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IDAPA 20
TITLE 03
CHAPTER 15

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. (3-21-12)

001. TITLE AND SCOPE.

01. Title. These rules will be cited as IDAPA 20.03.15, "Rules Governing Geothermal Leasing on Idaho State Lands." (3-21-12)

02. Scope. These rules apply to the exploration and extraction of any and all geothermal resources situated in state-owned mineral lands. (3-21-12)

03. Other Laws. In addition to these rules, the Lessee shall comply with all applicable federal, state and local laws, rules and regulations. The violation of any applicable law, rule or regulation shall constitute a breach of any lease issued in accordance with these rules. (4-4-13)

002. WRITTEN INTERPRETATIONS.
The Idaho Department of Lands maintains written interpretations of its rules which may include, but may not be limited to, written procedures manuals and operations manuals and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of interpretations, subject to the exemptions in Title 74, Chapter 1, Idaho Code, are available for public inspection and copying at the director's office of the Idaho Department of Lands, 300 North 6th Street, Suite 103, Boise, Idaho. (3-21-12)

003. 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. (3-21-12)

004. INCORPORATION BY REFERENCE.
There are no documents that have been incorporated by reference into this rule. (3-21-12)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.
The principal place of business of the Idaho Department of Lands is 300 North 6th Street, Suite 103, Boise, Idaho and it is open from 8 a.m. To 5 p.m., Monday through Friday, except legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone number of the office is (208) 334-0200 and the fax number is (208) 334-2339. (3-21-12)

006. PUBLIC RECORDS ACT COMPLIANCE.
The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. (3-21-12)

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Associated By-Products or By-Product: (3-21-12)

a. Any mineral or minerals (exclusive of oil, hydrocarbon gas, and helium), which are found in solution or developed in association with geothermal resources; or (3-21-12)

b. Demineralized or mineralized water. (3-21-12)

02. **Available State Lands**. All state lands except those state lands already leased. (3-21-12)

03. **Board**. The Idaho State Board of Land Commissioners or its designee. (3-21-12)

04. **Casual Exploration**. Casual exploration means 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. (4-4-13)

05. **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. (3-21-12)

06. **Department**. The Idaho Department of Lands or its designee. (3-21-12)

07. **Director**. The head of the Idaho Department of Lands or his designee. (3-21-12)

08. **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. (4-4-13)

09. **Electrical Generation**. The use of geothermal resources to either directly generate electricity or to heat a secondary fluid and use it to generate electricity. (3-21-12)

10. **Field**. A geographic area overlying a geothermal system with one (1) or more geothermal reservoirs or pool, including any porous, permeable geologic layer, which may be formed along one (1) fault or fracture, or a series of connected faults or fractures. (4-4-13)

11. **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)

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

13. **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)

14. **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. (3-21-12)

15. **Motorized Earth-Moving Equipment**. Backhoes, bulldozers, front-loaders, trenchers, core drills, drill rigs, power augers, and other similar equipment. (3-21-12)

16. **Navigable Water Courses**. The state owned beds of active lakes, rivers and streams which do not include formerly submerged lands where the state retains ownership. (4-4-13)

17. **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)

18. **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)

19. **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. (4-4-13)

20. **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)

21. **Reservoir or Pool**. A porous, permeable geologic layer containing geothermal resources. (3-21-12)

22. **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. (3-21-12)

23. **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)

24. **Waste**. Any physical loss of geothermal resources including, but not limited to: (3-21-12)

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 which results, or tends to result in reducing the quantity of geothermal energy to be recovered from any geothermal area in the state; (3-21-12)

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. (3-21-12)

011. ABBREVIATIONS.

01. **IDAPA**. Idaho Administrative Procedure Act. (3-21-12)

02. **IDEQ**. Idaho Department of Environmental Quality. (3-21-12)

03. **IDWR**. Idaho Department of Water Resources. (3-21-12)

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. (4-4-13)

021. LEASE AWARD THROUGH AUCTION.
If more than one application is received for geothermal development on the same parcel of land, a lease auction will be held. (4-4-13)

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. (3-21-12)

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. (3-21-12)

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. (3-21-12)

031. LEASE EXPIRATION.
Prior to lease expiration, the lessee will have the first right of refusal for a new lease of up to forty-nine (49) years upon such terms and conditions as the Department deems appropriate after notice and an opportunity to negotiate a new lease. (3-21-12)

032. -- 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. (4-4-13)

02. Amount. Annual rentals will be set by the Board through competitive bidding, negotiation, fixed amounts, formulas, or some other method of valuation which a prudent investor might reasonably apply to establish such rental amounts. (4-4-13)

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: (4-4-13)

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; (3-21-12)

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. (3-21-12)

c. A royalty of between two percent (2%) and five percent (5%) of gross receipts for sale of electrical power. (3-21-12)

02. Calculation of Value. The value of geothermal production from the leased premises for the purpose of computing royalties shall be based on a total of the following: (4-4-13)

a. The total consideration accruing to the lessee from the sale of geothermal resources to another party in an arms-length transaction; and (4-4-13)

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 (4-4-13)

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. (3-21-12)

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. (4-4-13)

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. (3-21-12)

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. (3-21-12)

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. (4-4-13)

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: (3-21-12)

a. The operator's economic necessity of commingling; (3-21-12)

b. The type of geothermal use proposed for the commingled waters; and (3-21-12)

c. Sufficient measurement and accounting of all the commingled waters to ensure that the Department is appropriately compensated by royalties. (3-21-12)

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. (3-21-12)

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. (4-4-13)

041. -- 049. (RESERVED)

050. LAND SURFACE USE RIGHTS AND OBLIGATIONS.

01. Use and Occupancy. (3-21-12)

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. (3-21-12)

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. (3-21-12)

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. (3-21-12)

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. (3-21-12)

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. (3-21-12)

05. 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)

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. (4-4-13)

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. (3-21-12)

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 which 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 shall include all items which the Department deems necessary or useful in managing the geothermal resources, including, but not limited to, the following: (4-4-13)

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: (3-21-12)

i. Fires; (3-21-12)

ii. Soil loss and erosion; (3-21-12)

iii. Pollution of surface and ground waters; (3-21-12)

iv. Damage to fish and wildlife or other natural resources; (3-21-12)

v. Air and noise pollution; and (3-21-12)

vi. Hazards to public health and safety during lease activities. (3-21-12)

b. All pertinent information or data which the department may require to support the plan of operations for the utilization of geothermal resources and the protection of the environment; (3-21-12)

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. (4-4-13)

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. (3-21-12)

03. Plans Required. Prior to development, Lessee shall submit a Development Plan, Operating Plan, and Decommissioning and Reclamation Plan for the leased lands. All plans shall 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 shall include all items which 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 this rule. (4-4-13)

04. Waste and Damage. (3-21-12)

a. Lessee must take all reasonable precautions to prevent the following: (3-21-12)

i. Waste; (3-21-12)

ii. Damage to other natural resources; (3-21-12)

iii. Injury or damage to persons, real or personal property; and (3-21-12)

iv. Any environmental pollution or damages that may constitute a violation of state or federal laws.

(3-21-12)

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. (3-21-12)

05. Notice of Production. Lessee must notify the department within sixty (60) days before any geothermal resources are used or removed for commercial purposes. (3-21-12)

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. (3-21-12)

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 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. (3-21-12)

03. Prevention of Waste Through Reinjection. Geothermal lessees must return geothermal waters to the geothermal aquifer in a manner that supports geothermal development. (3-21-12)

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: (3-21-12)

a. Take all necessary precautions to keep all wells under control at all times; (3-21-12)

b. Utilize trained and competent personnel; (3-21-12)

c. Utilize properly maintained equipment and materials; and (3-21-12)

d. Use operating practices which insure the safety of life and property. (3-21-12)

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. (3-21-12)

057. -- 059. (RESERVED)

060. EXPLORATION AND OPERATION RECORDS, CONFIDENTIALITY.

01. Drilling Records. Lessee must keep or cause to be kept and to be 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. (3-21-12)

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. (4-4-13)

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. (3-21-12)

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. (3-21-12)

066. -- 069. (RESERVED)

070. WATER RIGHTS.

01. Water Rights. Lessee shall 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 shall be by and for Lessor and no claim thereto shall be made by Lessee. Such water rights shall attach to and become appurtenant to the state lands, and the Lessor shall be the owner thereof. (4-4-13)

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. (3-21-12)

071. -- 074. (RESERVED)

075. ASSIGNMENTS.

01. Prior Written Approval. In order for lessee to effect an assignment, lessee shall, 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 shall constitute 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. (4-4-13)

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. Overriding Royalty Disclosure. Overriding royalty interests created by an assignment are subject to the requirements in Section 080 of these rules. (3-21-12)

04. Responsibility. In an assignment of a partial or complete interest in all of the lands in a lease the assignor and its surety shall continue to be responsible for performance of any and all obligations under the lease until such time as the Department shall, in writing, release 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 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. (4-4-13)

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 shall 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 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. (4-4-13)

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. (9-3-91)

07. Application. The application for approval of an assignment must be on forms approved by the Department. (4-4-13)

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 shall not be unreasonably withheld provided such consent of the Department is requested and obtained prior to any assignment. (4-4-13)

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. (3-21-12)

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%). (3-21-12)

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. 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. (3-21-12)

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 which 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 which are committed to such unit, cooperative or other plans of development or operations. (4-4-13)

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. (4-4-13)

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. (3-21-12)

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. (4-4-13)

06. Continuation of Lease. Any lease which will be eliminated from any such cooperative or unit plan of development or operation, or any lease which 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. (3-21-12)

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 which the Department deems to be

consistent with the unit operations. (4-4-13)

086. -- 089. (RESERVED)

090. PREFERENTIAL RIGHTS UPON DISCOVERY OF UNLEASED MINERALS, OIL, GAS AND OTHER HYDROCARBONS.
Any lessee who discovers any minerals or oil, gas or other hydrocarbons on lands leased from the Board for development of geothermal resources will 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 will be issued upon a lease form in current use by the Board. The preference right will 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 Department 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 will require the Board to issue a mineral lease or a lease for oil, gas or other hydrocarbon development. (3-21-12)

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, 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: (4-4-13)

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 IDWR; and (3-21-12)

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 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. (4-4-13)

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: (3-21-12)

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)

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. (4-4-13)

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 shall deliver to the state a good and sufficient release on a form furnished by the Department. (4-4-13)

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. (3-21-12)

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. (3-21-12)

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. (3-21-12)

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. (4-4-13)

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. (3-21-12)

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. (3-21-12)

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 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. -- 110. (RESERVED)

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. -- 119. (RESERVED)

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

01. Non-Refundable Application Fee for Lease. Two hundred fifty dollars ($250) per application. (3-21-12)

02. Application Fee for Approval of Assignment. One hundred fifty dollars ($150) per lease involved in the assignment. (3-21-12)

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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