and property from hazards associated with the operations. For this purpose, the lessee shall provide warning, fencing, flagmen, barricades, well and hole coverings and other safety measures as appropriate. Restrictions on access must be approved by the director as part of a plan of operations under Rule Section 055. (9-3-91)

07. Other Uses. Operations under other leases or uses on the same lands shall not unreasonably interfere with or endanger operations under leases issued under these rules nor shall operations under these rules unreasonably interfere with or endanger operations under any lease, license, claim, permit or other authorized use pursuant to the provisions of any other Idaho law. (9-3-91)

08. Distance from Residence. No well shall be drilled within two hundred (200) feet of any house or barn on the premises, without the written consent of the director and its surface lessees, grantees or contract purchasers. (9-3-91)

09. Fences. Lessee shall not at any time fence any watering place upon leased lands where the same 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. (9-3-91)

10. Timber Removal. Lessee shall not unreasonably interfere with the removal of timber purchased prior to or subsequent to the issuance of a lease. Lessee may remove any timber required for ingress or egress or necessary for operations. Any timber cut or removed by lessee shall be paid for by lessee on a current stumpage price basis as determined by the director. (9-3-91)

11. Grazing. A geothermal resources lease shall not be construed to prohibit the leasing of the leased lands by the Board to other persons for grazing and agricultural purposes, or for the mining of minerals or for oil and gas development; provided, however, that the lessee under a geothermal resources lease shall have paramount right as against grazing and agricultural lessees to the use of so much of the surface of the land as shall be necessary for the purposes of the lease. All lessees shall have the right of ingress and egress at all times during the term of the lease. (9-3-91)

12. 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 shall be subject to all the terms and provisions of that lease during the life thereof, including extensions and renewals under Section 030. (9-3-91)

13. Damage. Lessee shall 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. (9-3-91)

14. Potable Water Discovery. All leases issued under these rules shall 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, shall 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 department of water resources. (9-3-91)

15. Reclamation. Lessee shall reclaim all state lands disturbed by exploration, development, operation

and marketing of geothermal resources in accordance with applicable reclamation procedures contained in Section 47-1509 and 47-1510, Idaho Code, as now existing and hereafter amended. Lessee shall conserve, segregate, stockpile and protect topsoil to enhance reclamation. Lessee shall take all necessary steps in the exploration, development, operation and marketing of geothermal resources to avoid a threat to life or property or an unreasonable risk to subsurface, surface or atmospheric resources. (9-3-91)

051. DILIGENT EXPLORATION.

Each lease will include provisions for the diligent exploration of the leased resources until there is production in commercial quantities from the state lands subject to lease, and failure to perform such exploration may subject the lease to termination. Diligent exploration means exploration operations on or related to the leased lands, including without limitation geochemical surveys, heat flow measurements, core drilling, or drilling of a test well. A report of all exploration operations and expenditures must be submitted to the director at the close of each lease year. (9-3-91)

052. -- 054. (RESERVED).

055. OPERATIONS UNDER THE LEASE.

01. Best Practices. All operations will conform to the best practice and engineering principles in use in the industry. Operations shall 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. Operations shall be conducted with due regard for the safety and health of employees. Lessee shall promptly remove from the leased lands or store, in an orderly manner, all scraps or other materials not in use. Lessee shall notify the director of all accidents within twenty-four (24) hours and shall submit a written report within thirty (30) days. (9-3-91)

02. Compliance with Rules. Lessee shall comply with and be subject in all respects to the conditions, limitations, penalties and provisions of the laws of the state of Idaho and the rules of the Board, the Department of Water Resources, the Department of Environmental Quality, and all other federal, state and local laws, now existing or hereafter enacted. (9-3-91)

03. Waste and Damage. Lessee shall take all reasonable precautions to prevent: (1) waste; (2) damage to any natural resource including trees and other vegetation, fish and wildlife and their habitat; (3) injury or damage to persons, real or personal property; and (4) any environmental pollution or damage. The director may inspect lessee's operations and issue such orders as are necessary to accomplish these purposes. Any significant effect on the environment created by the lessee's operations or failure to comply with environmental standards shall be reported to the director by lessee within twenty-four (24) hours and confirmed in writing within thirty (30) days. (9-3-91)

04. Shut Downs. The director is authorized to shut down any operations which he determines are unsafe or are causing or can cause pollution of the natural environment or waste of natural resources including geothermal resources upon failure by lessee to take timely, corrective measures ordered by the director. (9-3-91)

05. Wells One Thousand Feet or Deeper. Prior to initiation of operations to drill a well for any purpose to one thousand (1,000) feet or deeper, lessee shall submit to the director for his approval a plan of operations. Such plan shall include: (9-3-91)

- a.** The proposed location of each well including a layout showing the position of the mud tanks, reserve pits, cooling towers, pipe rack, etc.; (9-3-91)
- b.** Existing and planned access, access controls and lateral roads; (9-3-91)
- c.** Location and source of water supply and road building material; (9-3-91)
- d.** Location of camp sites, air-strips and other supporting facilities; (9-3-91)
- e.** Other areas of potential surface disturbance. (9-3-91)

- f.** The topographic features of the land and the drainage patterns; (9-3-91)
- g.** Methods for disposing of waste material; (9-3-91)
- h.** A narrative statement describing the proposed measure to be taken for protection of the environment, including, but not limited to the prevention or control of (1) fires, (2) soil erosion, (3) pollution of the surface and ground water, (4) damage to fish and wildlife or other natural resources, (5) air and noise pollution, and (6) hazards to public health and safety during lease activities; (9-3-91)
- i.** All pertinent information or data which the director may require to support the plan of operations for the utilization of geothermal resources and the protection of the environment; (9-3-91)
- j.** Provisions for monitoring deemed necessary by the director to insure compliance with these rules for the operations under the plan; (9-3-91)
- k.** The information required for sections a through k of this section may be shown on a map or maps of sufficient scale available from state or federal sources. (9-3-91)
- 06. Amendments.** The plan of operations shall be amended by the lessee for the director'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. (9-3-91)
- 07. Sampling.** When necessary or advisable, the director shall require that adequate samples be taken and tests or surveys be made using techniques consistent with industry practice, without cost to the state of Idaho, to determine the identity and character of formations; the presence of geothermal resources, water or reservoir energy; the quantity and quality of geothermal, water or reservoir energy; the amount and direction of deviation of any well from the vertical; formation, casing and tubing pressures, temperatures, rate of heat and fluid flow, and whether operations are conducted in a manner looking to the protection of the interest of the state of Idaho. (9-3-91)
- 08. Marking of Derrick.** The lessee shall mark each derrick upon commencement of drilling operations and each producing or suspended well in a conspicuous place with his name or the name of the operator, the serial number of the lease, the number and location of the well. Whenever possible, the well location shall be described by section or tract, township, range and by quarter-quarter section or lot. The lessee shall take all necessary means and precautions to preserve these markings. (9-3-91)
- 09. Additional Requirements.** The lessee shall: (1) take all necessary precautions to keep all wells under control at all times; (2) utilize trained and competent personnel; (3) utilize properly maintained equipment and materials; and (4) use operating practices which insure the safety of life and property. 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 shall be based on sound engineering principles and shall 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. (9-3-91)
- 10. Unused Wells.** Except as provided in Subsection 050.14 the lessee shall promptly plug and abandon any well on the leased land that is not used or useful, in conformity with regulations promulgated by the Idaho department of water resources or its predecessor agency. No production well shall be abandoned until its lack of capacity for further profitable production of geothermal resources has been demonstrated to the satisfaction of the director. A producible well may be abandoned only after receipt of written approval by the director. Equipment shall be removed, and premises at the well site shall 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 director. Drilling equipment shall 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 director is authorized to cause the work to be performed at the expense of the lessee and the surety. (9-3-91)
- 11. Designation of Operator.** In all cases where operations are not conducted by the lessee but are to be conducted under authority of an unapproved operating agreement, assignment or other arrangement, a designation

of operator shall be submitted to the director prior to commencement of operations. Such a designation will be accepted as authority of the operator or his local representative to act for the lessee and to sign any papers or reports required under these rules. All changes of address and any termination of the authority of the operator shall be immediately reported, in writing, to the director. (9-3-91)

12. Agent for Service. When required by the director, lessee shall 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. (9-3-91)

056. WASTE PREVENTION, DRILLING AND PRODUCTION OBLIGATIONS.

01. Waste. All leases shall be 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. (9-3-91)

02. Diligence. The lessee shall, 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 in lieu thereof, with the consent of the director shall pay a sum determined by the director as adequate to compensate the Board for failure to drill and produce any such well. The lessee shall promptly drill and produce such other wells as the director determines a reasonably prudent operator would drill in order that the lease be developed and produced in accordance with good operating practices. (9-3-91)

03. Loss Through Waste or Failure to Produce. The director shall 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 lease, and the compensation due to the Board as reimbursement for such loss. Payment for such losses will be paid when billed. (9-3-91)

04. By-Products. Subject to lessee's right to surrender the lease, where the director determines that production, use or conversion of geothermal resources under a geothermal lease is susceptible of producing a valuable by-product or by-products, including commercially demineralized water contained in or derived from such geothermal resources for beneficial use in accordance with applicable state water laws, he shall require substantial beneficial production or use thereof, except where he determines that: (9-3-91)

- a. Beneficial production or use is not in the interest of conservation of natural resources; or (9-3-91)
- b. Beneficial production or use would not be economically feasible; or (9-3-91)
- c. Beneficial production and use should not be required for other reasons satisfactory to him. (9-3-91)

057. -- 059. (RESERVED).

060. EXPLORATION AND OPERATION RECORDS, CONFIDENTIALITY.

01. Drilling Records. Lessee shall keep or cause to be kept and to be filed with the department of water resources such careful and accurate well drilling records as are now or may hereafter be required by that department. Lessee shall file with the director, department of lands, such production records and exploration evidence as required by Section 036 and Rule 051, which records shall be subject to inspection by the public at the offices of the department during regular business hours under such conditions as the director deems appropriate, subject, however, to exemptions from disclosure as set forth in Section 9-340, Idaho Code. As an express condition of the lease, the director may inspect and copy well drilling records filed with the department of water resources at any time after the records are filed. (9-3-91)

02. Continuing Obligations. Lessee's obligations under this rule shall continue beyond assignment, surrender, termination or expiration of the lease. Lessee shall, within thirty (30) days after assignment, surrender, termination or expiration or such additional time as the director may grant, file all outstanding data and records required by this rule with the director. (9-3-91)

061. -- 064. (RESERVED).

065. LESSEE'S RECORDS, RIGHT OF INSPECTION BY DIRECTOR.

Lessee shall permit director to examine during reasonable business hours all books, records and other documents and matters pertaining to operations under a lease, in his custody or control, and to make copies of and extracts therefrom at the Board's expense. (9-3-91)

066. -- 069. (RESERVED).

070. WATER RIGHTS.

Lessee shall comply with all laws of the state of Idaho, including the rules and regulations of the department of water resources, regulating the appropriation of the public waters of Idaho to beneficial uses. No water right developed or obtained by lessee in conjunction with operations under this lease shall be sold, assigned or otherwise transferred without written approval of the director. Upon surrender, termination or expiration of the lease, lessee shall take all actions required by the director to assign to the Board all water rights, including applications, permits and licenses. Lessee shall enjoy the right of use of any private waters upon the leased lands during the term of the lease, but not thereafter. (9-3-91)

071. -- 074. (RESERVED).

075. ASSIGNMENTS.

01. Prior Written Approval. A total or partial assignment of a lease must be approved in writing by the director and no assignment shall be effective until written approval is given. An assignment shall take effect the first day of the month following the approval of the assignment. (9-3-91)

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 shall contain less than forty (40) acres. No undivided interest in a lease of less than ten percent (10%) shall be created by assignment. (9-3-91)

03. Responsibility. In an assignment of the complete interest in all of the lands in a lease the assignor and his surety shall continue to be responsible for performance of any and all obligations under the lease until the effective date of the assignment. After the effective date of any assignment, the assignee and his surety shall 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. (9-3-91)

04. Segregation of Assignment. An assignment of the record title of the complete interest in a portion of the lands in a lease shall clearly segregate the assigned and retained portions. After the effective date, the assignor is released and discharged from any obligations thereafter accruing with respect to the assigned lands. Such segregated leases shall 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. (9-3-91)

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 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. (9-3-91)

06. Form of Assignment. An assignment must be a good and sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the serial number of the lease, 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. An assignment must effect or concern only one (1) lease or a portion thereof, except for good cause shown. (9-3-91)

07. Application. The application for approval of an assignment must be on forms provided by the department or exact copies thereof. It must be accompanied by a signed statement by the assignee either (1) that he is

the sole party in interest in the assignment, or (2) setting forth the names and qualifications of the other parties taking an interest in the lease. Where the assignee is not the sole party in interest, separate statements must be signed by each of the other parties and by the assignee setting forth the nature and extent of the interest of each party and the nature of the agreement between them. In addition, it shall be declared which party in interest will be the party of record for purpose of receiving all communications and other notices from the lessor. If payments out of production are reserved, a statement must be submitted stating the details as to the amount, method of payment, and other pertinent items. These separate statements must be filed in the office of the department in Boise, not later than fifteen (15) days after the filing of the application for approval. (9-3-91)

08. Denial. Unless the lease account is in good standing at the time the assignment is reached for action, the request for approval of the assignment will be denied, and the lease shall be subject to termination in accordance with these rules. (9-3-91)

076. -- 079. (RESERVED).

080. OVERRIDING ROYALTY INTERESTS.

01. Statements. Overriding royalty interests in geothermal leases constitute accountable acreage holdings under these regulations. If an overriding royalty interest is created which is not shown in the instrument of assignment or transfer, a statement must be filed with the director describing the interest. Any such assignment will be deemed valid if accompanied by a statement over the assignee's signature that the assignee is a person as defined in these rules and that his interests in geothermal leases do not exceed the acreage limitations provided in these rules. All assignments of overriding royalty interests without a working interest and otherwise not contemplated by Rule 075, must be filed for record in the office of the department in Boise within ninety (90) days from the date of execution. Such interests will not receive formal approval. (9-3-91)

02. Maximum Amount. No overriding royalty on the production of geothermal resources created by an assignment contemplated by Rule Section 075 or otherwise shall exceed five percent (5%) nor shall an overriding royalty, when added to overriding royalties previously created, exceed five percent (5%). (9-3-91)

03. Conformance with Rules. The creation of an overriding royalty interest that does not conform to the requirements of this rule shall 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%). (9-3-91)

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 shall be 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. (9-3-91)

081. -- 084. (RESERVED).

085. UNIT OR COOPERATIVE PLANS OF DEVELOPMENT OR OPERATION.

01. 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 director, 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. Applications to unitize shall be filed with the director who shall certify whether such plan is necessary or advisable in the public interest. The director may require whatever documents or data he or she deems necessary. 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 which are committed to such unit, cooperative or other plans of development or operations. (9-3-91)

02. Contents. The agreement shall 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 shall 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 director. It will be effective only after approval by the director. The unit operator must be a person as defined by these rules and he must be approved by the director. (9-3-91)

03. Interested Parties. The owners of any rights, title or interest in the geothermal resources to be developed or operated under an agreement can be regarded as proper parties to a proposed agreement. All such owners must be invited to join as parties to the agreement. If any owner fails or refuses to join the agreement, the proponent of the agreement should declare this to the director and should submit evidence of efforts made to obtain joinder of such owner and the reasons for nonjoinder. (9-3-91)

04. Collective Bond. In lieu of separate bonds required for each lease committed to a unit agreement, the unit operator may furnish and maintain a collective corporate surety bond conditioned upon faithful performance of the duties and obligations of the agreement and the terms of the leases subject thereto and these rules. The liability under the bond shall be for such amount as the director shall determine to be adequate to protect the interests of the state of Idaho. Additional bond coverage may be required whenever deemed necessary by the director. In case of changes of unit operator, a new bond must be filed or a consent of surety to the change in principal under the existing bond must be furnished. (9-3-91)

05. Lease Modification. Any modification of an approved agreement will require approval of the director under procedures similar to those cited in Subsection 085.01 above, of this rule. (9-3-91)

06. Term. The term of all leases included in any cooperative or unit plan of development or operation shall be extended automatically for the term of such unit or cooperative agreement, but in no event beyond that time provided in Subsection 030.03. Rentals or royalties on leases so extended shall be at the rate specified in the lease. (9-3-91)

07. Continuation of Lease. Any lease which shall be eliminated from any such cooperative or unit plan of development or operation, or any lease which shall be in effect at the termination of any such cooperative or unit plan of development or operation, unless relinquished, shall continue in effect for the term of the lease or for one (1) year after its elimination from the plan or agreement or the termination thereof, whichever is longer, and so long thereafter as lessee engages in diligent and continuous drilling as provided in Subsection 030.02, or so long thereafter as geothermal resources are produced in paying quantities, but in no event beyond the time provided in Subsection 030.03. (9-3-91)

08. 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 he has 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, he will be permitted to operate independently, but will be required to perform his operations in a manner which the director deems to be consistent with the unit operations. (9-3-91)

09. Department of Water Resources. Nothing in this rule shall excuse the parties to a unit agreement from procuring the approval of the department of water resources pursuant to Section 42-4013, Idaho Code, if approval is required. (9-3-91)

086. -- 089. (RESERVED).

090. PREFERENTIAL RIGHTS UPON DISCOVERY OF UNLEASED MINERALS, OIL, GAS AND OTHER HYDROCARBONS.

Any lessee who shall discover any minerals or oil, gas or other hydrocarbons on lands leased from the Board for development of geothermal resources shall have a preference right to a state lease covering such minerals, or oil, gas or other hydrocarbons, provided the unleased minerals at the time of discovery are not included within a mineral location under Section 47-703, Idaho Code, a mineral lease or mineral lease application of another party, and provided that the oil, gas or other hydrocarbons are not under lease or subject to a pending lease application under Section 47-801, Idaho Code. Any preference-right lease shall be issued upon a lease form in current use by the Board. The preference right shall continue for a period of sixty (60) days after the discovery of unleased minerals, or oil, gas

or other hydrocarbons, provided the lessee must notify the director within thirty (30) days after the discovery and must make application to lease the unleased minerals or oil, gas or other hydrocarbons, within sixty (60) days after the date of discovery. Nothing herein shall require the Board to issue a mineral lease or a lease for oil, gas or other hydrocarbon development. (9-3-91)

091. -- 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 in Boise, on a form furnished by the director, 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 director where he finds such exception is justified on the basis of exploratory and development data derived from activity on the leasehold. The relinquishment must: (9-3-91)

- a.** Describe the lands to be relinquished; (9-3-91)
- 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; (9-3-91)
- 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 department of water resources; and (9-3-91)
- d.** Furnish a sworn statement that all monies due and payable to workers employed by the record title holder of the interest on the leased premises have been paid. (9-3-91)

02. Continuing Obligations. A relinquishment shall take effect on the date it is filed, subject to the continued obligation of the lessee and his surety: (9-3-91)

- a.** To make payments of all accrued rentals and royalties; (9-3-91)
- b.** To place all wells on the land to be relinquished in condition for suspension of operations or abandonment; (9-3-91)
- c.** To restore the surface resources in accordance with these rules and the terms of the lease; and (9-3-91)
- d.** To comply with all other environmental stipulations provided for by these rules or lease. (9-3-91)

03. Failure to Pay Rental. Except as provided in Subsection 095.04 below, any lease may be immediately terminated by the director if the lessee fails to pay the rental on or before the anniversary date of the lease. However, if the time for payment falls upon any day in which the office of the department in Boise is not open, payment received on the next official working day shall be deemed to be timely. The termination of the lease for failure to pay the rental shall 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. (9-3-91)

04. Rental Deficiency. If the rental payment due under a lease is paid on or before its anniversary date, but the amount of the payment is deficient and the deficiency is nominal, the lease shall not be immediately terminated unless the lessee fails to pay the deficiency within the period prescribed in a notice deficiency, or by the due date, whichever is later. A deficiency is nominal if it is not more than ten dollars (\$10) or one percent (1%) of the total payment due, whichever is more. The notice of deficiency shall be sent by certified mail, return receipt requested, and shall allow the lessee twenty (20) days from the date of notice to submit the full balance due. If the payment called for in the notice is not made within the time allowed, the lease will be terminated by the director as of its anniversary date. (9-3-91)

05. Termination for Cause. A lease may be terminated by the director 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: (9-3-91)

a. The violation has been corrected; or (9-3-91)

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. (9-3-91)

06. Equipment Removal. Upon the expiration of the lease, or the earlier termination or surrender thereof pursuant to this rule, the lessee shall have the privilege at any time within a period of ninety (90) days thereafter of removing from the 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 within the ninety (90) day period, or any extension thereof that may be granted because of adverse climatic conditions during that period, shall, at the option of the director, become property of the state of Idaho, but the lessee shall remove any or all such property where so directed by the director. (9-3-91)

07. Surrender After Termination. Upon the expiration or termination of a lease, the lessee shall quietly and peaceably surrender possession of the premises to the state and deliver to the state a good and sufficient release on a form furnished by the director. (9-3-91)

096. -- 099. (RESERVED).

100. BOND REQUIREMENTS.

01. Minimum Bond. Concurrent with the execution of the lease by the lessee, lessee shall furnish to director a good and sufficient bond in the amount of two thousand dollars (\$2,000) 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. Prior to initiation of operations to drill a well for any purpose to one-thousand (1,000) feet or deeper, lessee shall increase such bond to the amount of ten thousand dollars (\$10,000). The director 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. (9-3-91)

02. Statewide Bond. In lieu of the aforementioned bonds, 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 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. (9-3-91)

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 director. (9-3-91)

04. General Lease Bond. An operator, or, if there is more than one for different portions of the lease, each operator, may furnish a general lease bond of not less than ten thousand dollars (\$10,000) in his own name as principal on the bond in lieu of the lessee. Where there is more than one operator's bond affecting a single lease, each such bond must be conditioned upon compliance with all lease terms for that portion of the leasehold for which each operator is responsible. (9-3-91)

05. Operator Bond. Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee if he is not a party to the bond. (9-3-91)

101. LIABILITY INSURANCE.

01. Liability Insurance Required. Prior to entry upon the leased lands for other than casual exploration or inspection as contemplated by Subsection 050.01, lessee shall purchase and maintain, for the duration

of the lease, the following liability insurance: (9-3-91)

a. Public Liability Insurance in the form of comprehensive general liability or commercial general liability including the following: (9-3-91)

i. Blanket contractual; (9-3-91)

ii. Products and completed operations; (9-3-91)

iii. Premises liability; and (9-3-91)

iv. Collapse, explosion, underground hazard (for drilling operation one thousand (1,000) feet or deeper). (9-3-91)

b. Workers' Compensation and Employers' Liability as required by law. (9-3-91)

02. Limits of Liability. All such coverage required under Subsection 101.01.a.i. above shall have a combined single limit (CSL), by virtue of one or more policies, on a per-occurrence basis, in amounts not less than one million dollars (\$1,000,000). (9-3-91)

03. Additional Requirements. The state of Idaho, Department of Lands, and the Idaho State Board of Land Commissioners shall be named an additional insured on the insurance required in Subsection 101.01.a.i. above. Additionally, 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 surface rights and improvements shall also be an additional insured. (9-3-91)

04. Insurance Certificate Required. No work under this lease shall commence prior to the receipt by the Department of Lands of a certificate, signed by a licensed insurance agent, evidencing existence of insurance as required above. Further, such certificate must reflect that no change of cancellation in such coverage shall become effective until thirty (30) days after the Department of Lands has received written notice of such change. (9-3-91)

102. INDEMNITY.

Lessee shall expressly agree to indemnify, defend and save harmless the state of Idaho, state Board of land commissioners, the director of the department of lands, the department of 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 and every of the foregoing, from and against any and all claims, liability, costs, damages, or expenses including any claims, by the federal government or other damages to the environment or for loss, injury, or damage to persons or property including claims of the employees of the lessee or lessee's agent, operator or contractor which may arise out of the activities conducted on the leased premises by the lessee, its agent, operator, contractor, or employees. (9-3-91)

103. -- 104. (RESERVED).

105. TITLE.

The state of Idaho does not warrant title to the leased lands or the geothermal resources and associated by-products which 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 shall be paid to the state only in the proportion which 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 shall the lessee be entitled to or 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. (9-3-91)

106. -- 109. (RESERVED).

110. IMPOSSIBILITY OF PERFORMANCE.

Whenever, as a result of any cause beyond lessee's control, including without limitation, fire, flood, windstorms, or

other act of God; law, order or regulation of any governmental agency, or inability to secure men, material or transportation, it becomes impossible for lessee to perform or to comply with any obligation under a lease other than payment of rentals, the director may by written order excuse lessee from damages or forfeiture of the lease and lessee's obligations shall be suspended so long as the director finds that good cause exists; provided, however, that nothing herein shall extend the term of the lease. (9-3-91)

111. TAXES.

Lessee shall 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. (9-3-91)

112. RENTAL NOTICES.

Advance notice of rental due is usually sent to the lessee by the department, but failure to receive such notices shall not act to relieve the lessee from the payment of the rental and the lease shall be in default if such payment is not made as provided in these rules. (9-3-91)

113. OUTSTANDING LEASES.

No right to seek, obtain or use geothermal resources has passed or shall 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. (9-3-91)

114. RIGHT OF CANCELLATION BY THE BOARD.

The Board reserves the right to cancel any geothermal resources lease upon failure by the lessee to exercise due diligence or care in the prosecution of his operations or upon failure by lessee to comply with the terms and conditions stated in the lease and with all laws of the state of Idaho, including without limitation these rules. (9-3-91)

115. AMENDMENTS.

These rules may be amended, altered, changed, modified or repealed at any time by action of the Board, pursuant to the Administrative Procedures Act, Title 67, Chapter 52, Idaho Code; provided, however, any amendment to these rules changing the rental or royalty due the state of Idaho or the term of geothermal resource leases shall not adversely affect leases outstanding upon the effective date of the amendment. (9-3-91)

116. -- 119. (RESERVED).

120. FEES.

The following fees shall apply: (9-3-91)

- 01. Non-Refundable Application Fee for Lease.** Twenty-five dollars (\$25) per application. (9-3-91)
- 02. Application Fee for Approval of Assignment.** Twenty dollars (\$20) per lease involved in the assignment. (9-3-91)
- 03. Late Payment Fee.** The greater of the following: (9-3-91)
 - a.** Twenty-five dollars (\$25); or (9-3-91)
 - b.** One percent (1%) per month (or portion thereof) on the unpaid balance. (9-3-91)

121. -- 999. (RESERVED).

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