SENATE RESOURCES & ENVIRONMENT COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2008 Legislative Session

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IDAPA 20 - DEPARTMENT OF LANDS

20.03.04 - RULES GOVERNING THE REGULATION OF BEDS, WATERS, AND AIRSPACE OVER NAVIGABLE LAKES IN THE STATE OF IDAHO

DOCKET NO. 20-0304-0701 (FEE RULE)

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Idaho Code Section 67-5224 and IDAPA 20.01.01, Rules of Practice and Procedure Before the State Board of Land Commissioners ("Board"), Sections 830 through 835, notice is hereby given that this agency has adopted a pending rule. This action is authorized pursuant to Section 58-104(6), Idaho Code.

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

The new rules are intended to implement changes in Section 58-1307, Idaho Code that increased application fees. The increase in fees is intended to cover the department's program costs. The rules also eliminate conflicts with Idaho Code Sections 58-1301, et seq. and the rules are reorganized to make them more understandable. These changes will also reduce the amount of time and money the department spends on the program. Encroachment standards are centralized in the new rules and expanded to address the issues that are currently facing the department. These issues include floathome sanitation, demolition, and allowing some amount of private moorage at commercial marinas. These rules are being promulgated in conjunction with changes to IDAPA 20.03.17, Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands.

Some changes were made to the pending rules after the close of comments on October 24, 2007. These changes are largely in response to comments received from the public. The definition of "commercial navigational encroachment" was modified to make it more general. A new definition of "commercial marina" was added. The term "commercial navigational encroachment" was then placed in the standards for encroachment lengths and in the application section. The standards for community docks and commercial marinas were modified and reorganized to clarify the distinctions between public and private moorage and remove some potential conflicts between paragraphs. Locked gates will be allowed on public moorage to address security concerns. Commercial marinas that convert to community docks must meet all the community dock standards. Parking requirements were modified to apply to all moorage at commercial marinas. Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have also been made to the rule and are being published with this Notice of Rulemaking as part of the pending

rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in Book 2 of the October 3rd, 2007 Idaho Administrative Bulletin, Vol. 07-10, pages 39 through 60.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. The fee or charge is being imposed pursuant to Section 58-1307, Idaho Code:

Encroachment application fees for: single and two-family docks within the line of navigability will be increased to $250; shoreline protection will be increased to $250; single and two-family docks outside the line of navigability will be increased to $1,000; community docks and commercial navigational encroachments will be increased to $2,000; nonnavigational encroachments will be increased to $1,000. For commercial navigational encroachments, if the actual cost of processing the permit exceeds $2,000, then the department may charge an additional amount subject to Section 58-1307, Idaho Code. These fee amounts will also be the maximum fees for temporary permits. Assignment fees are set at $150.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Eric Wilson, (208) 334-0261 or ewilson@idl.idaho.gov. More information is also at http://www.idl.idaho.gov/adminrule/rulemaking.html.

DATED this 15th day of November, 2007

Eric Wilson, Navigable Waters/Minerals Program Manager
Idaho Department of Lands
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THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Idaho Code 67-5221(1) and IDAPA 20.01.01, "Rules of Practice and Procedure Before the State Board of Land Commissioners" (Board), Sections 830 through 835, notice is hereby given that this agency has initiated proposed rulemaking procedures. This proposed rulemaking is authorized pursuant to Section 58-104(6), Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking, and changes

to 20.03.17, will be held on:

October 10th, 2007 -- 8 am to 5 pm
3780 Industrial Avenue South
Coeur d'Alene, Idaho

The purpose of the hearing is to gather public comments on the proposed rules. The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

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

The Idaho Department of Lands (IDL) is initiating this rulemaking partly in response to changes in Title 58, Chapter 13, Idaho Code made during the 2006 legislative session. These changes allowed higher permit fees to be collected. This rulemaking is also needed to clear up numerous conflicts between the rules and Title 58, Chapter 13, Idaho Code and to clarify several unclear sections that hinder effective program administration. The issues to be addressed by this rulemaking include, but are not limited to, increasing the permit fees, clarifying the definitions of commercial and community marinas, allowing commercial marinas to have up to 50% private moorage under certain conditions, changing some hearing processes, specifying floathome standards, authorizing temporary permits, and simplifying enforcement actions. This rulemaking will be conducted in conjunction with the IDAPA 20.03.17 rulemaking.

FEE SUMMARY: The following is a specific description of the application fees:

Single and two-family docks within the line of navigability are $250; single and two-family docks outside the line of navigability are $1,000; community and commercial docks are $2,000; nonnavigational encroachments are $1,000. For commercial docks, if the actual cost of processing the permit exceeds $2,000, then the department may charge an additional amount subject to Title 58, Chapter 13, Idaho Code, Section 58-1307. These fee amounts will also be the maximum fees for temporary permits. Assignment fees are set at $150.

FISCAL IMPACT: This is a general fund program. The department anticipates a positive fiscal impact of approximately $156,000 on the state general fund due to increased application and assignment fees.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the June 6, 2007 Idaho Administrative Bulletin, Vol. 07-6 page 77. Negotiations were conducted over six (6) meetings in June and July, 2007.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Eric Wilson, (208) 334-0261 or ewilson@idl.idaho.gov. More information is also at http://www.idl.idaho.gov/adminrule/rulemaking.html

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2007.

DATED this 21st day of August, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.
~~*The State Board of Land Commissioners is authorized by Sections 58-104(9) and 58-1301, et seq., Idaho Code, to adopt these rules for the regulation of the beds, waters and airspace over navigable lakes in the state of Idaho.*~~ This Chapter is adopted under the legal authorities of Title 58, Chapter 1, Sections 58-104(6), 58-104(9), 58-105, and 58-127, Idaho Code; Title 58, Chapter 13, Idaho Code; and Title 67, Chapter 52, Idaho Code. ~~*(7-1-98)*~~(____)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 20.03.04, "Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho~~*," IDAPA 20.03.04*~~." (____)

02. Scope. These rules ~~*regulate*~~ govern encroachments on, in, or above navigable lakes in the state of Idaho. ~~*(7-1-98)*~~(____)

002. WRITTEN INTERPRETATIONS.
~~*The Department has no written interpretive statements pertaining to the interpretation of rules in this chapter.*~~ 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, Attorney General formal and informal opinions, and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals, Attorney General opinions, and other written interpretations, if applicable, are available for public inspection and copying at the director's office of the Idaho Department of Lands, Boise, Idaho, or are available on the internet at www.idl.idaho.gov. ~~*(7-1-98)*~~(____)

003. ADMINISTRATIVE APPEALS.
~~*Hearings and administrative appeals are available only as set forth herein under the rules governing the processing of applications for non-commercial single-family and two-family encroachments, Section 025; and the rules governing the processing of applications for all other types of encroachments, Section 030; and the rules governing revocation of encroachment permits, Section 040.*~~ Any person aggrieved by any final decision or order of the board shall be entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, IDAPA 20.01.01, Title 58, Chapter 13, Sections 58-1305 and 58-1306, Idaho Code, and Sections 025, 030, and 080 of these rules. ~~*(7-1-98)*~~(____)

004. INCORPORATION BY REFERENCE.
The following documents are incorporated by reference into these rules: ( )

01. International Building Code©, 2006 Edition published by the International Code Council© and available on the Internet at: http://www.iccsafe.org. ( )

02. United States Aid to Navigation System. Prepared by the United States Coast Guard and available on the Internet at: http://www.uscgboating.org/safety/aton/system.htm.( )

005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.
The principal place of business of the Department of Lands is in Boise, Idaho and it is open from 8 a.m. to 5 p.m. except Saturday, Sunday and 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. ( )

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. ( )

00~~4~~7. -- 009. (RESERVED).

010. DEFINITIONS.

01. Adjacent. Contiguous or touching, and with regard to land or land ownership having a common boundary. (7-1-98)

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

0~~2~~3. Artificial High Water Mark. The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line. ~~*(9-13-90)*~~( )

0~~3~~4. Beds of Navigable Lakes. The lands lying under or below the "natural or ordinary high water mark" of a navigable lake and, for purposes of these rules only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one. (9-13-90)

0~~4~~5. Board. The Idaho State Board of Land Commissioners ~~*of the State of Idaho*~~ or its ~~*authorized representative*~~ designee. ~~*(9-13-90)*~~( )

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

07. Boat Lift. A mechanism for mooring boats partially or entirely out of the water. ( )

08. **Boat Ramp**. A structure or improved surface extending below the ordinary or artificial high water mark whereby watercraft or equipment are launched from land-based vehicles or trailers. ( )

0~~5~~9. ***~~Commercial Navigational Encroachment~~*** **Commercial Marina**. A *commercial* navigational encroachment *~~for the use of which patrons pay a fee~~* whose primary purpose is to provide moorage for rental or for free to the general public. *~~(9-13-90)~~*( )

10. ***Commercial Navigational Encroachment****. A navigational encroachment used for commercial purposes.* ( )

~~06~~11. **Community Dock~~s~~**. A ~~S~~structure~~s~~ that provides private moorage *~~facilities~~* for more than two (2) adjacent *~~riparian~~* littoral owners, or *~~for a homeowners' association that is a riparian~~* other littoral owners *~~owning~~* possessing a *~~riparian~~* littoral common area *~~including riparian~~* with littoral rights including, but not limited to homeowner's associations. *~~A community dock shall not have less than fifty (50) feet combined shoreline frontage. A community dock shall be considered a commercial navigational aid for purposes of processing the application.~~* No public access is required for a community dock. *~~(3-19-99)~~*( )

~~07.~~ ***~~Contested Case Hearing~~****. ~~A formal hearing conducted pursuant to these rules, Idaho Code, Title 67, Chapter 52, and IDAPA 20.01.01, "Rules of Practice and Procedure Before the State Board of Land Commissioners." This type of hearing requires the formal designation of parties as set forth in the Board's Rules of Practice and Procedure, IDAPA 20.01.01, and is conducted like a trial. Members of the public not wishing to formally intervene in contested case hearings as a party may nevertheless participate in such hearings as public witnesses pursuant to IDAPA 20.01.01.~~* *~~(7-1-98)~~*

12. **Covered Slip**. A slip, or group of slips, with a tubular frame, fabric canopy, and no eaves. ( )

~~08~~13. **Department**. The Idaho Department of Lands or its designee. *~~(9-13-90)~~*( )

~~09~~14. **Director**. The *~~director~~* head of the Idaho Department of Lands or his designee. *~~(9-13-90)~~*( )

1~~0~~5. **Encroachments in Aid of Navigation**. Includes docks, piers, *~~floats,~~* jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other *~~such aids to navigability~~* facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake. The term "encroachments in aid of navigation" may be used interchangeably herein with the term "navigational encroachments." *~~(3-19-99)~~*( )

1~~1~~6. **Encroachments Not in Aid of Navigation**. Includes all other encroachments on, in, or above the beds or waters of a navigable lake, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation. It shall also include float homes *~~moored permanently or in any one (1) place for a substantial period of time and used as either a permanent or temporary place of abode or residence~~* and floating toys. The term "encroachments not in aid of navigation" may be used interchangeably herein with the term "nonnavigational encroachments." *~~(9-13-90)~~*( )

17. **Floating Home or Float Home**. A structure that is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling and is not self-propelled. These structures are usually dependent for utilities upon a continuous utility linkage to a source originating on shore, and must have either a permanent continuous connection to a sewage system on shore, or an alternative method of sewage disposal that does not violate local, state, or federal water quality and sanitation regulations. ( )

18. **Floating Toys**. Non-navigational encroachments including, but not limited to, trampolines, inflatable structures, water ski courses, and other recreational equipment not moored to a dock. ( )

19. **Jet Ski Ramp, Port, or Lift**. A mechanism for mooring jet skis or other personal watercraft similar to a boat lift. The lifts may be free standing or attached to a dock or pier.( )

~~1~~20. **Line of Navigability**. ~~*The dock line established by existing docks or if no dock line exists then such distance below the low water mark as will afford sufficient draft for water craft customarily in use on that particular body of water.*~~ A line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question. ~~*(7-1-98)*~~( )

~~13~~21. **Low Water Mark**. That line or elevation on the bed of a lake marked or located by the average low water elevations over a period of years, and marks the point to which the riparian rights of adjoining landowners extend as a matter of right, in aid of their right to use the waters of the lake for purposes of navigation. ~~*(7-1-98)*~~( )

22. **Moorage**. A place to secure float homes and watercraft including, but not limited to, boats, personal watercraft, jet skis, etc. ( )

~~14~~23. **Natural or Ordinary High Water Mark**. The high water elevation in a lake over a period of years, uninfluenced by man made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. (9-13-90)

~~15~~24. **Navigable Lake**. Any permanent body of relatively still or slack water, including man-made reservoirs, not privately owned and not a mere marsh or stream eddy, and capable of accommodating boats or canoes. ~~*and includes*~~ This definition does not include man-made reservoirs ~~*except*~~ where the jurisdiction thereof is asserted and exclusively assumed by a federal agency. ~~*(9-13-90)*~~( )

~~16~~25. **Party**. Each person or agency named or admitted as a party, or property seeking and entitled as of right to be admitted as a party to a hearing on an application for an encroachment. (9-13-90)

~~17~~26. **Person**. A~~*ny individual,*~~ partnership, association, ~~*company,*~~ corporation, ~~*municipality, county, state or federal agency,*~~ natural person, or ~~*other*~~ entity qualified to do business in the state of Idaho and any federal, state, tribal, or municipal unit of government.

~~(9-13-90)~~(____)

2~~7~~. **Piling**. A metal, concrete, plastic, or wood post that is placed into the lakebed and used to secure floating docks and other structures. (____)

~~1~~28. **Plans**. Maps, sketches, engineering drawings, aerial and other photographs, word descriptions, and specifications sufficient to describe the extent, nature and approximate location of the proposed encroachment and the proposed method of accomplishing the same. (9-13-90)

~~19~~29. **Public ~~Meeting~~ Hearing**. The type of hearing where members of the public are allowed to comment, in written or oral form, on the record at a public meeting held at a set time and place and presided over by a designated representative of the Department who shall act as the hearing coordinator. This type of hearing is an informal opportunity for public comment and does not involve the presentation of witnesses, cross examination, oaths, or the rules of evidence. A record of any oral presentations at such hearings will be taken by the Department by tape recorder. The hearing coordinator shall exercise such control at hearings as necessary to maintain order, decorum and common courtesy among the participants. ~~(7-1-98)~~(____)

~~2~~30. **Public Trust Doctrine**. The duty of the State to its people to ensure that the use of public trust resources is consistent with identified public trust values. This common law doctrine has been interpreted by decisions of the Idaho Appellate Courts and is codified at Title 58, Chapter 12, Idaho Code. (3-19-99)

31. **Pylon**. A metal, concrete, or wood post that is placed into the lakebed and used to support fixed piers. (____)

~~21~~32. **Riparian or Littoral Rights**. ~~Only~~ ~~t~~The rights of owners or lessees of land adjacent to navigable ~~lakes and~~ waters of the lake to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters ~~or to remove bed materials from state-owned lakebeds~~ of the lake. ~~(3-19-99)~~(____)

~~22~~33. **Riparian or Littoral Owner**. The fee owner of land immediately adjacent to a navigable lake, or his lessee, or the owner of riparian or littoral rights that have been segregated from the fee specifically by deed or grant. ~~(7-1-98)~~(____)

34. **Riparian or Littoral Right Lines**. Lines that extend waterward of the intersection between the artificial or ordinary high water mark and an upland ownership boundary to the line of navigation. Riparian or littoral right lines will generally be at right angles to the shoreline. (____)

35. **Side Tie**. Moorage for watercraft where the dock or pier is on only one (1) side of the watercraft. (____)

~~2~~36. **Single-Family Dock**. A structure providing noncommercial moorage ~~facilities~~ that serves one (1) waterfront ~~lot having frontage of~~ owner whose waterfront footage is no less than twenty-five (25) feet. ~~(7-1-98)~~(____)

3~~7~~. **Slip**. Moorage for boats with pier or dock structures on at least two (2) sides of the moorage. ( )

~~24~~38. **Submerged Lands**. The state-owned beds of navigable lakes, rivers and streams below the natural or ordinary high water marks. (9-13-90)

~~25~~39. **Two-Family Dock**. A structure providing noncommercial moorage ~~*facilities*~~ that serves two (2) adjacent waterfront ~~*lots*~~ owners having a combined ~~*frontage*~~ waterfront footage of no less than fifty (50) feet. Usually the structure is located on the common ~~*riparian*~~ littoral property line. ~~*(7-1-98)*~~( )

~~26~~40. **Uplands~~*s*~~**. The land bordering on navigable lakes, rivers, and streams. ~~*(9-13-90)*~~( )

011. ABBREVIATIONS.

01. IDAPA. Idaho Administrative Procedure Act. ( )

02. ATON. Aids to Navigation. ( )

01~~1~~2. POLICY.

01. Environmental Protection and Navigational or Economic Necessity. It is the express policy of the State of Idaho that the public health, interest, safety and welfare requires that all encroachments upon, in or above the beds or waters of navigable lakes of the state be regulated in order that the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment. Moreover, it is the responsibility of the State Board of Land Commissioners to regulate and control the use or disposition of state-owned lake beds, so as to provide for their commercial, navigational, recreational or other public use. (9-13-90)

02. No Encroachments Without Permit. No encroachment on, in or above the beds or waters of any navigable lake in the state shall hereafter be made unless approval therefore has been given as provided in these rules. An encroachment permit does not guarantee the use of public trust lands without appropriate compensation to the state of Idaho. ~~*(9-13-90)*~~( )

03. Permitting of Existing Encroachments. ( )

a. The provisions of Title 58, Chapter 13, Section 58-1312, Idaho Code, shall apply. ( )

b. Any new encroachments, or any unpermitted encroachments constructed after January 1, 1975, shall be subject to these rules. ( )

01~~2~~3. -- 014. (RESERVED).

015. ~~*DOCK*~~ ENCROACHMENT STANDARDS~~*AND FLOAT HOME REQUIREMENTS*~~.

01. Single-Family and Two-Family Docks. The following parameters govern the size and dimensions of single-family docks and two-family docks. (7-1-98)

a. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed ten (10) feet in width, excluding the slip cut out. ~~*(3-19-99)*~~(____)

b. Total surface decking area waterward of the natural or ordinary or artificial high water mark shall not exceed seven hundred (700) square feet, including approach ramp and walkway for a single-family dock and shall not exceed one thousand one hundred (1,100) square feet, including approach ramp and walkway for a two-family dock. ~~*(7-1-98)*~~(____)

c. No portion of the docking facility shall extend ~~*more than one hundred (100) feet waterward of the natural or ordinary high water mark or if applicable the artificial high water mark or further than three (3) feet of water depth at low water*~~ beyond the line of navigability. Shorter docks are encouraged whenever practical and new docks normally will be installed within the waterward extent of existing docks or the line of navigation. ~~*(7-1-98)*~~(____)

~~***d.*** *Where feasible, all docks, piers or similar structures shall be constructed to protrude as nearly as possible perpendicular to the general shoreline.* *(7-1-98)*~~

~~***02***~~**d.** ~~*Variance.*~~ A variance to the standards contained in Subsection 015.01 of these rules may be approved by the ~~*director*~~ department where it can be justified by site specific considerations such as the distance to the established line of navigation. ~~*(7-1-98)*~~(____)

0~~*3*~~2. Community Docks. (7-1-98)

a. A community dock shall be considered a commercial navigational aid for purposes of processing the application. (____)

~~***a***~~**b.** No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed ten (10) feet in width except breakwaters when justified by site specific conditions and approved by the department. ~~*No part of the fixed portion of the dock shall exceed ten (10) feet in width. This includes fixed piers and approach ramps.(3-19-99)*~~(____)

~~***b***~~**c.** A community dock shall not have less than fifty (50) feet combined shoreline frontage. Moorage facilities will be limited in size as a function of the length of shoreline dedicated to the community dock. The surface decking area of the community dock shall be limited to the product of the length of shoreline multiplied by seven (7) square feet per lineal feet or a minimum of seven hundred (700) square feet. However, the Department, at its discretion, may limit the ultimate size when evaluating the proposal and public trust values. ~~*(3-19-99)*~~(____)

d. If a breakwater will be incorporated into the structure of a dock, and a need for the breakwater can be demonstrated, the department may allow the surface decking area to exceed the size limitations of Paragraph 015.02.c of these rules. (____)

e. A person with an existing community dock that desires to change the facility to a

commercial marina must submit *the following information to the department:* *( )*

i. *A* new application for an encroachment permit. *( )*

ii. *T*ext and drawings *that describe* which moorage will be public and which moorage will be private. *( )*

03. Commercial Marina. ( )

a. Commercial marinas must have moorage available for use by the general public. Such use may range from providing day moorage on a first come, first served basis for free or rent to renting or leasing moorage for a period of time up to one (1) year. *Moorage contracts may be renewed annually, but the renewal term may not exceed one (1) year. Moorage* for use by the general public *may* not include *conditions that result in a transfer of ownership of moorage or real property, or require membership in a club or organization.* *( )*

b. *Commercial marinas that change to a community dock use must conform to all the community dock standards, including square footage restrictions. This change of use must be approved by the department through a new encroachment permit prior to implementing the change.* *( )*

c. *Commercial marinas shall provide a minimum of upland vehicle parking equivalent to one (1) parking space per two (2) watercraft moorages, and one (1) parking space per two (2) float home moorages. Local city or county ordinances governing parking requirements for marinas will apply if such have been enacted.* *( )*

d. *If a commercial marina can be accessed from a road, marina customers must be allowed access via that road.* *( )*

e. *Commercial marinas must have a minimum of fifty percent (50%) of their boat moorage available for use by the general public.* *( )*

f. Moorage that is not available for public use is private moorage. Private moorage *is* created when one (1) of the following occurs: *( )*

i. Moorage is rented or leased for longer than one (1) year *without requiring a renewal.* *( )*

ii. Moorage is acquired with a purchase as described in *P*aragraph 015.03.a. of these rules. *( )*

g. When calculating the moorage percentage, the amount of public moorage shall be compared to the amount of private moorage. Commercial marinas with private float home *moorage* shall be required to provide either non-private float home *moorage* or two (2) public use boat *moorages* for every private float home *moorage* in addition to any other required public use boat *moorages*. *( )*

h. When private moorage is permitted, the public moorage must be of similar size and quality as private moorage, except for float home moorage as provided in Paragraph 015.03.*g*. of these rules. ( )

i. Commercial marinas with private moorage must form a condominium association, co-op, or other entity that owns and manages the marina, littoral rights, upland property sufficient to maintain and operate a marina, and private submerged land, if present. This entity is responsible for obtaining and maintaining an encroachment permit under these rules and a submerged lands lease under IDAPA 20.03.17, "Rules Governing Leases on State-Owned Submerged lands and Formerly Submerged Lands." ( )

j. Existing commercial marinas that desire to change their operations and convert some of their moorage to private use must keep at least fifty percent (50%) of their moorage available for use by the general public. This change in operations must be approved by the department through a new encroachment permit prior to implementation of the change. The permit application shall describe, in text and in drawings, which moorage will be public and which moorage will be private. ( )

04. Covered Slip. ( )

a. Covered slips, regardless of when constructed, may not have a temporary or permanent residential area. ( )

b. Slip covers should have colors that blend with the natural surroundings and are approved by the department. ( )

c. Covered slips with permanent roofs and up to three (3) walls may be maintained or replaced at their current size if they were previously permitted or if they were constructed prior to January 1, 1975. These structures may not be expanded nor converted to boat garages. ( )

d. Fabric covered slips must be constructed as canopies without sides unless the following standards are followed: ( )

i. At least two (2) feet of open space is left between the bottom of the cover and the dock or pier surface; and ( )

ii. Fabric for canopy and sides will transmit at least seventy-five percent (75%) of the natural light. ( )

05. Boat Garage. ( )

a. Boat garages are considered nonnavigational encroachments. ( )

b. Applications for permits to construct new boat garages, or to expand the total square footage of the existing footprint, will not be accepted unless the application is to support local emergency services. ( )

c. Existing permitted boat garages may be maintained or replaced at their current

size. ( )

d. Relocation of an existing boat garage will require a permit. ( )

0~~4~~6. Breakwaters. Breakwaters built upon the lake for use in aid of navigation will not be authorized below the level of normal low water without an extraordinary showing of need, provided, however that this shall not apply to floating breakwaters secured by piling and used to protect private property from recurring wind, wave, or ice damage, or used to control traffic in busy areas of lakes. The breakwater shall be designed to counter wave actions of known wave heights and wave lengths. ~~*(7-1-98)*~~( )

07. Seawalls. Seawalls should be placed at or above the ordinary high water mark, or the artificial high water mark, if applicable. Seawalls are not an aid to navigation, and placement waterward of the ordinary or artificial high water mark will generally not be allowed. ( )

08. Riprap. ( )

a. Riprap used to stabilize shorelines will consist of rock that is appropriately sized to resist movement from anticipated wave heights or tractive forces of the water flow. The rock shall be sound, dense, durable, and angular rock resistant to weathering and free of fines. The riprap shall overlie a distinct filter layer which consists of sand, gravel, or nonwoven geotextile fabric. The riprap and filter layer shall be keyed into the bed below the ordinary or artificial high water mark, as applicable. If the applicant wishes to install riprap with different standards, they must submit a design that is signed and stamped for construction purposes by a professional engineer registered in the state of Idaho. ( )

b. Riprap used to protect the base of a seawall or other vertical walls may not need to be keyed into the bed and may not require a filter layer, at the department's discretion. ( )

0~~5~~9. Mooring Buoys. Buoys shall be installed a minimum of thirty (30) feet away from ~~*riparian*~~ littoral right lines of adjacent ~~*riparian*~~ littoral owners. One (1) mooring buoy per ~~*riparian*~~ littoral owner shall be allowed. ~~*(3-19-99)*~~( )

~~*06*~~10. Float Homes ~~*Construction, Alteration or Relocation*~~. ~~*(7-1-98)*~~( )

a. Applications for permits to construct new float homes, or to expand the total square footage of the existing footprint, will not be accepted. ~~*(7-1-98)*~~( )

b. Applications for relocation of float homes ~~*existing prior to April 5, 1974,*~~ within a lake or from one lake to another shall be subject to the following requirements: ~~*(7-1-98)*~~( )

i. Proof of ownership or long term lease of the uplands adjacent to the relocation site must be furnished to the Department. (7-1-98)

ii. The applicant must show that all wastes and waste water will be transported to shore disposal systems by a method approved by the Idaho Department of Environmental Quality or the appropriate local health authority. Applicant must either obtain a letter from the local sewer district stating that the district will serve the float home or demonstrate that sewage will be

appropriately handled and treated. Applicant must also provide a statement from a professional plumber licensed in the state of Idaho that the plumbing was designed according to the International Building Code, installed properly, and has been pressure tested. ~~*(7-1-98)*~~( )

c. Encroachment ~~A~~applications and approved local permits are required for replacement ~~*or enlargement of float homes. Adding another story to a float home shall require a permit*~~ of, or adding another story to, a float home. ~~*(7-1-98)*~~( )

d. All plumbing and electrical work on float homes must be done in accordance with the International Building Code. ( )

e. All float homes that are hooked to upland sewer or septic systems must be inspected and certified every year by a professional plumber licensed in the state of Idaho. Permittees or their designee are responsible for providing this documentation to the department. ( )

11. Excavated or Dredged Channel. ( )

a. Excavating, dredging, or redredging channels shall require an encroachment permit and shall be processed in accordance with Section 030 of these rules. ( )

b. An excavated or dredged channel or basin to provide access to navigable waters must have a clear environmental, economic, or social benefit to the people of the state, and shall not result in any appreciable environmental degredation. A channel or basin shall not be approved if the cumulative effects of these features in the same navigable lake would be adverse to fisheries or water quality. ( )

c. Whenever practical, such channels or basins shall be located to serve more than one (1) littoral owner; provided, however, that no basin or channel will be approved that will provide access for watercraft to nonlittoral owners. ( )

12. ATONs. Aids to Navigation will conform to the requirements established by the United States Aid to Navigation system. ( )

13. General Encroachment Standards. ( )

a. Square Footage. The square footage requirements in Subsections 015.01 and 015.02 include all structures beyond the ordinary or artificial high water mark such as the approach, ramp, pier, dock, and all other floating or suspended structures that cover the lake surface, except for: ( )

i. Boat lifts that provide less shading than dock structures and as described in Paragraph 015.13.b. ( )

ii. Jet ski ramp, port, or lift as described in Paragraph 015.13.b. ( )

iii. Slip covers. ( )

iv. Undecked portions of breakwaters. ( )

b. Boat Lifts and Jet Ski Lifts. ( )

i. Single-family docks are allowed a single boat lift and two (2) jet ski lifts, or two (2) boat lifts, without adding their footprint to the dock square footage. Additional lifts will require that fifty percent (50%) of the footprint of the largest lifts be included in the allowable square footage of the dock or pier as per Subsection 015.01. ( )

ii. Two-family docks are allowed two (2) boat lifts and four (4) jet ski lifts, or four (4) boat lifts, without adding their footprint to the dock square footage. Additional lifts will require that fifty percent (50%) of the footprint of the largest lifts be included in the allowable square footage of the dock or pier as per Subsection 015.01. ( )

iii. Community docks are allowed one (1) boat lift or two (2) jet ski lifts per moorage. Lifts placed outside of a slip shall be oriented with the long axis parallel to the dock structure. Additional lifts will require that fifty percent (50%) of their footprint be included in the allowable square footage of the dock or pier as per Subsection 015.02. ( )

c. Angle from Shoreline. ( )

i. Where feasible, all docks, piers, or similar structures shall be constructed so as to protrude as nearly as possible at right angles to the general shoreline, lessening the potential for infringement on adjacent littoral rights. ( )

ii. Where it is not feasible to place docks at right angles to the general shoreline, the department shall work with the applicant to review and approve the applicant's proposed configuration and location of the dock and the dock's angle from shore. ( )

d. Length of Community Docks and Commercial *Navigational Encroachments*. Docks, piers, or other works may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water, except that no structure may extend beyond the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the director. If a normally accepted line of navigability has not been established through use, the director may from time to time as he deems necessary, designate a line of navigability for the purpose of effective administration of these rules. *( )*

e. Presumed Adverse Effect. It will be presumed, subject to rebuttal, that single-family and two-family navigational encroachments will have an adverse effect upon adjacent littoral rights if located closer than ten (10) feet from adjacent littoral right lines, and that commercial navigational encroachments, community docks or nonnavigational encroachments will have a like adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines. Written consent of the adjacent littoral owner or owners will automatically rebut the presumption. All boat lifts and other structures attached to the encroachments shall be subject to the above presumptions of adverse affects. ( )

f. Weather Conditions. Encroachments and their building materials shall be designed

and installed to withstand normally anticipated weather conditions in the area. Docks, piers, and similar structures shall be adequately secured to pilings or anchors to prevent displacement due to ice, wind, and waves. Flotation devices for docks, float homes, etc. shall be reasonably resistant to puncture and other damage. ( )

g. Markers. If the department determines that an encroachment is not of sufficient size to be readily seen or which poses a hazard to navigation, the permit shall specify that aids to navigation be used to clearly identify the potential hazard. ( )

h. **Overhead Clearance**. ( )

i. Overhead clearance between the natural or ordinary high water mark or the artificial high water mark, if there be one, and the structure or wires must be sufficient to pass the largest vessel which may reasonably be anticipated to use the subject waters in the vicinity of the encroachment. In no case will the clearance be required to exceed thirty (30) feet unless the department determines after public hearing that it is in the overall public interest that the clearance be in excess of thirty (30) feet. Irrespective of height above the water, approval of structures or wires presenting a hazard for boating or other water related activities may be conditioned upon adequate safety marking to show clearance and otherwise to warn the public of the hazard. The department shall specify in the permit the amount of overhead clearance and markings required. ( )

ii. When the permit provides for overhead clearance or safety markings under Paragraph 015.13.h, the department shall consider the applicable requirements of the United States Coast Guard, the Idaho Transportation Department, the Idaho Public Utilities Commission and any other applicable federal, state, or local regulations. ( )

i. Beaded Foam Flotation. Beaded foam flotation shall be completely encased in a manner that will maintain the structural integrity of the foam. The encasement shall be resistant to the entry of rodents. ( )

016. -- 019. (RESERVED).

020. APPLICATIONS.

01. Encroachment Applications. No person shall hereafter make or cause to be made any encroachment on, in or above the beds or waters of any navigable lake in the state of Idaho without first making application to and receiving written approval from the ~~*director*~~ department. The placing of dredged or fill material, refuse or waste matter intended as or becoming fill material, on or in the beds or waters of any navigable lake in the state of Idaho shall be considered an encroachment and written approval by the ~~*director*~~ department is required. If demolition is required prior to construction of the proposed encroachment, then the application must describe the demolition activities and the steps that will be taken to protect water quality and other public trust values. No demolition activities may proceed until the permit is issued. ~~*(9-13-90)*~~( )

02. Signature Requirement. Only persons who are ~~*riparian*~~ littoral owners or lessees of a ~~*riparian*~~ littoral owner shall be eligible to apply for encroachment permits. A person who has been specifically granted ~~*riparian*~~ littoral rights or dock rights from a ~~*riparian*~~ littoral owner shall

also be eligible for an encroachment permit; the grantor of such ~~*riparian*~~ littoral rights, however, shall no longer be eligible to apply for an encroachment permit. Except for waterlines or utility lines, the possession of an easement to the shoreline does not qualify a person to be eligible for an encroachment permit. ~~*(7-1-98)*~~( )

03. Other Permits. Nothing in these rules shall excuse a person seeking to make an encroachment from obtaining any additional approvals lawfully required by federal, local or other state agencies. (9-13-90)

04. Repairs, ~~*Replacement*~~ Reinstallation of Structures. ~~*Approval is not*~~ No permit is required to clean, maintain, or ~~*to make*~~ repair~~*s to*~~ an existing permitted encroachment, but ~~*approval*~~ a permit is required to completely replace, enlarge. or extend an existing encroachment. ~~*Replacing*~~ Reinstalling the top or deck of a dock, wharf or similar structure shall be considered a repair; ~~*replacing*~~ reinstallation of winter damaged or wind and water damaged pilings, docks, or float logs ~~*used to maintain existing encroachments in position*~~ shall be considered a repair. ~~*Redredging a channel or basin shall be considered a replacement and a permit is necessary unless redredging is authorized by the outstanding permit. Dredging of a channel or basin will require a new permit. Complete replacement of the entire dock at one (1) time exactly to the same specifications of the currently existing dock is considered a repair and will not require a new permit so long as dock is made to the same configuration in the same location.*~~ Repairs that adversely affect the bed of the lake will be considered a violation of these rules.
~~*(3-19-99)*~~( )

05. Dock Reconfigureation. ( )

a. Rearrangement of single-family and two-family docks will require a new application for an encroachment permit. ( )

b. Rearrangement of community docks *and commercial navigational encroachments* may not require a new application for an encroachment permit if the changes are only internal. The department shall be consulted prior to modifications being made, and shall use the following criteria to help determine if a new permit must be submitted: *( )*

i. Overall footprint does not change in dimension or orientation; ( )

ii No increase in square footage, as per Paragraph 015.13.a., occurs; ( )

iii. The entrances and exits of the facility do not change. ( )

06. Redredging. Redredging a channel or basin shall be considered a new encroachment and a permit is required unless redredging is specifically authorized by the outstanding permit. Water quality certification from the Idaho Department of Environmental Quality is required regardless of how redredging is addressed in any existing or future permit.
( )

0~~5~~7. Forms, Filing. Applications must be in writing on forms provided by the Department or copies. Applications and plans shall be filed in the local office of the Department ~~*in Coeur d'Alene*~~, whose location is available on the internet at www.idl.idaho.gov, or the

director's office in Boise, together with filing fees and costs of publication ~~*where*~~ when required by these rules~~*, except that applications and plans for noncommercial navigational encroachments may be filed at any supervisory field office. Plans shall include a lakebed profile in relationship to the proposed encroachment. The lakebed profile shall show the summer and winter water levels. The plan shall show, where possible, the lengths of adjacent docks as an indication of the line of navigability. The plans shall show the relationship of the proposed encroachment in the lake and indicate a general vicinity map. The plans shall be presented on paper no larger than eight and one-half by fourteen (8 1/2" x 14") inches*~~. Costs of preparation of the application, including all necessary maps and drawings, shall be paid by the applicant. ~~*(7-1-98)*~~(____)

a. Plans shall include the following information on paper no larger than eight and one half by fourteen (8 1/2" x 14") inches: (____)

i. Lakebed profile in relationship to the proposed encroachment. The lakebed profile shall show the summer and winter water levels. (____)

ii. Copy of most recent survey or county plat showing the full extent of the applicant's lot and the adjacent littoral lots. (____)

iii. Proof of current ownership or control of littoral property or littoral rights. (____)

iv. A general vicinity map. (____)

v. Scaled air photos or maps showing the lengths of adjacent docks as an indication of the line of navigability, distances to adjacent encroachments, and the location and orientation of the proposed encroachment in the lake. (____)

vi. Total square footage of proposed docks and other structures, excluding pilings, that cover the lake surface. (____)

vii. Names and current mailing addresses of adjacent littoral landowners. (____)

~~*a*~~**b.** Applications ~~*for nonnavigational encroachments and commercial navigational encroachments*~~ must be submitted or approved by the ~~*riparian or*~~ littoral owner or, if the encroachment will lie over or upon private lands between the natural or ordinary high water mark and the artificial high water mark, the application must be submitted or approved by the owner of such lands. ~~*Where*~~ When the littoral owner is not the applicant, the application shall bear the owner's signature as approving the encroachment prior to filing. ~~*(9-13-90)*~~(____)

~~***b.*** *Applications for noncommercial navigational encroachments associated with private or public uplands must be signed by the riparian or littoral owner or his lessee, or by the owner or lessee of private lands between the natural or ordinary high water mark, and the artificial high water mark, seeking approval to make the encroachment. Owners of riparian or littoral lands or of the aforesaid private lands not making or joining in the application shall be considered adjacent riparian owners entitled to notice under Subsection 025.02, where the encroachment is on or over such riparian or littoral or other private lands.* *(7-1-98)*~~

c. If more than one (1) littoral owner exists, the application must bear the signature of

all littoral owners, or the signature of an authorized officer of a designated homeowner's or property management association. ( )

~~c~~d. Applications for noncommercial encroachments intended to improve waterways for navigation, wildlife habitat and other recreational uses by members of the public must be filed by any municipality, county, state, or federal agency, or other entity empowered to make such improvements. Application fees are not required for these encroachments. ~~(7-1-98)~~( )

~~d~~e. The following applications shall be accompanied by ~~a~~ the respective nonrefundable filing fees ~~of two hundred fifty dollars ($250),~~ together with a deposit toward the cost of newspaper publication, which deposit shall be determined by the director at the time of filing: ~~(9-13-90)~~( )

i. Nonnavigational encroachments require a fee of one thousand dollars ($1,000); ~~(9-13-90)~~( )

ii. Commercial navigational encroachments require a base fee of two thousand dollars ($2,000). If the costs of processing an application exceed this amount, then the applicant may be charged additional costs as allowed by Title 58, Chapter 13, Section 58-1307, Idaho Code; ~~(7-1-98)~~( )

iii. Community navigational encroachments require a fee of two thousand dollars ($2,000); and ~~(7-1-98)~~( )

iv. Navigational encroachments extending beyond the line of navigability require a fee of one thousand dollars ($1,000). ~~(9-13-90)~~( )

~~e~~f. Applicants shall pay any balance due on publication costs before written approval will be issued. The Department shall refund any excess at or before final action on the application. (9-13-90)

~~f~~g. Application for a ~~permit for~~ single-family ~~and joint~~ or two-family dock~~s~~ not extending beyond the line of navigability or a nonnavigational encroachment for bank stabilization and erosion control or for fisheries and wildlife habitat improvements shall be accompanied by a nonrefundable filing fee of two hundred fifty dollars ($250). ~~(7-1-98)~~( )

~~g~~h. No publication cost is required for application for noncommercial navigational encroachment not extending beyond the line of navigability or for application for installation of buried or submerged water intake lines and utility lines. (9-13-90)

~~h~~i. Applications and plans shall be stamped with the date of filing. (7-1-98)

~~i~~j. Applications that are incomplete, not in the proper form, not containing the required signature(s), or not accompanied by filing fees and costs of publication ~~where~~ when required, shall not be accepted for filing. The ~~director~~ department shall ~~notify~~ send the applicant ~~of any deficiency~~ a written notice of incompleteness with a listing of the application's deficiencies. The applicant will be given thirty (30) days from receipt of the notice of incompleteness to resubmit the required information. The deadline may be extended with written

consent of the department. If the given deadline is not met, the department will notify the applicant that the application has been denied due to lack of sufficient information. The applicant may reapply ~~*provided the required information is submitted*~~ at a later date, but will be required to pay another filing fee and publication fee, if applicable. ~~*(7-1-98)*~~(____)

021. -- 024. (RESERVED).

025. PROCESSING OF APPLICATIONS FOR ~~*NONCOMMERCIAL*~~ SINGLE-FAMILY AND ~~*JOINT*~~ TWO-FAMILY NAVIGATIONAL ENCROACHMENTS WITHIN LINE OF NAVIGABILITY.

01. ~~*Noncommercial*~~ Single-Family and Two-Family **Navigational Encroachments**. Applications for single-family and two-family navigational encroachments not extending beyond the line of navigability will be processed with a minimum of procedural requirements and shall not be denied except in the most unusual of circumstances. No newspaper publication, formal appearance by the applicant, or hearing is contemplated. ~~*(7-1-98)*~~(____)

02. Adjacent ~~*Riparian*~~ Littoral **Owners**. If a proposed encroachment referred to in Subsection 025.01 may infringe upon the ~~*riparian or*~~ littoral right~~*s*~~ lines of an adjacent ~~*riparian*~~ littoral owner, the ~~*director*~~ department shall require the applicant to secure the written consent of the adjacent ~~*riparian*~~ littoral owner. ~~*(7-1-98)*~~(____)

03. Notification of Adjacent ~~*Riparian*~~ Littoral Owners. If the signature of the adjacent ~~*riparian*~~ littoral owner is not required, the Department shall provide a copy of such application to the ~~*riparian*~~ littoral owners immediately adjacent to the applicant's property. ~~*Such adjacent riparian owner shall have twenty-one (21) days from the date of the mailing to provide comments to the Department.*~~ If the applicant owns one (1) or more adjacent lots, the department shall notify the owner of the next adjacent lot. This ~~*notice*~~ notification will be sent by regular mail to the adjacent ~~*riparian*~~ littoral owners' usual place of address, which, if not known, shall be the address shown on the records of the county treasurer or assessor. The applicant may submit the adjacent ~~*riparian*~~ littoral owners' signatures as concurring with the application in lieu of the ~~*twenty-one (21) day notice period*~~ department's notification. ~~*(3-19-99)*~~(____)

04. Written Objections. (____)

a. If an adjacent ~~*riparian*~~ littoral owner files written objections to the application with the ~~*director*~~ department within ~~*twenty-one*~~ ten (~~*2*~~10) days from the date of service or receipt of notice of the completed application, the ~~*director*~~ department shall fix a time and a place for a hearing. In computing the time to object, the day of service or receipt of notice of the application shall not be counted. Objections must be received within the ~~*twenty-one*~~ ten (~~*2*~~10) day period by mail or hand delivery in the local department office ~~*of the Department in Coeur d'Alene*~~ or the director's office in Boise. If the last day of the period is Saturday, Sunday or a legal holiday, the time within which to object shall run until the end of the first business day thereafter. ~~*(7-1-98)*~~(____)

b. The applicant and any objectors may agree to changes in the permit that result in the objections being withdrawn. Department employees may facilitate any such agreement. Participation by department personnel in this informal mediation shall not constitute a conflict of

interest for participation in the hearing process. A withdrawal of objections must be in writing, completed prior to a scheduled hearing, and contain: ( )

i. Signatures of the applicant and the objecting party; ( )

ii. A description of the changes or clarifications to the permit that are acceptable to the applicant, the objecting party, and the department. ( )

05. Unusual Circumstances. Even though no objection is filed by an adjacent ~~*riparian*~~ littoral owner to a noncommercial navigational encroachment, if the director deems it advisable because of the existence of unusual circumstances, he may require a hearing. ~~*(7-1-98)*~~( )

06. Hearings. Hearings fixed by the director following an objection pursuant to Subsection 025.04 or the Director's own determination pursuant to Subsection 025.05 shall be fixed as to time and place, but no later than sixty (60) days from date of acceptance for filing of the application. At the hearing the applicant and any adjacent riparian owner filing timely objections may appear personally or through an authorized representative and present evidence. ~~*Said hearing shall be in the nature of a formal contested case hearing as defined herein by Subsection 010.07.*~~ The department may also appear and present evidence at the hearing. In such hearings the ~~*Department*~~ hearing coordinator shall act as ~~*the*~~ a fact finder and not a party. The Director, at his discretion, shall designate a Department representative to sit as the hearing ~~*officer*~~ coordinator. Provided, however, that the parties may agree to informal disposition of an application by stipulation, agreed settlement, consent order, or other informal means. ~~*(3-19-99)*~~( )

07. Decision Following a Hearing. The director shall, within forty-five (45) days after close of the hearing provided for in Subsections 025.04 or 025.05 render a final decision and give notice thereof to the parties appearing before him either personally or by certified or registered mail. The final decision shall be in writing. ~~*(7-1-98)*~~( )

08. ~~***Reconsideration****. The applicant, if dissatisfied with the Director's decision, or other aggrieved party who participated at a hearing, shall have twenty (20) days from the date of the Director's decision to request reconsideration thereof. If reconsideration is requested, the director shall set a time and place for a reconsideration hearing, not to exceed thirty (30) days from receipt of the request, at which time and place the person requesting reconsideration and the applicant may appear in person or through an authorized representative and present briefing and oral argument. Upon conclusion of reconsideration, the director shall by personal service or by registered or certified mail notify the applicant of his decision.*~~ **Disposition Without Hearing**. If a hearing is not held under Subsection 025.04 or Subsection 025.05, then the department shall act upon a complete application filed under Subsection 025.01 as expeditiously as possible but no later than sixty (60) days from acceptance of the application. Failure to act within this sixty (60) day timeframe shall constitute approval of the application. Applications determined to be incomplete under Subsection 020.07 are not subject to the sixty (60) day timeframe until the information requested by the department and required by the rules has been submitted. ~~*(3-19-99)*~~( )

09. Judicial Review. Any applicant aggrieved by the Director's final decision ~~*on*~~

~~*reconsideration*~~, or ~~*other*~~ an aggrieved party appearing at a ~~*reconsideration*~~ hearing, shall have a right to have the proceedings and final decision reviewed by the district court in the county where the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final decision. An adjacent ~~*riparian*~~ littoral owner shall be required to deposit an appeal bond with the court, ~~*a*~~ in an amount to be determined by the court but not less than five hundred dollars ($500) ~~*appeal bond*~~ insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the action of the director. The applicant need post no bond with the court to prosecute an appeal. ~~*(3-19-99)*~~( )

~~***10. Disposition Without Hearing****. In the event no objection to the proposed encroachment and request for hearing is filed with the director by an adjacent riparian owner under Subsection 025.04, or hearing ordered by the director under Subsection 025.05, then the director shall act upon an application filed under Subsection 025.01 as expeditiously as possible but no later than sixty (60) days from acceptance of the application and failure to act within such time shall constitute approval of the application.*~~ ~~*(7-1-98)*~~

026. -- 029. (RESERVED).

030. PROCESSING OF APPLICATIONS FOR ALL OTHER TYPES OF ENCROACHMENTS.

01. Nonnavigational, Community, and Commercial Navigational Encroachments. Upon receipt of a~~*n*~~ complete application for a nonnavigational encroachment, a community dock, or a commercial navigational encroachment, or for a navigational encroachment extending beyond the line of navigability, the ~~*director*~~ department shall, within ten (10) days of ~~*acceptance for filing of the*~~ receiving a complete application, ~~*cause notice of the application to be published*~~ publish a notice of application once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the encroachment is proposed~~,~~. ~~*however, that if*~~ If, however, the director orders a hearing on the application ~~*in the first instance*~~ within the time for publication of the above notice, the ~~*director*~~ department shall dispense with publication of the notice of the application and shall proceed instead to publish a notice of the public hearing as provided in Subsection ~~*025.06*~~ 030.05. Applications for installation of buried or submerged water intake lines and utility lines shall be exempt from the newspaper publication process ~~*unless it is of a size that it requires an easement from the state of Idaho*~~. ~~*(7-1-98)*~~( )

02. Encroachments Not in Aid of Navigation. Encroachments not in aid of navigation in navigable lakes will normally not be approved by the Department and will be considered only in cases involving major environmental, economic, or social benefits to the general public. Approval under these circumstances is authorized only when consistent with the public trust doctrine and when there is no~~*t*~~ other feasible alternative with less impact on public trust values. ~~*(7-1-98)*~~( )

03. ~~***Agency Comments***~~ **Notifications**. Upon request or when the ~~*director*~~ department deems it appropriate, the ~~*director*~~ department may furnish copies of the application and plans to federal, state and local agencies and to adjacent ~~*riparian*~~ littoral owners, requesting comment on the likely effect of the proposed encroachment upon adjacent ~~*riparian*~~ littoral property and ~~*lake*~~ public trust values ~~*factors of*~~ such as navigation, fish and wildlife habitat, aquatic life, recreation,

aesthetic beauty, ~~*or*~~ water quality, etc. ~~*Within thirty (30) days following receipt of a copy of the application and plans, such agencies shall notify the director of their opinions and recommendation, if any, for alternate plans determined by such agencies to be economically feasible to accomplish the purpose of the proposed encroachment without adversely affecting unreasonably adjacent riparian property or other lake value factors and public trust values.*~~
~~*(7-1-98)*~~(____)

04. Written Comments or Objections. ~~*Any resident of the state of Idaho, or a nonresident owner or lessee of real property adjacent to the lake in question, or any state, federal or local agency may, w*~~Within thirty (30) days of the first date of publication, an agency, adjacent littoral owner or lessee, or any resident of the state of Idaho may do one (1) of the following:
(____)

a. Notify the department of their opinions and recommendation, if any, for alternate plans they believe will be economically feasible and will accomplish the purpose of the proposed encroachment without unreasonably adversely affecting adjacent littoral property or public trust values; or (____)

b. ~~*f*~~File with the ~~*director*~~ Department written objections to the proposed encroachment and ~~*a*~~ request ~~*for*~~ a public hearing on the application. The hearing must be specifically requested in writing. Any person or agency requesting a hearing on the application shall deposit and pay to the ~~*director*~~ department an amount sufficient to cover the cost of publishing notice of hearing provided in Subsection 030.05. ~~*(3-19-99)*~~(____)

05. Hearing. Notice of the time and place of public hearing on the application shall be published by the director once a week for two (2) consecutive weeks in a newspaper in the county in which the encroachment is proposed, which hearing shall be held within ninety (90) days from the date the application is accepted for filing. (7-1-98)

06. Hearing Participants. Any person may appear at the public hearing and present oral testimony. Written comments shall also be received by the Department. (7-1-98)

07. Decision After Hearing. The director shall render a final decision within ~~*forty-five*~~ thirty (~~*45*~~30) days after close of the public hearing. A copy of his final decision shall be mailed to the applicant and to each person or agency appearing at the hearing and giving oral or written testimony in support of or in opposition to the proposed encroachment. ~~*(7-1-98)*~~(____)

08. Decision Where No Hearing. (____)

a. In the event no objection to the proposed encroachment is filed with the ~~*director*~~ department and no public hearing is requested under Subsection 030.04, or ordered by the director under Subsection 030.01, the ~~*director*~~ department, based upon ~~*his*~~ its investigation and considering the economics of the navigational necessity, justification or benefit, public or private, of such proposed encroachment as well as its detrimental effects, if any, upon adjacent real property~~*, lake value factors*~~ and public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, ~~*or*~~ water quality, etc. shall prepare and forward to the applicant ~~*either personally or by registered or certified mail, his*~~ its decision. ~~*(7-1-98)*~~(____)

~~*09*~~**b**. ~~***Reconsideration.***~~ The applicant, if dissatisfied with the director's decision, ~~*or other aggrieved persons who appeared at the public hearing and gave oral or written testimony,*~~ shall have twenty (20) days from the date of the director's decision to request reconsideration thereof. If reconsideration is required, the director shall set a time and place for a reconsideration hearing, not to exceed thirty (30) days from receipt of the request, at which time and place ~~*the person requesting reconsideration and*~~ the applicant may appear in person or through an authorized representative and present briefing and oral argument. Upon conclusion of reconsideration, the director shall by personal service or by registered or certified mail notify the applicant of his final decision. ~~*(3-19-99)*~~(____)

~~*1*~~**09**. **Judicial Review**. Any applicant aggrieved by the director's final decision, ~~*on reconsideration*~~ or ~~*other*~~ an aggrieved party ~~*appearing*~~ who appeared at a ~~*reconsideration*~~ hearing, shall have the right to have the proceedings and final decision of the director reviewed by the district court in the county in which the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final decision. The applicant need post no bond with the court to prosecute an appeal. Any other aggrieved party shall be required to deposit an appeal bond with the court, in an amount to be determined by the court but not less than five hundred dollars ($500), ~~*appeal bond*~~ insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the action of the director. ~~*(7-1-98)*~~(____)

~~*1*~~**10**. **Factors in Decision**. In recognition of continuing private property ownership of lands lying between the natural or ordinary high water mark and the artificial high water mark, if present, the ~~*director*~~ department shall consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors to be considered in granting or denying an application for either a nonnavigational encroachment or a commercial navigational encroachment not extending below the natural or ordinary high water mark. If no objections have been filed to the application and no public hearing has been requested or ordered by the director, or, if upon reconsideration of a decision disallowing a permit, or following a public hearing, the ~~*director*~~ department determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, ~~*he*~~ the permit shall be granted ~~*the permit*~~. ~~*(9-13-90)*~~(____)

031. -- 03~~*9*~~4. (RESERVED).

035. TEMPORARY PERMITS.

01. Applicability. Temporary permits are used for construction, temporary activities related to permitted encroachments, or other activities approved by the department. (____)

02. Permit Term. These permits are generally issued for less than one (1) year, but longer terms may be approved by the department and permits may be extended with department approval. (____)

03. Bonding. The department may require bonds for temporary permits. (____)

04. Fee. The board shall set fees for temporary permits, but the fees shall be no greater than the amounts listed for the respective permit types in Subsection 020.07. Fee information is

available on the Internet at www.idl.idaho.gov. ( )

05. **Processing**. These permits may be advertised if the department deems it appropriate, with the applicant paying the advertising fee as per Subsection 020.07. ( )

~~***040. PERMIT REVOCATION OR WITHDRAWAL.***~~

~~***01. Administrative Action on Revocation of Lake Encroachment Permit****. The Department may institute an administrative action to revoke a lake encroachment permit for violation of the conditions of a permit, or for any other reason authorized by law. All such proceedings shall be conducted as contested case hearings subject to the provisions of Idaho Code, Title 67, Chapter 52 and IDAPA 20.01.01, "Rules of Practice and Procedure Before the State Board of Land Commissioners."*** ~~*(7-1-98)*~~

~~***02. Notice of Noncompliance/Proposed Permit Revocation****. When the Department determines that cause exists for revocation of a lake encroachment permit, it shall provide the permittee with a "Notice of Noncompliance/Proposed Permit Revocation," which shall consist of a short and plain statement of the reason for the proposed revocation, including any pertinent legal authority.*** ~~*(7-1-98)*~~

~~***03. Request for Contested Case Hearing****. If the permittee disputes the Department's basis for revocation, the permittee shall, within thirty (30) days of receipt of the notice of noncompliance, request a contested case hearing in which to request a contested case hearing, the Department may proceed to revoke the permit administratively. If the permittee requests a contested case hearing, the Department shall proceed to schedule and conduct the hearing in accordance with these rules, Idaho Code, Title 67, Chapter 52 and IDAPA 20.01.01, "Rules of Practice and Procedure Before the State Board of Land Commissioners."*** ~~*(7-1-98)*~~

~~***04. Recommended Findings of Fact and Conclusions of Law****. A hearing officer appointed to conduct the revocation hearing shall prepare recommended findings of fact and conclusions of law and forward them to the Director for final adoption or rejection.*** ~~*(7-1-98)*~~

0~~41~~36. -- 049. (RESERVED).

050. RECORDATION.
Recordation of an issued permit in the records of the county in which an encroachment is located shall be a condition of issuance of a permit and proof of recordation shall be furnished to the Department by the permittee before a permit becomes valid. Such recordation shall be at the expense of the permittee. Recordation of an issued permit serves only to provide constructive notice of the permit to the public and subsequent purchasers and mortgagees, but conveys no other right, title, or interest on the permittee other than validation of said permit. ~~*(Idaho Code, Section 58-1306(c))*~~ ~~*(9-13-90)*~~( )

051. -- 054. (RESERVED).

055. LEASES AND EASEMENTS.

01. Lease or Easement Required. As a condition of the encroachment permit, the

~~*director*~~ department may require a submerged land lease or easement for use of any part of the state-owned bed of the lake where such lease or easement is required in accordance with "Rules Governing Leases on State-owned Submerged Lands and Formerly Submerged Lands," IDAPA 20.03.17, or "Rules For Easements On State-owned Submerged Lands And Formerly Submerged Lands," IDAPA 20.03.09. A lease or easement may be required for uses including, but not limited to, commercial uses. Construction of an encroachment authorized by permit without first obtaining the required lease or easement shall constitute a trespass upon state-owned public trust lands. This rule is intended to grant the state recompense for the use of the state-owned bed of a navigable lake where reasonable and it is not intended that the ~~*director*~~ department withhold or refuse to grant such lease or easement if in all other respects the proposed encroachment would be permitted. ~~*(3-19-99)*~~(____)

02. Seawalls, Breakwaters, Quays. Seawalls, breakwaters, and quays on or over state-owned beds, designed primarily to create additional land surface, will be authorized, if at all, by an encroachment permit and submerged land lease or easement, upon determination by the ~~*director*~~ department to be an appropriate use of submerged lands. ~~*(9-13-90)*~~(____)

056. -- 059. (RESERVED).

060. INSTALLATION.

01. Installation Only After Permit Issued. Installation or on site construction of an encroachment may commence only when the permit is issued or when the ~~*director*~~ department notifies the applicant in writing that installation may be commenced or when the ~~*director*~~ department has failed to act in accordance with Subsection 025.~~*1*~~08. ~~*(3-19-99)*~~(____)

~~***02. Construction**. Where feasible, all docks, piers or similar structures shall be constructed so as to protrude as nearly as possible at right angles to the general shoreline and shall be constructed so as not to interfere with docks, piers, or similar structures presently existing or likely to be installed to serve adjacent properties. (9-13-90)*~~

~~***03. Water Access**. Docks, piers or other works may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water during the normal low water period, except that no structure may extend beyond the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the director. If a normally accepted line of navigability has not been established through use, the director may from time to time as he deems necessary, after public hearing, designate a line of navigability for the purpose of effective administration of these rules. (9-13-90)*~~

~~***04. Excavated or Dredged Channel**. An excavated or dredged channel or basin to provide access to navigable waters may be authorized only when the applicant can show that it will provide a clear environmental, economic, or social benefit to the people of the state and will not result in any appreciable environmental degredation. A channel or basin shall not be approved if it appears that the cumulative effect of the proposed channel or basin plus all reasonably foreseeable future basins or channels in the same navigable lake would be adverse to fisheries or water quality. Whenever practical, such channels or basins shall be located to serve more than one (1) riparian owner; provided, however, that no basin or channel will be approved*~~

~~*that will provide access for watercraft to nonriparian owners.* *(3-19-99)*~~

~~***05.*** ***Presumed Adverse Effect****. It will be presumed, subject to rebuttal, that commercial navigational encroachments, community docks or nonnavigational encroachments will have an adverse effect upon adjacent riparian property if located closer than twenty-five (25) feet to adjacent riparian property lines and that single-family and two-family navigational encroachments will have a like adverse effect upon adjacent riparian property if located closer than ten (10) feet from adjacent riparian property lines. Consent of the adjacent riparian owner or owners will automatically rebut the presumption.* *(3-19-99)*~~

~~***06.*** ***Upland Vehicle Parking****. Commercial navigational encroachments shall provide upland vehicle parking equivalent to one (1) parking space per two (2) watercraft moorages. Local city or county ordinances governing parking requirements for marinas will apply if such have been enacted.* *(7-1-98)*~~

~~***07.*** ***Weather Conditions****. Encroachments shall be designed and installed to withstand normally anticipated weather conditions in the area. Docks, piers and similar structures shall be adequately secured to pilings or anchors to prevent displacement due to ice, wind and waves.* *(9-13-90)*~~

~~***08.*** ***Markers****. If the director determines that an encroachment is not of sufficient size to be readily seen or which poses a hazard to navigation, he shall specify in the permit approved markers be used to identify clearly the extent and size of the encroachment.* *(7-1-98)*~~

0~~9~~2. Removal of Construction Waste. ( )

a. Pilings, anchors, old docks, and other structures~~, or material~~ or waste at the site of the installation or reinstallation and not used as a part of the encroachment shall be removed from the water and lakebed at the time of the installation or reinstallation to a point above normal flood water levels; provided, however, that this shall not be construed to prevent the use of trash booms for the temporary control of floatable piling ends and other floatable materials in a securely maintained trash boom, but approval for a trash boom shall be required as part of a permit. ~~*(9-13-90)*~~( )

b. Demolition of encroachments shall be done in a manner that does not unnecessarily damage the lakebed or shoreline. Demolition work must comply with water quality standards administered by the Department of Environmental Quality. ( )

~~***10.*** ***Seawalls or Breakwaters****. Seawalls or breakwaters built upon the lake for use in aid of navigation will not be authorized below the level of normal low water without an extraordinary showing of need; provided, however that this shall not apply to floating breakwaters secured by piling and used to protect private property from recurring wind, wave or ice damage, or used to control traffic in busy areas of lakes.* *(9-13-90)*~~

~~11~~03. Compliance with Permit. All work shall be done in accordance with these rules, and the application submitted, and is subject to any condition specified in the permit. (7-1-98)

~~***12.*** ***Overhead Clearance****. Overhead clearance between the natural or ordinary high*~~

~~*water mark or the artificial high water mark, if there be one, and the structure or wires must be sufficient to pass the largest vessel which may reasonably be anticipated to use the subject waters in the vicinity of the encroachment. In no case will the clearance be required to exceed twenty (20) feet unless the director shall determine after hearing that it is in the overall public interest that the clearance be in excess of twenty (20) feet. Irrespective of height above the water, approval of structures or wires presenting a hazard for boating or other water related activities may be conditioned upon adequate safety marking to show clearance and otherwise to warn the public of the hazard. The director shall specify in the permit the amount of overhead clearance and markings required.*~~ ~~*(9-13-90)*~~

~~***13. Overhead Clearance; Other Requirements****. When the permit provides for overhead clearance or safety markings under Subsection 060.08, the director shall consider the applicable requirements of the U.S. Coast Guard, the Idaho Transportation Department, the Idaho Public Utilities Commission and any other applicable federal, state or local regulations.*~~ ~~*(3-19-99)*~~

~~1~~04. Sunset Clause. All activities authorized within the scope of the encroachment permit must be completed within three (3) years of issuance date. If the activities are not completed within three (3) years, the permit shall automatically expire unless it was previously revoked or ~~*otherwise*~~ extended by the department. ~~*(7-1-98)*~~(____)

061. -- 06~~9~~4. (RESERVED).

065. ASSIGNMENTS.

01. Assignment of Encroachment Permit. Encroachment permits may be assigned upon approval of the department provided that the encroachment conforms with the approved permit. The assignor and assignee must complete a department assignment form and forward it to the appropriate area office. (____)

02. Assignment Fee. The assignment fee shall be one hundred fifty dollars ($150). The fee shall be paid at the time the assignment is submitted to the department. (____)

03. Approval Required for Assignment. An assignment is not valid until it has been approved by the department. (____)

04. Assignment With New Permit. Encroachments not in compliance with the approved permit may be assigned only if: (____)

a. An application for a new permit to correct the noncompliance is submitted at the same time. (____)

b. The assignee submits written consent to bring the encroachment *permit* into compliance. *(____)*

066. -- 069. (RESERVED).

070. MISCELLANEOUS.

01. Water Resources Permit. A permit to alter a navigable stream issued by the Department of Water Resources pursuant to Title 42, Chapter 38, Idaho Code, may, in appropriate circumstances, contain language stating the approval of the Department of Lands to occupy the state-owned bed of the navigable stream. (9-13-90)

02. Dredge and Placer Mining. Department authorization is required for dredge and placer mining in the lands, lakes and rivers within the state, whether or not the state owns the beds, pursuant to Title 47, Chapter 13, Idaho Code. (9-13-90)

03. Mineral Leases. Littoral rights do not include any right to remove bed materials from state-owned lakebeds. Applications to lease minerals, oil, gas and hydrocarbons, and geothermal resources within the state-owned beds of navigable lakes will be processed by the department pursuant to Title 47, Chapters 7, 8 and 16, Idaho Code, and rules promulgated thereunder. ~~(9-13-90)~~(____)

04. Other Laws and Rules. The permittee shall comply with all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources. (____)

071. -- 079. (RESERVED).

080. VIOLATIONS - PENALTIES.

01. Cease and Desist Order. When the department determines that a violation of these rules is occurring due to the ongoing construction of an unauthorized encroachment or an unauthorized modification of a permitted encroachment, it may provide the landowner, contractor, or permittee with a written cease and desist order that shall consist of a short and plain statement of what the violation is, the pertinent legal authority, and how the violation may be rectified. This order will be served by personal service or certified mail. The cease and desist order shall be used to maintain the status quo pending formal proceedings by the department to rectify the violation. (____)

02. Notice of Noncompliance/Proposed Permit Revocation. When the department determines that these rules have been violated, a cause exists for revocation of a lake encroachment permit, or both of these have occurred, it shall provide the permittee with a notice of noncompliance/proposed permit revocation that shall consist of a short and plain statement of the violation including any pertinent legal authority. This notice shall also inform the permittee of what steps are needed to either bring the encroachment into compliance, if possible, or avoid revocation, or both. (____)

03. Noncompliance Resolution. The department will attempt to resolve all noncompliance issues through conference with the permittee or other involved party. Any period set by the parties for correction of a violation shall be binding. If the department is unsuccessful in resolving the violations, then the department may pursue other remedies under Section 080 of these rules. (____)

0~~1~~4. Violations. The following acts or omissions shall subject a person to a civil

penalty ~~*of not less than one hundred fifty dollars ($150) nor more than two thousand five hundred dollars ($2,500)*~~ as allowed by Title 58, Chapter 13, Section 58-1308, Idaho Code: ~~*(9-13-90)*~~(____)

a. A violation of the provisions of ~~*Section 58-1301, et seq.*~~ Title 58, Chapter 13, Idaho Code, or of the rules and general orders adopted thereunder and applicable to navigable lakes; ~~*(9-13-90)*~~(____)

b. A violation of any special order of the director applicable to a navigable lake; or (9-13-90)

c. Refusal to cease and desist from any violation in regards to a navigable lake after having ~~*been notified to do so in writing by the director*~~ received a written cease and desist order from the department by personal service or certified mail, within the time provided in the notice, or within thirty (30) days of service of such notice if no time is provided. ~~*(9-13-90)*~~(____)

d. Willfully and knowingly falsifying any records, plans, information, or other data required by these rules. (____)

e. Violating the terms of an encroachment permit. (____)

0~~2~~5. Injunctions, **Damages**. The Board expressly reserves the right, through the director, to seek injunctive relief under Title 58, Chapter 13, Section 58-1308, Idaho Code and mitigation of damages under Title 58, Chapter 13, Section 58-1309, Idaho Code, in addition to the civil penalties provided for in Subsection 080.0~~1~~4 of these rules. ~~*(7-1-93)*~~(____)

06. Mitigation, Restoration. The board expressly reserves the right, through the director, to require mitigation and restoration of damages under Title 58, Chapter 13, Section 58-1309, Idaho Code, in addition to the civil penalties and injunctive relief provided for in Subsections 080.04 and 080.05 of these rules. The department may consult with other state agencies to determine the appropriate type and amount of mitigation and restoration required. (____)

07. Revocation of Lake Encroachment Permits. (____)

a. The department may institute an administrative action to revoke a lake encroachment permit for violation of the conditions of a permit, or for any other reason authorized by law. All such proceedings shall be conducted as contested case hearings subject to the provisions of Title 67, Chapter 52, Idaho Code, and IDAPA 20.01.01, "Rules of Practice and Procedure before the State Board of Land Commissioners." (____)

b. A hearing officer appointed to conduct the revocation hearing shall prepare recommended findings of fact and conclusions of law and forward them to the director for final adoption or rejection. (____)

c. An aggrieved party who appeared and testified at a hearing shall have the right to have the proceedings and final decision of the director reviewed by the district court of the county in which the violation or revocation occurred by filing a notice of appeal within twenty-eight (28) days from the date of the final decision. (____)

IDAPA 20 - DEPARTMENT OF LANDS

20.03.17 - RULES GOVERNING LEASES ON STATE-OWNED SUBMERGED LANDS AND FORMERLY SUBMERGED LANDS

DOCKET NO. 20-0317-0701 (FEE RULE)

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Idaho Code Section 67-5224 and IDAPA 20.01.01, Rules of Practice and Procedure Before the State Board of Land Commissioners ("Board"), Sections 830 through 835, notice is hereby given that this agency has adopted a pending rule. This action is authorized pursuant to Section 58-104(6), Idaho Code.

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

The new rules were developed in conjunction with changes to IDAPA 20.03.04, Rules Governing the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho and will ensure continuity between the two sets of rules. Definitions were changed and expanded. The methods for determining rental rates were clarified. Yearly reporting requirements are added to assist the department's administration of the program and ability to keep rental rates current. Enforcement remedies are expanded to provide alternatives to lease cancellation. The rules also allow some amount of private moorage at commercial marinas.

Some changes were made to the pending rules after the close of comments on October 24, 2007. These changes are largely in response to comments received from the public. The definition of "commercial navigational encroachment" was modified to make it more general. A new definition of "commercial marina" was added. A definition of "two-family dock" was added for clarity. The lease term was modified in response to concerns that the wrong reference was used. References to public moorage, private moorage, and float homes were modified to clarify the meaning. Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have also been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in Book 2 of the October 3rd, 2007 Idaho Administrative Bulletin, Vol. 07-10, pages 61 through 69.

DEPARTMENT OF LANDS ***Docket No. 20-0317-0701***
Leases/State-Owned Submerged/Formerly Submerged Lands ***PENDING FEE RULE***

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

The fee or charge is being imposed pursuant to Sections 58-304 through 58-312, Idaho Code. Lease application and renewal fees will be increased to $150. Lease assignment fees will be increased to $150. Lease application and assignment fees will be required in addition to similar fees collected under IDAPA 20.03.04, Rules Governing the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho. Rental rates will be set by the Board. Lease violations may be remedied with payment of a civil penalty to be collected as additional rent.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Eric Wilson, (208) 334-0261 or ewilson@idl.idaho.gov. More information is also at http://www.idl.idaho.gov/adminrule/rulemaking.html.

DATED this 15th day of November, 2007.

Eric Wilson
Navigable Waters/Minerals Program Manager
Idaho Department of Lands
300 N. 6th Street, Suite 103, Boise, Idaho 83702
Phone (208) 334-0261/ Fax (208) 334-3698
ewilson@idl.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Idaho Code 67-5221(1) and IDAPA 20.01.01, "Rules of Practice and Procedure Before the State Board of Land Commissioners" (Board), Sections 830 through 835, notice is hereby given that this agency has initiated proposed rulemaking procedures. This proposed rulemaking is authorized pursuant to Section 58-104(6), Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking, and changes to 20.03.04, will be held on:

October 10th, 2007 -- 8 am to 5 pm
3780 Industrial Avenue South
Coeur d'Alene, Idaho

The purpose of the hearing is to gather public comments on the proposed rules. The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made

not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Idaho Department of Lands (IDL) is initiaing this rulemaking to provide continuity with IDAPA 20.03.04 and to address significant issues associated with development pressure, escalating resource demands, increased property values, and the economics of marina operation. The issues to be addressed by this rulemaking include changing definitions to match those of IDAPA 20.03.04, "Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho," and allowing commercial marinas to have some private moorage without permanently encumbering public trust lands and with sufficient protections for the parties involved. The rules will also specify what types of rental rates should be used. Yearly reporting requirements are added to assist the department in determining current market rental rates and to ensure our lessees are maintaining proper insurance coverage. These rules will also provide enforcement remedies in addition to lease cancellation. This rulemaking will be conducted in conjunction with the IDAPA 20.03.04 rulemaking.

FEE SUMMARY: The following is a specific description of the fees:

Lease application and renewal fees are $150; lease assignment fees are $150. Lease application and assignment fees will be required in addition to similar fees collected under IDAPA 20.03.04. Rental rates will be set by the board. Lease violations may be remedied with payment of a civil penalty to be collected as additional rent.

FISCAL IMPACT: This is a general fund program. The department anticipates a positive fiscal impact of approximately $4,000 on the state general fund due to increased application and assignment fees.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the June 6, 2007 Idaho Administrative Bulletin, Vol. 07-6 page 77. Negotiations were conducted over six (6) meetings in June and July, 2007.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Eric Wilson, (208) 334-0261 or ewilson@idl.idaho.gov. More information is also at http://www.idl.idaho.gov/adminrule/rulemaking.html

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this 21st day of August, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. *LEGAL* AUTHORITY.
~~*These rules are promulgated pursuant to, and shall be construed in a manner consistent with, the duties and responsibilities of the Idaho State Board of Land Commissioners as set forth in Idaho Code, Chapters 1, 3, and 6, Title 58, and the Public Trust Doctrine.*~~ This Chapter is adopted under the legal authorities of Title 58, Chapter 1, Idaho Code, Sections 58-104(6), 58-104(9), and 58-105; Title 58, Chapter 3, Idaho Code, Sections 58-304 through 58-312; Title 58, Chapter 6, Idaho Code; Title 58, Chapter 12; and Title 67, Chapter 52, Idaho Code. ~~*(7-1-97)*~~( )

001. TITLE AND SCOPE.

01. ~~***Application of Rules****. These rules set forth procedures concerning the issuance of leases on state-owned submerged lands.*~~ **Title**. These rules shall be cited as IDAPA 20.03.17, "Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands." ~~*(7-1-97)*~~( )

02. ~~***Additional Application of Rules***~~ **Scope**. These rules govern the issuance of leases on state-owned submerged lands. ( )

a. These rules also apply to state-owned islands raised from submerged lands, or filled submerged lands, or other formerly submerged lands that are no longer covered by water at any time during an ordinary year. ~~*(7-1-97)*~~( )

~~***03***~~**b.** ~~***State's Rights****.*~~ While the State asserts the right to issue leases for all encroachments, navigational or non-navigational, upon, in or above the beds or waters of navigable lakes and rivers, nothing in these rules shall be construed to vest in the state of Idaho any property, right or claim of such right to any private lands lying above the natural or ordinary high water mark of any navigable lake or river. ~~*(7-1-97)*~~( )

002. WRITTEN INTERPRETATIONS.
~~*There are no written interpretations of these rules.*~~ 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, Attorney General formal and informal opinions, and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals, Attorney General opinions, and other written interpretations, if applicable, are available for public inspection and copying at the director's office of the Idaho Department of Lands, Boise, Idaho, or are available on the Internet at www.idl.idaho.gov. ~~*(7-1-97)*~~( )

003. ADMINISTRATIVE APPEALS.
~~*This chapter does not provide for appeal of the administrative requirements for agencies.*~~ Any person aggrieved by any final decision or order of the board shall be entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, and IDAPA 20.01.01, "Rules of Practice and Procedure Before the State Board of Land Commissioners." ~~*(7-1-97)*~~( )

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

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.
The principal place of business of the Idaho Department of Lands is in Boise, Idaho and it is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and 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. ( )

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. ( )

00~~4~~7. -- 009. (RESERVED).

010. DEFINITIONS.

01. Artificial High Water Mark. The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line. ~~*(Section 58-1302(d), Idaho Code)*~~. ~~*(7-1-97)*~~( )

02. Board. The Idaho State Board of Land Commissioners or ~~*such representative as may be designated by the Board*~~ its designee. ~~*(7-1-97)*~~( )

03. ~~*Commercial Navigational Encroachment*~~ Commercial Marina. A *commercial* navigational encroachment ~~*for the use of which patrons pay a fee*~~ whose primary purpose is to provide moorage for rental or for free to the general public. ~~*(7-1-97)*~~( )

***04. Commercial Navigational Encroachment**. A navigational encroachment used for commercial purposes.* ( )

0~~4~~5. Community Dock~~*-or Multiple Family Dock*~~. ~~S~~A structure~~s~~ that provides private moorage ~~*facilities*~~ for more than two (2) adjacent ~~*riparian/*~~littoral ~~*property*~~ owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to, homeowners' associations. ~~*A community dock shall be considered a commercial navigational aid.*~~ No public access is required for a community dock. ~~*(7-1-97)*~~( )

0~~5~~6. Department. The Idaho Department of Lands or its designee. ~~*(7-1-97)*~~( )

0~~6~~7. Director. The ~~*director*~~ head of the Idaho Department of Lands or ~~*such representative as may be designated by the director*~~ his designee. ~~*(7-1-97)*~~( )

0~~7~~8. Dock Surface Area. Includes docks, slips, piers, and ramps and is calculated in square feet. Dock surface area does not include ~~*piles*~~ pilings, submerged anchors, or undecked breakwaters. ~~*(7-1-97)*~~( )

0~~8~~9. Encroachments in Aid of Navigation. Includes docks, piers, ~~*floats*~~ jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, ~~*log storage, public*~~

~~*boardwalks*~~ and other ~~*such aids to navigability*~~ facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake, river or stream. The term "encroachment~~*(*s~~*)*~~ in aid of navigation" may be used interchangeably herein with the term "navigational encroachment~~*(*s~~*)*~~." ~~*(7-1-97)*~~(____)

1~~*0*~~0~~*9*~~. Encroachments Not in Aid of Navigation. Includes all other encroachments on, in, or above the beds or waters of a navigable lake, river or stream, ~~*such as fills into waterways*~~ including landfills, bridges, ~~*floating restaurants, bars, stores*~~ utility and power lines, or other structures not constructed primarily for use in aid of navigation. It shall also include float homes ~~*moored permanently or in any one place for a substantial period of time and used as either a permanent or temporary place of abode or residence*~~ and floating toys. The term "encroachments not in aid of navigation" may be used interchangeably herein with the term "non-navigational encroachment~~*(*s~~*)*~~." ~~*(7-1-97)*~~(____)

1~~*0*~~1. Formerly Submerged Lands. The beds of navigable lakes, rivers, and streams that have either been filled or subsequently became uplands because of human activities including construction of dikes, berms, and seawalls. Also included are islands that have been created on submerged lands through natural processes or human activities since statehood, July 3, 1890. (7-1-97)

1~~*1*~~2. Market Value. ~~*For purposes of these rules only, the per acre market value of the state owned submerged lands shall be the same as the per acre value of the adjacent uplands for which the submerged or formerly submerged land shall serve as a substitute. The per acre value of the adjacent upland may be the county assessed value or may be appraised, as determined by the Director.*~~ The most probable price at a specified date, in cash, or on terms reasonably equivalent to cash, for which the property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. ~~*(7-1-97)*~~(____)

1~~*2*~~3. Natural or Ordinary High Water Mark. The line that the water impresses upon the soil by covering it for a sufficient period of time to deprive the soil of its vegetation and destroy its value for agricultural purposes~~*(Section 58-104 and 58-1302(c), Idaho Code)*~~. If, however, the soil, configuration of the surface, or vegetation has been altered by man's activity, the ordinary high water mark shall be located where it would have been if the alteration had not occurred. ~~*(7-1-97)*~~(____)

1~~*3*~~4. Person. A~~*n individual,*~~ partnership, association, ~~*or*~~ corporation, natural person, or entity qualified to do business in the state of Idaho~~*,*~~ and any federal, state, ~~*county*~~ tribal, or ~~*local*~~ municipal unit of government. ~~*(7-1-97)*~~(____)

1~~*4*~~5. Riparian or Littoral Rights. ~~*Only t*~~The rights of owners or lessees of land adjacent to navigable lakes, rivers or streams to maintain their adjacency to the lake, river, or stream and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters~~*or to remove state-owned bed materials. (Section 58-1302(f), Idaho Code)*~~. ~~*(7-1-97)*~~(____)

1~~*5*~~6. Single-Family Dock. A structure ~~*that provides*~~ providing noncommercial moorage ~~*facilities to*~~ that serves one (1) ~~*riparian/littoral*~~ waterfront owner whose waterfront footage is no

less than twenty-five (25) feet. ~~(7-1-97)~~(____)

16~~7~~. Submerged Lands. The state-owned beds of navigable lakes, rivers, and streams ~~lying~~ below the natural or ordinary high water marks. ~~(7-1-97)~~(____)

***18. Two-Family Dock**. A structure providing noncommercial moorage that serves two (2) adjacent waterfront owners having a combined waterfront footage of no less than fifty (50) feet. Usually the structure is located on the common littoral property line.* (____)

17~~7~~9. Uplands~~s~~. The land bordering on navigable lakes, rivers, and streams. ~~(7-1-97)~~(____)

011. ABBREVIATIONS.

01. IDAPA. Idaho Administrative Procedure Act. (____)

01~~1~~2. -- 019. (RESERVED).

020. APPLICABILITY.
Leases shall be required for all encroachments on, in, or over state-owned submerged land except: (7-1-97)

01. Single ~~or Multiple~~ -Family or Two-Family Docks. Single-~~or multiple~~-family or two-family docks that were constructed on or before July 1, 1993, that occupy~~ing~~ less than eleven hundred (1,100) square feet of dock surface area lakeward of the ordinary high water mark, and for which all required permits and approvals have been obtained. ~~(7-1-97)~~(____)

02. Single-Family Docks. Single-family docks that were constructed after July 1, 1993, that occupy~~ing~~ less than seven hundred (700) square feet of dock surface area lakeward of the ordinary high water mark, and for which all required permits and approvals have been obtained. ~~(7-1-97)~~(____)

03. ~~Multiple~~ Two-Family Docks. ~~Multiple~~ Two-family docks that were constructed after July 1, 1993, that occupy~~ing~~ less than eleven hundred (1,100) square feet of dock surface area lakeward of the ordinary high water mark, and for which all required permits and approvals have been obtained. ~~(7-1-97)~~(____)

04. Encroachments Free to the Public. Encroachments in aid of navigation for which the complete use is offered free to the public. (7-1-97)

05. Temporary Permits or Easements. Uses or encroachments that are customarily authorized by temporary permits or easements, such as roads, railroads, overhead utility lines, submerged cables, and pipelines. ~~(See~~ Information on easements can be found in IDAPA 20.03.09, "Easements on State-Owned Submerged Lands and Formerly Submerged Lands."~~)~~ ~~(7-1-97)~~(____)

021. -- 024. (RESERVED).

025. POLICY.

01. Policy of the State of Idaho. It is the policy of the state of Idaho to regulate and control the use and disposition of lands in the beds of navigable lakes, rivers and streams to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use; provided that the Board shall take no action in derogation of or seeking to interfere with the riparian or littoral rights of the owners of upland property abutting or adjoining such lands. ~~*(Section 58-104, Idaho Code).*~~ ~~*(7-1-97)*~~(____)

02. Director May Grant Leases. The director may grant leases for uses that are in the public interest and consistent with these rules. (7-1-97)

03. Requests or Inquiries Regarding Navigability. The State owns the beds of all lakes, rivers, and streams that ~~*are*~~ were navigable in fact at statehood. The Department will respond to requests or inquiries as to which lakes, rivers, and streams are deemed navigable in fact. Additional information about streams deemed navigable by the State of Idaho is available from the Department. ~~*(7-1-97)*~~(____)

04. Stream Channel Alteration Permit or Encroachment Permit. Issuance of a lease shall be contingent upon the applicant obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources, pursuant to Title 42, Chapter 38, Idaho Code, or an encroachment permit if required by the Department pursuant to the Lake Protection Act, Title 58, Chapter 13, Idaho Code, and compliance with local planning and zoning regulations if applicable. (7-1-97)

05. Other Permits and Licenses. Issuance of a lease shall not relieve an applicant from acquiring other permits and licenses that are required by law. (7-1-97)

06. Submerged Lands Lease Required Upon Notification. All persons using submerged lands in a manner that requires a submerged land lease shall obtain such a lease from the director when notified to do so. (7-1-97)

07. Term of Lease, Renewal of Lease. Leases shall be issued for a term ~~*not to exceed*~~ *of* ten (10) years *or as determined by the board.*~~*, and shall*~~ *Leases* may be renewed for additional ~~*ten (10) year*~~ periods to be determined by the department based upon satisfactory performance during the present term. Renewals shall be processed with a minimum of procedural requirements and shall not be denied except in the most unusual circumstances or noncompliance with the terms and conditions of the previous lease. Lease renewals shall be initiated by the ~~*director*~~ department. ~~*(7-1-97)*~~(____)

08. Director's Authorization to Issue and Renew Leases. The director is authorized to issue and renew leases for the use of submerged lands in accordance with these rules. (7-1-97)

09. Rights Granted. The lease grants only such rights as are specified in the lease. The right to use the property for all other purposes that do not interfere with the rights authorized in the lease remains with the state. (7-1-97)

10. Rules Applicable to All Existing and Proposed Uses and Encroachments.

These rules shall apply to all existing and proposed uses and encroachments, whether or not authorized by permit under the Lake Protection Act, Title 58, Chapter 13, Idaho Code, or the Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code. These rules provide that a lease may be required in addition to existing permits. See S~~*ubs*~~ection 020~~*.01 through 020.05*~~ of these rules for information about exceptions to lease requirements. ~~*(7-1-97)*~~*(____)*

11. Waiver of Lease Requirements. The director may, in his discretion, waive lease requirements for single~~*-or multiple-*~~family or two-family dock encroachments whose dock surface areas exceed square footages described in Subsections 020.01 through 020.03 of these rules when the additional dock surface area square footage is necessary to gain or maintain access to water of sufficient depth to sustain dock use for water craft customarily in use on that particular lake. ~~*(7-1-97)*~~(____)

12. Private *Moorage* at Commercial Marinas. *(____)*

a. This Subsection (025.12) does not apply to community docks. (____)

b. Private moorage at commercial marinas is allowed as long as the requirements of IDAPA 20.03.04, "Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho," Subsection 015.03 are met. (____)

c. The sale, lease, or rental of private moorage is in no way an encumbrance on any underlying public trust land. All transactions related to private moorage are subject to the limitations of the associated submerged lands lease. (____)

d. Acquisition of private moorage must be documented with a disclosure that the transaction does not convey public trust lands and only conveys the right to use the designated portion of the marina. (____)

e. The department shall make no policy regarding the cost of private moorage and the resolution of disputes between the involved parties. (____)

026. -- 029. (RESERVED).

030. LEASE APPLICATION, FEE, AND PROCEDURE.

01. Fee ~~*Determined by Board*~~. The lease application fee shall be ~~*determined by the Board*~~ one hundred fifty dollars ($150). ~~*(7-1-97)*~~(____)

~~***02. Fee May Not Be Required****. A lease application and fee may not be required if an encroachment permit application for a new or changed encroachment is filed simultaneously. In these cases, the encroachment permit application and fee will also serve as a lease application and fee.*~~ ~~*(7-1-97)*~~

0~~*3*~~2. Fee Shall Be Required. A lease application and nonrefundable fee shall be required for new and existing encroachments~~*unless application for a new encroachment permit is filed simultaneously*~~. A lease application fee shall be required for leases that are renewed upon expiration. ~~*(7-1-97)*~~(____)

~~***04. Encroachment Permit Application Fees**. Information on encroachment permit application fees may be found in IDAPA 20.03.04, "Rules for the Regulation of Beds, Waters and Airspace over Navigable Lakes in the State of Idaho."*~~ ~~*(7-1-97)*~~

0~~5~~3. Application to Lease and Fee. The lease application and fee shall be submitted with ~~*a letter of request stating the purpose of the lease; a scale drawing of the proposed lease area with plans detailing all intended improvements, including reference to the nearest known property corner(s); the permit number of each existing applicable encroachment permit(s); and the required rent.*~~ the information from Subsections 030.03.a. through 030.03.c., in sufficient detail for the department to determine an appropriate lease rate based on numbers of slips, square footage, or other permit information: ~~*(7-1-97)*~~(____)

a. A letter of request stating the purpose of the lease. (____)

b. A scale drawing of the proposed lease area with plans detailing all intended improvements, including reference to the nearest known property corner(s). An encroachment permit may satisfy this requirement. (____)

c. The permit number of each existing applicable encroachment permit. (____)

0~~6~~4. Submittal of Application to Lease and Fee. The lease application and fee ~~*may be submitted to any office of the Department*~~ shall be filed in the local office of the department, whose location is available on the Internet at www.idl.idaho.gov, or the director's office in Boise. ~~*(7-1-97)*~~(____)

0~~7~~5. Notification of Approval~~/~~ or Denial. The applicant shall be notified in writing if the lease application is approved or denied. The applicant shall also be notified of any additional requirements. ~~*(7-1-97)*~~(____)

0~~8~~6. Request for Reconsideration. Any applicant aggrieved with the director's determination of rent or denial of a lease application may request reconsideration by the Director. (7-1-97)

031. -- 034. (RESERVED).

035. RENTAL.

~~***01. Rental Rates Determined by the Board**.*~~ The rental rate~~s~~ policy for submerged land leases shall be set by the Board. This policy is available on the Internet at www.idl.idaho.gov. ~~*(7-1-97)*~~(____)

01. Standardized Rental Rates. The board shall set standard submerged land lease rental rates for common uses such as *commercial* marinas, community docks, floathomes, restaurants, and retail stores. These rates may use a percentage of market value or gross receipts as well as other methods determined appropriate by the board. *(____)*

02. ~~***Modification of Rent**. The director may temporarily reduce or waive annual lease***

~~*rent for commercial submerged lands leases for a period not to exceed two (2) years upon showing by the lessee that irreversible financial harm will occur if the rent is not temporarily modified.*~~ **Nonstandard Rental Rates**. The board shall direct the department to use a percentage of market value or gross receipts, or other methods determined appropriate by the board, as the submerged lands lease rental rate for uses that are uncommon, especially for non-navigational encroachments. ~~*(7-1-97)*~~( )

036. YEARLY REPORTING.

01. Annual Report. Lessees shall provide an annual report to the department which shall include: ( )

a. A schedule of moorage rental rates, including moorage sizes and types. ( )

b. The number and size of *all* public *boat and float home* moorages. *( )*

c. The number and size of *all* private *boat and* float home *moorages*. *( )*

d. Current proof of insurance that is required by the lease. ( )

02. Failure to Report. Failure to provide the annual report information will be a violation of these rules. ( )

03~~6~~7. -- 039. (RESERVED).

040. LATE PAYMENT, EXTENSIONS OF PAYMENT.

01. Penalty for Late Payment of Rent. Rent not paid by the due date shall be considered late. A penalty, calculated from the day after which payment was due, shall be added to the rent. The penalty shall be determined by the Board for the first month or any portion thereof and one percent (1%) of the rent due, including penalty, per month thereafter. (7-1-97)

02. Extension in Time for Payment of Rent. An extension in time in which to submit payment of rent may be granted for commercial submerged lands leases only. Such extensions may not exceed two (2) successive years, ~~*(Section 58-305, Idaho Code)*~~ as required by Title 58, Chapter 3, Idaho Code, Section 58-305. ~~*(7-1-97)*~~( )

03. Request for Extension in Time for Payment of Rent. Lessees must request extensions on forms supplied by the lessor and pay an extension fee to be determined by the Board. The lessee must also provide a statement from his banker or accountant verifying that money is not available for the payment of rent. (7-1-97)

04. Interest Rate for Extension in Time for Payment of Rent. If an extension is granted, rent plus interest at a rate established by the Board will be due no later than October 1 of the rent year. Specifically, interest will be the average monthly rate for conventional mortgages as quoted in the Federal Reserve Statistical Report; the rate to be rounded downward to the nearest one quarter percent (1/4%) on the tenth of each month following the release of data. (7-1-97)

041. -- 044. (RESERVED).

045. APPRAISAL PROCEDURES.
Appraisals may be used to determine the market value of adjacent uplands for calculating submerged lease rental rates. (____)

01. Appraisal. An appraisal ~~*normally*~~ will either be performed by qualified department staff~~. *If desired by the applicant and agreed to by the director, the applicant may ask the Department for*~~ or an independent contract appraisal. Any appraisal must be under the control of the Department. ~~*(7-1-97)*~~(____)

02. Cost of Appraisal. ~~*If the appraisal is performed by department staff or by an independent contract appraiser,*~~ ~~*t*~~The appraisal costs shall be the actual cost for department personnel plus transportation, including per diem and administrative overhead, or the bid amount for the contract appraiser. An itemized statement of these costs shall be provided to the applicant. The cost of the appraisal shall be in addition to those costs outlined in S~~*ubs*~~ection~~*s 035.01 and*~~ 035~~*.02*~~ of these rules and shall be billed separately from the application fee and rent.
~~*(7-1-97)*~~(____)

046. -- 049. (RESERVED).

050. LEASE MODIFICATION OR AMENDMENT.

01. Encroachment Amendment. A lease modification or amendment must first be permitted through an amendment to the lake encroachment permit or stream alteration permit, if needed. ~~*(7-1-97)*~~(____)

02. Modification of Existing Lease. Modification or amendment of an existing lease will be processed in the same manner as a new application, but no fee will be required. Modification or amendment includes change of use, location, size or scope of the lease site, but does not include ordinary maintenance, repair or replacement of existing structures or facilities.
~~*(7-1-97)*~~(____)

03. Modification of Interior Facilities. Changes in the interior arrangement of existing facilities that do not constitute a change of use and do not alter or enlarge the exterior dimensions, ~~*shall*~~ may not be deemed a modification under this rule. The department shall determine if a lease modification is needed due to proposed changes. ~~*However, t*~~The lessee must give written notice to the Department at least ten (10) days in advance of making such changes. The lessee shall also furnish one (1) set of as-built plans to the Department within thirty (30) days following completion of changes. ~~*(7-1-97)*~~(____)

051. -- 054. (RESERVED).

055. ASSIGNMENTS, ASSIGNMENT FEE.

01. Assignment of Lease. Leases may be assigned upon approval of the director provided that the lease conforms with Subsection 025.02 and all other provisions of these rules. The assignor and assignee must complete the Department's standard assignment form and

forward it to any department office. (7-1-97)

02. Assignment Fee. The assignment fee shall be ~~*determined by the Board and shall be paid at the time the assignment is submitted to the Department*~~ one hundred fifty dollars ($150). ~~*(7-1-97)*~~( )

03. Permit ~~*Transfer*~~ Assignment. The encroachment permit/stream alteration permit pertinent to a lease must be ~~*transferred*~~ assigned to a purchaser simultaneously with a lease assignment. A lease assignment will not be approved unless the permit is ~~*transferred*~~ assigned. ~~*(7-1-97)*~~( )

04. Approval Required for Assignment. An assignment is not valid until it has been approved by the director. (7-1-97)

056. -- 059. (RESERVED).

060. CANCELLATION AND ADDITIONAL REMEDIES.

01. Cancellation of Lease for Violation of Terms. Any violation of the terms of the lease by the lessee, including non-payment of rent or any violation by lessee of any rule now in force or hereafter adopted by the Board may subject the lease to cancellation. The lessee shall be provided written notification of any violation. The letter shall specify the violation, corrective action necessary, and specify a reasonable time to make the correction. If the corrective action is not taken within the specified reasonable period of time, the Department shall notify the lessee of cancellation of the lease; provided, however, that the notice shall be provided to lessee no later than thirty (30) days prior to the effective date of such cancellation. (7-1-97)

02. Reinstatement of Lease. A lease may be reinstated within ~~*thirty*~~ ninety (~~*3*~~90) days after cancellation for non-payment by paying the rental, plus interest, and a reinstatement fee to be determined by the Board. ~~*(7-1-97)*~~( )

03. Cancellation of Lease for Use Other Than Intended Purpose. A lease not used for the purpose for which it was granted may be canceled. The Department shall notify the lessee in writing of any proposed cancellation. The lessee shall have thirty (30) days to reply in writing to the Department to show cause why the lease should not be cancelled. Within sixty (60) days, the Department shall notify the lessee in writing as to the Department's decision concerning cancellation. The lessee will have thirty (30) days to appeal an adverse decision to the director. (7-1-97)

04. Removal of Improvements Upon Cancellation. Upon cancellation, the director shall provide the lessee with a specific, but reasonable, amount of time, not to exceed six (6) months from the date of final notice, to remove any facilities and improvements. Failure to remove any facilities or structures within such time period established by the director shall be deemed a trespass on submerged or formerly submerged lands. (7-1-97)

05. Additional Remedies Available. In addition to termination of the lease for the material default of the lessee, the lease may provide for other remedies to non-monetary breach of the lease, including, but not limited to: ( )

a. Civil penalties as determined by the board and to be collected as additional rent; (____)

b. The reasonable costs of remedial action undertaken by the department as a result of the lessee's failure to perform a requirement of the lease, These costs will be collected as additional rent; and (____)

c. Such other remedies as the board shall deem appropriate. (____)

061. -- 064. (RESERVED).

065. BOND.

01. Bond Requirement Determined by Director. Bonds may be required for commercial ~~non-~~ navigational, community dock, and nonnavigational leases. The need for bond shall be at the discretion of the director who shall consider the potential for abandonment of the facility, harm to state-owned submerged land and water resources, the personal and real property of adjacent upland owners and the personal and real property owned by the encroachment owner that is appurtenant to and supportive of the encroachment. ~~(7-1-97)~~(____)

02. Performance Bond. In the event a bond is necessary, the lessee shall submit a performance bond in favor of the state of Idaho and in a format acceptable to the director before a lease is issued. Acceptable bonds include surety, collateral, and letters of credit. The amount of bond shall be the estimated cost of restoration as established by the director in consultation with the lease applicant on a case by case basis. To determine restoration costs, the director may consider the potential for damage to land, to improvements, and the cost of structure removal. (7-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

075. OTHER RULES AND LAWS~~*OF THE STATE*~~.
The lessee shall comply with all applicable state, federal, and local rules and laws ~~*of the state of Idaho*~~ insofar as they affect the use of the lands described in the lease. ~~(7-1-97)~~(____)

IDAPA 37 - DEPARTMENT OF WATER RESOURCES

37.03.01 - ADJUDICATION RULES

DOCKET NO. 37-0301-0701 (FEE RULE)

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 42-1805(8), Idaho Code.

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

Rule change is necessary to make rules consistent with 2006 and 2007 legislative amendments to Chapter 14, Title 42, Idaho Code, update outdated citations to Idaho Code, and reduce number of claim forms from two to one.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 2 of the October 3, 2007 Idaho Administrative Bulletin, Vol. 07-10, pages 377 through 392.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. The fee or charge is being imposed pursuant to Section 58-1307, Idaho Code:

Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: The rule itself does not impose or increase a fee or charge. The 2006 legislative amendments to Section 42-1414, Idaho Code, revised the fee structure for filing a notice of claim to a water right with IDWR. The proposed rule change makes the fee structure cited in the adjudication rules conform to the new fee structure in Section 42-1414, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year:

There is no anticipated fiscal impact.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions

concerning this pending rule, contact Don Shaff, Adjudication Bureau Chief, at (208) 287-4800.

DATED this 21st day of November, 2007.

Donald V. Shaff, Adjudication Bureau Chief
Idaho Department of Water Resources
322 E. Front St., Boise, Idaho
PO Box 83720, Boise, Idaho 83720-0098
Ph: (208) 287-4800 / Fax: (208) 287-6700

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPOARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 24, 2007.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 42-1805(8), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule change is necessary to make rules consistent with 2006 and 2007 legislative amendments to Chapter 14, Title 42, Idaho Code, update outdated citations to Idaho Code, and reduce number of claim forms from two to one.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Compliance with deadlines in amendments to governing law or federal programs.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. The fee or charge is being imposed pursuant to Section 58-1307, Idaho Code:

Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: The rule itself does not impose or increase a fee or charge. The 2006 legislative amendments to Section 42-1414, Idaho Code, revised the fee structure for filing a notice of claim to a water right with IDWR. The proposed rule change makes the fee structure cited in the adjudication rules conform to the new fee structure in Section 42-1414, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year:

There is no negative fiscal impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the primary purpose of rule change is to make the rules consistent with existing Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Don Shaff, Adjudication Bureau Chief, at (208) 287- 4800.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2007.

DATED this 23rd day of August, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

001. TITLE AND SCOPE (RULE 1).

01. **Title**. The title of this chapter is IDAPA 37.03.01, "Adjudication Rules." ( )

02. **Scope**. The purpose of these rules is to implement statutes governing the filing of notices of claims to water rights acquired under state law and the collection of fees for filing notices of claims to water rights acquired under state law in general adjudications, as provided in Sections 42-1409~~*(2), (4) and (8)*~~, 42-1414, and 42-1415, Idaho Code. ~~*(7-1-93)*~~( )

002. -- 009. (RESERVED).

010. DEFINITIONS (RULE 10).

01. **AF**. An acre foot (feet). (7-1-93)

02. **Amendment Fee**. The additional fee payable at the time of filing an amendment to a claim, as provided in Section ~~*42-1409(4)*~~ 42-1414(2), Idaho Code. ~~*(7-1-93)*~~(____)

~~***03.*** ***Application****. An application to appropriate water, as provided in Sections 42-202 or 42-1503, Idaho Code.* *(7-1-93)*~~

0~~*4*~~3. **Aquaculture**. The use of water for propagation of fish, shell fish, and any other animal or plant product naturally occurring in an underwater environment. (7-1-93)

0~~*5*~~4. **Aquaculture Fee**. The variable fee payable for aquaculture use, as provided in Section ~~*42-1414(2)(c)*~~ 1414(1)(b)(iii), Idaho Code, which shall be calculated for each cfs and fraction thereof to the nearest dollar. ~~*(7-1-93)*~~(____)

0~~*6*~~5. **CFS**. Cubic foot (feet) per second. (7-1-93)

0~~*7*~~6. **Claim**. A notice of claim to a water right acquired under state law, as provided in Section ~~*42-1409(2)*~~ 42-1409(4), Idaho Code. ~~*(7-1-93)*~~(____)

0~~*8*~~7. **Department**. The Idaho Department of Water Resources. (7-1-93)

0~~*9*~~8. **Director**. The Director of the Idaho Department of Water Resources. (7-1-93)

09. **Domestic Use**. Domestic use as defined in Section 42-1401A(4), Idaho Code. (____)

~~***10.*** ***Extended Payment Plan****. The installment schedule for payment of fees for filing claims, as provided in Section 42-1414(3), Idaho Code.* *(7-1-93)*~~

~~***11.*** ***Fire-Fighting Purposes****. The use of water in times of emergency: to extinguish an existing fire on private or public lands, facilities, or equipment; to prevent an existing fire from spreading to private or public lands, facilities or equipment within the vicinity of and endangered by an existing fire; and by fire-fighting personnel engaged in fighting an existing fire. Fire-fighting purposes does not include the use of water to prevent a fire from occurring in the future, the use of water for domestic purposes in regularly maintained firefighting stations, or the storage of water for fighting future fires.* *(7-1-93)*~~

1~~*2*~~0. **Flat Fee**. The per claim fee for filing claims, as provided in Section ~~*42-1414(1)*~~ 42-1414(1)(a), Idaho Code. ~~*(7-1-93)*~~(____)

1~~*3*~~1. **Late Fee**. The additional fee payable for the filing of late claims, as provided in Section ~~*42-1409(8)*~~ 42-1414(3), Idaho Code. ~~*(7-1-93)*~~(____)

~~***14.*** ***Long Claim Form****. The department's form number 42-1409(2)a, entitled "Notice of Claim to a Water Right Acquired Under State Law."* *(7-1-93)*~~

1~~*5*~~2. **Per Acre Fee**. The variable fee for irrigation use, as provided in Section ~~*42-1414(2)(a)*~~ 42-1414(1)(b)(i), Idaho Code, which shall be calculated for each acre and fraction

thereof rounded to the next one-half (1/2) acre. ~~*(7-1-93)*~~(____)

1~~6~~3. Per Cfs Fee. The variable fee payable for other uses, as provided in Section ~~*42-1414(2)(d)*~~ 42-1414(1)(b)(iii), (iv), and (~~*e*~~v), Idaho Code, which shall be calculated for each cfs and fraction thereof to the nearest dollar. ~~*(7-1-93)*~~(____)

1~~7~~4. Per Kilowatt Fee. The variable fee payable for power generation use, as provided in Section ~~*42-1414(2)(b)*~~ 42-1414(1)(b)(ii), Idaho Code, which shall be calculated for each kilowatt and fraction thereof. ~~*(7-1-93)*~~(____)

~~***18. Report****. The report of the director, as provided in Section 42-1411(1), Idaho Code.*~~
~~*(7-1-93)*~~

1~~9~~5. ~~*Short*~~ State Law Claim Form. The department's form ~~*number 42-1409(2)b,*~~ entitled "Notice of Claim to a Water Right Acquired Under State Law ~~*for Domestic and/or Stockwater Purposes."*~~ as provided in Section 42-1409(4), Idaho Code. ~~*(7-1-93)*~~(____)

16. Stock Watering Use. Stock watering use as defined in Section 42-1401A(11), Idaho Code. (____)

~~20~~17. Total Fee. The fee payable for filing a claim, which consists of the flat fee plus any applicable variable fee or late fee. ~~*(7-1-93)*~~(____)

~~2~~18. Variable Fee. The fee payable for filing claims in addition to the flat fee, as provided in Section ~~*42-1414(2)*~~ 42-1414(1)(b), Idaho Code. ~~*(7-1-93)*~~(____)

~~22~~.19 Water Delivery System. All structures and equipment used for diversion, storage, transportation, and use of water from the water source to and including each place of use.
(7-1-93)

2~~3~~0. Water Delivery Organization. An irrigation district, a water utility, a municipality, or any similar claimant of a water right who diverts water pursuant to the water right claimed and delivers the water to others who make beneficial use of the water diverted by the water delivery organization pursuant to the water right claimed by the water delivery organization. (7-1-93)

011. -- 024. (RESERVED).

025. GENERAL (RULE 25).

01. Requirement to Pay. All persons filing claims to water rights acquired under state law or amendments to claims to water rights acquired under state law shall be required to pay filing fees as set forth by statute and these rules. (7-1-93)

02. Method of Payment. Fees shall be paid in legal tender of the United States; or by money order, certified check, cashier's check, ~~*or*~~ personal check, or by debit or credit card either at IDWR or by electronic payment on-line payable to the department in legal tender of the United States. ~~*Credit card payments and t*~~Two-party checks will not be accepted. ~~*(7-1-93)*~~(____)

03. Personal Check. If a personal check in payment of a flat fee, a variable fee, or a late fee, ~~*and/or the first payment on an extended payment plan*~~ is returned unpaid to the department, the claims covered by the returned check will be rejected and returned to the claimant. If a personal check in payment of an amendment fee is returned unpaid to the department, the amended claim will be rejected and returned to the claimant, but the original claim will still be in effect. ~~*If a personal check in payment of the second through fifth payments on an extended payment plan is returned unpaid to the department, the returned check will be treated as nonpayment pursuant to Rule Subsection 040.05.*~~ ~~*(7-1-93)*~~(____)

04. Time of Payment. Flat fees and variable fees shall be payable to the department at the time of filing a claim~~*, except in the case of extended payment plans otherwise provided for by statute and these rules*~~. Amendment fees shall be payable to the department at the time of filing the amended claim. Late fees shall be payable at the time of filing the late claim. ~~*(7-1-93)*~~(____)

05. Government Voucher. Fees payable by government agencies (other than agencies of foreign governments) may be paid when due by government voucher. If full payment of the voucher is not received within forty-five (45) days of the date the voucher is received, the unpaid voucher will be treated as a returned check as provided in Rule Subsection 025.03. (7-1-93)

~~***06. Insufficient Paid Fee***~~. ~~*If a fee paid is later determined by the director to be insufficient, the director will send a notice of balance due by certified mail to the claimant at the most recent address shown by department records, stating the balance due and that the balance will be due within thirty (30) days of the date the notice is mailed. If the balance is not received by the date set forth in the notice, the balance due will be treated as an extended payment plan in default as set forth in Rule Subsections 040.05.c. and 040.05.d. A notice of balance due shall not be issued after filing of the director's report for the claim for which the fee was paid, or more than four (4) years after the date the insufficient payment was received by the director, whichever is later.*~~ ~~*(7-1-93)*~~

0~~7~~6. Rejection of Claim. Claims ~~*based upon an application to appropriate water that has not been approved by the department pursuant to Sections 42-204 or 42-1503, Idaho Code, shall not be accepted, and any fees paid shall be*~~ that are filed without the correct filing fee will be rejected and returned to the claimant. ~~*(7-1-93)*~~(____)

0~~8~~7. Fire-Fighting. A claim is not required to be filed for water used solely ~~*for fire-fighting purposes*~~. ~~*The report will contain general conclusions of law recognizing and protecting the use of water for fire-fighting purposes absent a decree, license, or permit for the use of water for fire-fighting purposes.*~~ to extinguish an existing fire on private or public lands, structures, or equipment, or to prevent an existing fire from spreading to private or public lands, structures, or equipment endangered by an existing fire pursuant to Section 42-201(3), Idaho Code. A claim is required for the use of water for domestic purposes in regularly maintained firefighting stations and for the storage of water for fighting future fires. ~~*(7-1-93)*~~(____)

~~***09. In-Stream Livestock Use***~~. ~~*A claim is not required to be filed for water used solely for in-stream livestock use as defined by Section 42-113, Idaho Code. The report will contain general conclusions of law stating that:*~~ ~~*(7-1-93)*~~

~~***a.*** *In the consideration of applications for permits to appropriate water for other purposes, the director shall impose such reasonable conditions as are necessary to protect prior water rights for in-stream livestock use; and* *(7-1-93)*~~

~~***b.*** *In the administration of water rights, the director shall recognize and protect water rights for in-stream livestock use, according to priority, as the director recognizes and protects water rights for other purposes.* *(7-1-93)*~~

~~1~~08. **Examples**. Examples set forth in these rules are solely for purposes of illustration and do not have the effect of rules. (7-1-93)

026. -- 029. (RESERVED).

030. FLAT FEES (RULE 30).

01. Small Domestic Use and Stock Watering Use Based on Permit, License, Decree, or Statutory Claim. A flat fee of ~~*twenty-five*~~ fifty dollars ($~~2~~50) shall be payable for each domestic use and/or stock watering use claim based on permit, license, decree or statutory claim, where the total amount of water diverted does not exceed thirteen thousand (13,000) gallons per day~~,~~. ~~*that is limited to:*~~ ~~*(7-1-93)*~~(____)

~~***a.*** *Domestic use as defined by Section 42-1401A(5), Idaho Code;* *(7-1-93)*~~

~~***b.*** *Stock watering use as defined by Section 42-1401A(12), Idaho Code; or* *(7-1-93)*~~

~~***c.*** *Domestic use as defined by Section 42-1401A(5), Idaho Code, and stock watering use as defined by Section 42-1401A(12), Idaho Code.* *(7-1-93)*~~

~~***d.*** *Domestic use as defined by Section 42-1401A(5), Idaho Code, includes single-ownership, multiple-family domestic uses, so long as the total amount of water diverted for all households pursuant to a single water right does not exceed thirteen thousand (13,000) gallons per day.* *(7-1-93)*~~

02. ~~***Exception***~~ **Other Claims**. A flat fee of ~~*fifty*~~ one hundred dollars ($~~5~~100) shall be payable for each claim that does not meet the ~~*definition*~~ criteria of Rule Subsection 030.01. ~~*(7-1-93)*~~(____)

031. -- 034. (RESERVED).

035. VARIABLE FEES (RULE 35).

01. General. For each claim not meeting the ~~*definition*~~ criteria of Rule ~~*Subsection*~~ 0~~*07*~~30.01, there may be a variable fee in addition to the flat fee. ~~*(7-1-93)*~~(____)

02. Per Acre Fee. (7-1-93)

a. A per acre fee of two dollars ($2) per acre shall be required for claims for irrigation use. (____)

~~a~~b. The per acre fee shall only be charged once against a particular acre, regardless of the number of claims filed for the irrigation of that acre or the number of claimants filing claims for the irrigation of that acre. (7-1-93)

i. Example 1: A claimant submits two (2) claims, one (1) for irrigation of sixty (60) acres, and one (1) for a supplemental water right to irrigate the same sixty (60) acres with a later priority. The total fee for both claims consists of two (2) flat fees of ~~*fifty*~~ one hundred dollars ($~~*5*~~100) each, plus one (1) ~~*sixty*~~ one hundred twenty dollars ($~~*6*~~120) variable fee based upon sixty (60) acres, for a total of ~~*one*~~ three hundred ~~*sixty*~~ twenty dollars ($~~*16*~~320). ~~*(7-1-93)*~~(____)

~~*b*~~c. The per acre fee shall be payable by the first person to file a claim for the irrigation of a particular acre. (7-1-93)

i. Example 2: A water delivery organization files a claim for irrigation of lands within the service area of the water delivery organization, and pays the filing fee. An individual files a claim for a supplemental water right for sixty (60) acres of land that is claimed as irrigated acreage by the water delivery organization. The total fee paid directly by the individual is the ~~*fifty*~~ one hundred dollar ($~~*5*~~100) flat fee~~,~~; the variable per acre fee has already been paid by the water delivery organization. ~~*(7-1-93)*~~(____)

~~*c*~~d. The per acre fee for an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or irrigation districts organized and existing as such under the laws of the state of Idaho, or for beneficial use by more than five (5) water users in an area of less than twenty-five thousand (25,000) acres shall be determined based upon the acreage claimed to be irrigated by the project or irrigation district within the boundaries of the project or irrigation district. ~~*(7-1-93)*~~(____)

03. Per Kilowatt Fee. (7-1-93)

a. A per kilowatt of capacity (manufacturer's nameplate rating) fee of seven dollars ($7) per kilowatt shall be required for claims for power use. (____)

~~*a*~~b. The per kilowatt fee shall be determined based upon the total generating capacity of all generators in which the water right claimed is used. (7-1-93)

~~*b*~~c. The total per kilowatt fee for all claims filed for a single hydropower facility shall not exceed the per kilowatt fee for the total generating capacity of all generators in the hydropower facility. (7-1-93)

i. Example 3: A claimant submits three (3) claims for water used in one (1) power plant. The power plant has four (4) generators, each with a manufacturer's nameplate rating of ninety (90) kilowatt capacity. The total fee for all three (3) claims consists of three (3) flat fees of ~~*fifty*~~ one hundred dollars ($~~*5*~~100) each, plus a variable fee of ~~*one*~~ two thousand ~~*two*~~ five hundred ~~*sixty*~~ twenty dollars ($~~*1,260*~~ 2,520) (4 x 90 x ~~*3.50*~~ 7.00), for a total of ~~*one*~~ two thousand ~~*four*~~ eight hundred ~~*ten*~~ twenty dollars ($~~*1,410*~~ 2,820). ~~*(7-1-93)*~~(____)

04. Per CFS Fee. (7-1-93)

a. A per cfs fee of twenty dollars ($20) per cfs for aquaculture shall be required. A per cfs fee of two hundred dollars ($200) per cfs for all other uses except irrigation, power, domestic and stock watering uses meeting the criteria of Rule 010, shall be required. ( )

~~a~~**b.** For a claim to water for more than one (1) public purpose, the per cfs fee shall only be charged once per cfs claimed. Public purposes shall include public in-stream flows, public lake level maintenance, wildlife, aesthetic beauty, and recreation. (7-1-93)

i. Example 4: A claimant files a claim to ten (10) cfs for a public in-stream flow for wildlife, recreation, and aesthetic purposes. The variable fee is ~~one~~ two thousand dollars ($~~1~~2,000) and the flat fee is ~~fifty~~ one hundred dollars ($~~5~~100), for a total fee of ~~one~~ two thousand ~~fifty~~ one hundred dollars ($~~1,050~~ 2,100). ~~(7-1-93)~~( )

~~b~~**c.** If there is a seasonal variation in the number of cfs claimed, the per cfs fee shall be based upon the maximum number of cfs claimed for any period during a single calendar year. (7-1-93)

~~c~~**d.** The per cfs fee shall apply to claims for water quality improvement, recreation, aesthetic purposes, and any other purpose not expressly listed at Section ~~42-1414(2)~~ 42-1414(1), Idaho Code, except as otherwise provided by these rules. ~~(7-1-93)~~( )

05. Claims Including Storage. (7-1-93)

a. The variable fee for a claim that includes storage shall be based upon the ultimate use of the water stored. If the claim states purposes other than diversion to storage, storage, and diversion from storage, the total variable fee will be determined as provided in Rule ~~Subsection~~ 035.06. ~~(7-1-93)~~( )

b. ~~Ground water recharge is not an ultimate use and n~~No variable fee shall be payable for water claimed for ground water recharge purposes. ~~(7-1-93)~~( )

c. For purposes of determining the per cfs fee for amounts of water claimed in af, one (1) cfs equals one and ninety-eight one-hundreths (1.98) af per day of diversion to storage. (7-1-93)

d. No variable fee shall be payable for minimum by-pass flows. (7-1-93)

06. Multiple Purpose Claims. If a claimant claims more than one (1) purpose of use on a single claim, the variable fee will be the total of the variable fees payable for each purpose of use. (7-1-93)

a. Example 5: A claimant files a claim for twenty (20) cfs of water, which is first used for power purposes in a plant with a one hundred fifty (150) kilowatt capacity, and is then used for irrigation of one thousand (1,000) acres of land. The variable fee is ~~one~~ two thousand dollars ($~~1~~2,000) (per acre fee~~t~~) plus ~~five hundred twenty-five~~ one thousand fifty dollars ($~~52~~1,050) (per kilowatt fee), for a total variable fee of ~~one~~ three thousand ~~five hundred twenty-five~~ fifty dollars ($~~1,525~~ 3,050). The total fee is ~~one~~ three thousand ~~five~~ one hundred ~~seventy-five~~

fifty dollars ($~~*1,575*~~ 3,150), consisting of the ~~*one*~~ three thousand ~~*five hundred twenty-five*~~ fifty dollars ($~~*1,525*~~ 3,050) variable fee and the ~~*fifty*~~ one hundred dollar ($~~*5*~~100) flat fee. ~~*(7-1-93)*~~(____)

b. Example 6: A claimant files a claim for twenty (20) cfs of water, half of which is claimed for commercial purposes, half of which is claimed for irrigation of five hundred (500) acres. The variable fee is two thousand dollars ($2,000) (per cfs fee) plus one thousand dollars ($1,000) (per ~~*cfs fee) plus five hundred dollars ($500) (per*~~ acre fee) for a total variable fee of ~~*one*~~ three thousand ~~*five hundred*~~ dollars ($~~*1,500*~~ 3,000). The total fee is ~~*one*~~ three thousand ~~*five*~~ one hundred ~~*fifty*~~ dollars ($~~*1,550*~~ 3,100), consisting of the ~~*one*~~ three thousand ~~*five hundred*~~ dollar ($~~*1,500*~~ 3,000) variable fee and the ~~*fifty*~~ one hundred dollar ($~~*5*~~100) flat fee. ~~*(7-1-93)*~~(____)

07. Exceptions. No variable fee shall be payable for claims or portions of claims for fire-fighting purposes~~,~~ if a claim is required under Rule 025.07 or for domestic use and/or stock watering use meeting the definitions of domestic use and stock watering use in Rule 0~~*3*~~10~~*.01*~~. ~~*(7-1-93)*~~(____)

a. Example 7: A claimant files a claim for 5.04 cfs of water based upon a license, five (5) cfs of which is claimed for irrigation of two hundred fifty (250) acres, two one-hundreths (.02) cfs of which is claimed for domestic use, two one-hundreths (.02) cfs of which is claimed for stock watering. The variable fee is ~~*two*~~ five hundred ~~*fifty*~~ dollars ($~~*2*~~500) and the flat fee is ~~*fifty*~~ one hundred dollars ($~~*5*~~100), for a total fee of ~~*three*~~ six hundred dollars ($~~*3*~~600). ~~*(7-1-93)*~~(____)

~~***036. 039. (RESERVED).***~~

~~***040. EXTENDED PAYMENT PLANS (RULE 40).***~~

~~***01. Eligibility****. A claimant is eligible for an extended payment plan where the total fee for all claims filed by that claimant in a single day at a single claims-taking location equals or exceeds one thousand dollars ($1,000).* *(7-1-93)***

~~***02. Payment Schedule****.* *(7-1-93)***

~~***a.*** *An extended payment plan shall consist of five (5) annual payments. An extended payment plan is not available for a shorter term or with more frequent payments, but early payments will be accepted as provided in Rule Subsection 040.04.* *(7-1-93)***

~~***b.*** *Extended payments shall be made in equal annual payments of principal. The first principal payment shall be due upon filing the claim or claims. The remaining four (4) payments will be due on the first day of the same month during the following four (4) years. Interest will be calculated annually from the day after the due date for the previous principal payment to and including the due date for the next principal payment, and will be due upon the due date for the next principal payment.* *(7-1-93)***

~~*i. Example 8: A claimant files claims December 17, 1987, and the total fees are five thousand dollars ($5,000). One thousand dollars ($1,000) will be due December 17, 1987. The second payment will be due December 1, 1988, and will be one thousand dollars ($1,000) plus three hundred eighty-two dollars and forty-seven cents ($382.47) (349 days interest on $4,000),*~~

~~for a total of one thousand three hundred eighty-two dollars and forty-seven cents ($1,382.47). The third payment will be due on December 1, 1989, and will be one thousand dollars ($1,000) plus one (1) year's interest on three thousand dollars ($3,000), for a total of one thousand three hundred dollars ($1,300). The fourth payment will be due December 1, 1990 and will be one thousand dollars ($1,000) plus one (1) year's interest on two thousand dollars ($2,000), for a total of one thousand two hundred dollars ($1,200). The fifth payment will be due on December 1, 1991, and will consist on one thousand dollars ($1,000) plus one (1) year's interest on one thousand dollars ($1,000), for a total of one thousand one hundred dollars ($1,100). (7-1-93)~~

~~**03. Notice of Payment Due**. At least fourteen (14) days prior to the date an extended payment is due, the director will send a notice of payment due by regular mail to the claimant at the most recent address shown by department records. (7-1-93)~~

~~**04. Early Payments**. Early payments will be accepted. When a payment due is received prior to the fourteenth (14th) day before the due date, interest will be recalculated based on the amount of interest accrued daily from the day after receipt of the next previous payment to and including the date the early payment is received. Any overpayment resulting from the recalculation of interest due will be applied to the principal amount due the following year, unless the early payment is the last payment, in which case any overpayment will be refunded to the claimant. (7-1-93)~~

~~**05. Late Payments**. (7-1-93)~~

~~**a.** When a payment due is not received by the 14th day following the due date, interest will accrue daily on the amount due from the day after the due date to and including the date the payment is received at the annual interest rate set forth at Section 42-1414, Idaho Code. When the payment due is received, it will be applied first to interest (including late interest) and then to principal, and the next year's payment will be recalculated accordingly, unless the late payment is the last payment due. If the late payment is the last payment due, the director will send a notice of balance due by regular mail to the claimant at the most recent address shown by department records, stating that the balance will be due within thirty (30) days of the date the notice is mailed. (7-1-93)~~

~~**b.** When a payment due is not received by the 30th day following the due date, the director will send a notice of default by certified mail to the claimant at the most recent address shown by department records. (7-1-93)~~

~~**c.** When a payment due is not received by the 60th day following the due date, and the director has not filed the director's report, the director may reject and return all claims covered by the extended payment plan in default. (7-1-93)~~

~~**d.** When a payment due is not received by the 60th day following the due date, and the director has filed the director's report, the director may: (7-1-93)~~

~~i. Issue a cease and desist order directing the claimant not to divert any water pursuant to the claims covered by the extended payment plan in default until all amounts due have been received by the department; (7-1-93)~~

~~*ii. Obtain an injunction from the district court conducting the general adjudication directing the claimant not to divert any water pursuant to the claims covered by the extended payment plan in default until all amounts due have been received by the department; and(7-1-93)*~~

~~*iii. Reject and return the claims covered by the extended payment plan and amend the report to recommend the water right represented by the claims covered by the extended payment plan as unclaimed. (7-1-93)*~~

~~***06. Splitting Extended Payment Plans**. (7-1-93)*~~

~~***a.** When a single extended payment plan is established that covers more than one (1) claim, the extended payment plan may later be split into two (2) extended payment plans, each of which covers a portion of the claims previously covered by the single extended payment plan. If the claims covered by an extended payment plan created by the split would not have qualified for an extended payment plan at the time the claims were filed, the entire balance for the claims covered by the extended payment plan created by the split will be due at the time the extended payment plan is split. (7-1-93)*~~

~~***b.** A single claim may not be split into two (2) extended payment plans unless the water right claimed has been split by conveyance to different owners. If the portion of the claim covered by an extended payment plan created by the split would not have qualified for an extended payment plan at the time the claim was filed, the entire balance of the fee for that portion of the claim will be due at the time the extended payment plan is split. (7-1-93)*~~

~~***c.** When a single extended payment plan has been established that covers more than one (1) claim, the claimant may choose to pay the balance on less than all of the claims, leaving the balance on the remaining claims to be paid on the extended payment plan, unless the remaining claims would not have qualified for an extended payment plan at the time of filing. (7-1-93)*~~

~~***07. Partial Payments**. (7-1-93)*~~

~~***a.** Partial payments (payment of less than the full amount due on an extended payment) will be applied first to interest due and any remainder will be applied to principal. (7-1-93)*~~

~~***b.** Partial payments on extended payment plans covering more than one (1) claim will be divided among the claims in proportion to the amount due on each claim, except as provided in Rule Subsections 040.07.c. and 040.07.d. (7-1-93)*~~

~~***c.** When a single extended payment plan has been established that covers more than one (1) claim, the claimant may choose to make a payment on less than all of the claims, and allow the other claims to be rejected and returned, if the claims on which a payment is made would have qualified for an extended payment plan at the time of filing. (7-1-93)*~~

~~***d.** When a single extended payment plan has been established that covers more than one (1) claim, the claimant may choose to pay the balance on less than all of the claims, and allow the other claims to be rejected and returned. (7-1-93)*~~

0~~41~~36. -- 044. (RESERVED).

045. AMENDMENT FEES (RULE 45).

~~***01.***~~ Recalculated Fee. When a claimant files an amendment to a claim, the total fee shall be recalculated as if the amended claim were the original claim. If the total fee as recalculated is greater than the total fee paid at the time the claim was filed, the amendment fee shall be the difference between the two (2) amounts. No refund shall be made if the total fee as recalculated is less than the total fee paid at the time the claim was filed. ~~*(7-1-93)*~~(____)

~~***02. Determining Eligibility****. The amendment fee shall not be included for purposes of determining eligibility for an extended payment plan, and the amendment fee may not be included in an extended payment plan.*~~ (7-1-93)

046. -- 049. (RESERVED).

050. LATE FEES (RULE 50).

01. Late Fee Payable. A late fee shall be payable when a claim is filed after the date set forth in the first commencement notice mailed to the claimant or the claimant's predecessor in interest pursuant to Section~~*s 42-1408A(2) and*~~ 42-1414(3), Idaho Code. ~~*(7-1-93)*~~(____)

~~***02. Determining Eligibility****. The late fee shall not be included for purposes of determining eligibility for an extended payment plan, and the late fee may not be included in an extended payment plan.* *(7-1-93)*~~

0~~3~~2. Waiver. The late fee may be waived by the director for good cause shown. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

060. SUFFICIENCY OF CLAIMS (RULE 60).

01. Single Claim. A single claim may describe only one (1) water right. A claim that describes more than one (1) water right will be rejected and returned along with any fees paid, and must be refiled as multiple claims except claims based on both state law and federal law. ~~*(7-1-93)*~~(____)

~~***02. Claim Forms****.* *(7-1-93)*~~

~~***a.*** *Claims meeting the definition of Rule Subsection 030.01, other than claims to domestic and/or stock watering use that include storage or instream stock watering use, may be filed on the short claim form.* *(7-1-93)*~~

~~***b.*** *Claims not meeting the definition of Rule Subsection 030.01, and claims to domestic and/or stock watering use that include storage or instream stock watering use, shall be filed on the long claim form.* *(7-1-93)*~~

0~~3~~2. ~~*Short*~~ State Law Claim Form -- Minimum Requirements. Claims filed on the ~~*short*~~ state law claim form shall contain the following information: ~~*(7-1-93)*~~(____)

a. Name, Address and Phone Number of Claimant. The name, address, and phone number of the claimant and all co-claimants claiming the water right jointly with the claimant shall be listed at item one (1) of the form. (7-1-93)

b. Date of Priority. The date of priority shall be listed at item two (2) of the form, and shall include month, day and year. Only one (1) priority may be ~~*claimed*~~ stated. If more than one (1) priority date is ~~*claimed*~~ stated, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. ~~*(7-1-93)*~~(____)

c. Source of Water Supply. The source of water supply shall be stated at item three (3) of the form. (7-1-93)

i. For surface water sources, the source of water shall be identified by the official name listed on the U.S. Geological Survey Quadrangle map. If no official name has been given, the name in local common usage should be listed. If there is no official or common name, the source should be described as "unnamed stream" or "spring." The first named downstream water source to which the source is tributary shall also be listed. For ground water sources, the source shall be listed as "ground water." (7-1-93)

ii. Only one (1) source shall be listed unless the claim is for a single water delivery system that has more than one (1) source, or the claim is for a single licensed or decreed right that covers more than one (1) water delivery system. If more than one (1) source is listed and the claim is not for a single water delivery system that has more than one (1) source, and the claim is not for a single licensed or decreed water right that covers more than one (1) water delivery system, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. (7-1-93)

~~***d.*** *Location of Point of Diversion. The location of the point of diversion shall be listed at item four (4) of the form.* *(7-1-93)*~~

~~*i.* *The location of the point of diversion shall be described to nearest forty (40) acre tract (quarter-quarter Section) or government lot number, and shall include township number (including north or south designations), range number (including east or west designations), Section number, and county. The location of the point of diversion should be described to the nearest ten (10) acre tract (quarter-quarter-quarter Section) if that description is reasonably available.* *(7-1-93)*~~

~~*ii.* *If the point of diversion is located in a platted subdivision, a plat of which has been recorded in the county recorder's office for the county in which the subdivision is located, the claimant shall also list the subdivision name, block number and lot number in the remarks section of the form.* *(7-1-93)*~~

~~iii. Only one (1) point of diversion shall be listed unless the claim is for a single water delivery system that has more than one (1) point of diversion, or the claim is for a single licensed or decreed water right that covers more than one (1) water delivery system. If more than one (1) point of diversion is listed and the claim is not for a single water delivery system that has more than one (1) point of diversion, and the claim is not for a single licensed or decreed right that covers more than one (1) water delivery system, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. (7-1-93)~~

~~**e.** Description of Diversion Works. The diversion works shall be described at item five (5) of the form. (7-1-93)~~

~~i. The description shall include all major components of the water delivery system. The description shall also include the depth of wells, the horsepower capacity of pumps, and those dimensions of major components which affect the diversion capacity of the water delivery system. (7-1-93)~~

~~ii. The description shall include the dates and a description of any changes in use or enlargements in use, and as to those dimensions required to be described above, the dimensions as originally constructed and as enlarged. (7-1-93)~~

~~**f.** Purpose of Use and Period of Use. Domestic use is listed on the first line of item six (6) of the form. The period of use and the amount of water claimed in cfs for domestic purposes shall be listed on the first line of item six (6). Period of use shall include the month and day of the first and last day of use. (7-1-93)~~

~~i. Stock watering use is listed on the second line of item six (6) of the form. The period of use and the amount of water claimed in cfs for stock watering purposes shall be listed on the second line of item six (6) of the form. Period of use shall include the month and day of the first and last day of use. (7-1-93)~~

~~ii. The amount of water claimed for each purpose for which water is claimed shall not exceed the amount of water beneficially used for the purpose claimed, and the period of use for each purpose claimed shall not exceed the period in which water is beneficially used for the purpose claimed. (7-1-93)~~

~~**g.** Amount of Water Claimed. The total amount of water claimed shall be listed in cfs at item seven (7) of the form. The total amount of water claimed shall not exceed the total of the amounts listed at item six (6) of the form, or the total diversion capacity of the diversion system, whichever is less. (7-1-93)~~

~~**h.** Annual Volume of Consumptive Use. The annual volume of consumptive use for domestic and stock watering use is generally deemed de minimus. Annual volume of consumptive use is already stated as de minimus at item eight (8) of the form. (7-1-93)~~

~~**i.** Description of Uses. The uses of water claimed shall be fully described at item nine (9) of the form. (7-1-93)~~

~~*i. For domestic use in homes, the number of households served shall be described. If domestic use for more than one (1) household not in a single ownership is listed, the form will be rejected and returned along with any fees paid, and the claim must be refiled on the long claim form.* (7-1-93)~~

~~*ii. Domestic use for organization camps and public campgrounds shall be fully described, including but not limited to the number of camp units, water faucets, flush toilets, showers, and sewer connections. Description of domestic use for organization camps and public campgrounds shall also include the average and peak numbers of individuals using the facility, and the periods when peak or average rates of usage occur.* (7-1-93)~~

~~*iii. For stock watering use, the number and type of stock shall be described.* (7-1-93)~~

~~***j.*** *Place of Use. The place of use for domestic use claimed shall be listed at item ten (10) of the form by entering a "D" in the appropriate boxes for each forty (40) acre tract or government lot on the form. The place of use for stock watering use claimed shall be listed at item ten (10) of the form by entering an "S" in the appropriate boxes for each forty (40) acre tract or government lot on the form.* (7-1-93)~~

~~***k.*** *County of Place of Use. The county(ies) in which the place(s) of use is (are) located shall be listed at item eleven (11) of the form.* (7-1-93)~~

~~***l.*** *Authority to Assert Claim. The claimant shall indicate at item twelve (12) of the form whether the claimant is the owner of the place(s) of use. If the claimant is not the owner of the place(s) of use, the claimant shall, in the remarks section of the form, describe the claimant's authority to assert the claim, and state the name, address, and phone number of the owner(s) of the place(s) of use.* (7-1-93)~~

~~***m.*** *Other Water Rights. The claimant shall describe at item thirteen (13) of the form any other water rights used at the same place and for the same purpose as the right claimed. If there are no other water rights used at the same place and for the same purpose as the right claimed, the claimant shall state "NA" or "none."* (7-1-93)~~

~~***n.*** *Remarks. The claimant may submit any additional, relevant information not specifically requested at item fourteen (14) of the form. If the space provided is not sufficient, remarks shall be set forth on a separate piece of paper and attached to the form. All separate attachments must be specifically referenced in the remarks section of the form.* (7-1-93)~~

~~***o.*** *Basis of Claim. The basis of the claim shall be indicated at item fifteen (15) of the form. If a water right number has been assigned by the department to the right claimed, the water right number shall also be indicated. If a water right number has not been assigned and the water right is based upon a decree, the claimant shall list the title and date of the decree, the case number, and the court that issued the decree.* (7-1-93)~~

~~***p.*** *Signature. All claims must be signed and sworn or affirmed before a notary public or other person authorized by law to administer an oath or affirmation at item sixteen (16) of the form.* (7-1-93)~~

~~*i. Individuals shall sign at the space indicated for individuals. The form must be signed by the person listed as the claimant at item one (1) of the form unless written evidence is submitted with the form to show that the signatory has authority to sign for the claimant. A form listing more than one (1) claimant at item one (1) must be signed by each of the claimants listed at item one (1) unless the names are joined by "or", or "and/or" at item one (1). (7-1-93)*~~

~~*ii. Claims by corporations, municipalities or other organizations shall be signed by an officer of the corporation or an elected official of the municipality or an individual authorized by the organization to sign the form. The signator's title shall be indicated with the signature. (7-1-93)*~~

~~***04. Short Claim Form—Insufficient Claims, Waivers**. (7-1-93)*~~

~~***a.** Claims filed on the short claim form that do not contain the information required by Rule 060.03, and claims that were improperly filed on the short claim form, shall be rejected and returned along with any fees paid. (7-1-93)*~~

~~***b.** The director may waive the minimum information requirements of Rule 060.03 and accept the claim for good cause shown. (7-1-93)*~~

~~***05. Long Claim Form—Minimum Requirements**. Claims filed on the long claim form shall contain the following information: (7-1-93)*~~

~~***a.** Name, Address and Phone Number of Claimant. The name, address, and phone number of the claimant and all co-claimants claiming the water right jointly with the claimant shall be listed at item one (1) of the form. (7-1-93)*~~

~~***b.** Date of Priority. The date of priority shall be listed at item two (2) of the form, and shall include month, day and year. Only one (1) priority may be stated. If more than one (1) priority date is stated, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. (7-1-93)*~~

~~***c.** Source of Water Supply. The source of water supply shall be stated at item three (3) of the form. (7-1-93)*~~

~~*i. For surface water sources, the source of water shall be identified by the official name listed on the U.S. Geological Survey Quadrangle map. If no official name has been given, the name in local common usage should be listed. If there is no official or common name, the source should be described as "unnamed stream" or "spring." The first named downstream water source to which the source is tributary shall also be listed. For ground water sources, the source shall be listed as "groundwater." (7-1-93)*~~

~~*ii. Only one (1) source shall be listed unless the claim is for a single water delivery system that has more than one (1) source, or the claim is for a single licensed or decreed right that covers more than one (1) water delivery system. If more than one (1) source is listed and the claim is not for a single water delivery system that has more than one (1) source, and the claim is not for a single licensed or decreed water right that covers more than one (1) water delivery system, the claim will be rejected and returned along with any fees paid, and must be refiled as*~~

~~*multiple claims.*~~ ~~*(7-1-93)*~~

d. Location of Point of Diversion. For claims other than in-stream flows, the location of the point(s) of diversion shall be listed at item four (4) part (a) of the form. For claims to in-stream flows ~~*for public purposes*~~, the beginning and ending points of the claimed in-stream flow shall be listed at item four (4) part (b) of the form. ~~*(7-1-93)*~~(____)

i. The location of the point of diversion shall be described to nearest forty (40) acre tract (quarter-quarter section) or government lot number, and shall include township number (including north or south designations), range number (including east or west designations), section number, and county. The location of the point of diversion should be described to the nearest ten (10) acre tract (quarter-quarter-quarter section) if that description is reasonably available. (7-1-93)

ii. If the point of diversion is located in a platted subdivision, a plat of which has been recorded in the county recorder's office for the county in which the subdivision is located, the claimant shall also list the subdivision name, block number and lot number in ~~*the remarks section of the form*~~ Section 13 of the form (remarks section). The claimant shall also list the Parcel Number or Parcel Identification Number (PIN) as assigned by the county assessor's office for the parcel where the water is diverted unless no Parcel Number or PIN is recorded for the property at the point of diversion. ~~*(7-1-93)*~~(____)

iii A claim to a water right that includes storage shall state the point at which water is impounded (applicable only to in-stream reservoirs) or the point at which water is diverted to storage (applicable only to offstream reservoirs), the point at which water is released from storage into a natural stream channel (applicable only where a natural stream channel is used to convey stored water), and the point at which water is rediverted (applicable only where a natural channel is used to convey stored water). (7-1-93)

iv. Only one (1) point of diversion shall be listed unless the claim is for a single water delivery system that has more than one (1) point of diversion, or the claim is for a single licensed or decreed water right that covers more than one (1) water delivery system. If more than one (1) point of diversion is listed and the claim is not for a single water delivery system that has more than one (1) point of diversion, and the claim is not for a single licensed or decreed water right that covers more than one (1) water delivery system, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. (7-1-93)

e. Description of Diversion Works. The diversion works shall be described at item five (5) of the form. (7-1-93)

i. The description shall include all major components of the water delivery system, such as dams, reservoirs, ditches, pipelines, pumps, wells, headgates, etc. The description shall also include those dimensions of major components which affect the diversion capacity of the water delivery system. The description shall also state whether the ditches are lined and/or covered, the depth of wells, the horsepower capacity of pumps, and whether headgates are automatic or equipped with locks and/or measuring devices. (7-1-93)

ii. The description shall include the dates and a description of any changes in use

(including change in point of diversion, place of use, purpose of use, and period of use) or enlargements in use (including an increase in the amount of water diverted, the number of acres irrigated, or additional uses of water), and as to those dimensions required to be described above, the dimensions as originally constructed and as enlarged. (7-1-93)

iii. Water delivery organizations shall describe the water delivery system up to and including the point where responsibility for water distribution is assumed by entities other than the water delivery organization. (7-1-93)

f. Purpose of Use and Period of Use. Each purpose for which water is claimed, the period of use for each purpose for which water is claimed, and the amount of water claimed for each purpose for which water is claimed shall be listed at item six (6) of the form. Period of use shall include the month and day of the first and last day of use. For example, the period of use for domestic use is often 1-01 to 12-31. ~~*(7-1-93)*~~( )

i. The purpose may be described in general terms such as irrigation, industrial, municipal, mining, power generation, fish propagation, domestic, stock watering, etc. (7-1-93)

ii. A claim to a water right which includes storage shall be broken down into component purposes, with the ultimate use(s) of the stored water indicated. The component purposes of a storage right are diversion to storage (not applicable to in-stream reservoirs), storage, diversion from storage (not applicable where the ultimate use is an in-reservoir public purpose). Detention of water in a holding pond that can be filled in less than twenty-four (24) hours at the claimed diversion rate is not required to be claimed as storage. The amount of water claimed shall be limited to the active storage capacity of the reservoir unless a past practice of refilling the reservoir during the water year (October 1 to September 30) is shown or the claim is for a licensed or decreed right that includes refill. If a past practice of refilling the reservoir is shown or if the claim is for a licensed or decreed right that includes refill, the total amount of water claimed for the calendar year and the entire period during which diversion to storage or impoundment occurs shall be indicated. (7-1-93)

iii. The amount of water claimed for each purpose for which water is claimed shall not exceed the amount of water beneficially used for the purpose claimed, and the period of use for each purpose claimed shall not exceed the period in which water is beneficially used for the purpose claimed. (7-1-93)

iv. The amount of water diverted shall be listed in cfs, and the amount of water stored shall be listed in af per annum. (7-1-93)

g. Amount of Water Claimed. The total amount of water claimed shall be listed at item seven (7) of the form. The total amount of water claimed shall not exceed the total of the amounts listed at item six (6) of the form, or the total diversion capacity of the diversion system, whichever is less. (7-1-93)

~~***h.*** *Annual Volume of Consumptive Use. The annual volume of consumptive use shall be listed in af per annum at item eight (8) of the form. The annual volume of consumptive use for in-stream uses and for domestic and/or stock watering uses meeting the definition of Rule 030.01 is generally deemed de minimus.* *(7-1-93)*~~

***i*h.** Description of Non-Irrigation Uses. Non-irrigation uses shall be fully described at item *nine* eight (*9*8) of the form. For domestic uses, the number of households served shall be described; for stock watering uses, the type of stock and number of each type of stock shall be described. (____)

i. If the claimant's domestic use does not meet the definition of domestic use in Rule 010.09, the form will be rejected and returned unless the appropriate variable fee is paid. (____)

ii. The claimant shall also state whether the stock watering use is in-stream, or whether water is diverted from the source for stock watering*, or both*. Both types of stock watering cannot be filed on the same claim form; each type requires a separate claim. *(7-1-93)*(____)

iii. Domestic use for organization camps and public campgrounds shall be fully described, including but not limited to the number of camp units, water faucets, flush toilets, showers, and sewer connections. Description of domestic use for organization camps and public campgrounds shall also include the average and peak number of individuals using the facility, and the periods when peak or average rates of usage occur. (____)

***j*i.** Place of Use. The place of use for each purpose for which water is claimed shall be listed at item *ten* nine (*10*9) of the form, except that the place of use for in-stream flows for public purposes need not be listed if the place of use is fully described as the stream between the beginning and ending points listed as the points of diversion. *(7-1-93)*(____)

i. *The number of acres irrigated shall be described by entering the appropriate numbers in the appropriate boxes for each forty (40) acre tract or government lot on the form. For other uses, a symbol or letter corresponding to the purpose for which water is claimed shall be placed in the appropriate box for each forty (40) acre tract or government lot on the form.* An aerial photograph denoting or showing the place of use where the use of water occurs shall be included with the claim, unless the claim meets the definition of domestic use and stock watering use as defined in Rule 010. *(7-1-93)*(____)

ii. Claims for an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or irrigation districts organized and existing as such under the laws of the state of Idaho, or for beneficial use by more than five (5) water users in an area of less than twenty-five thousand (25,000) acres shall be accompanied by a map showing the boundaries of the project or irrigation district, and shall state the total number of acres irrigated within the boundaries of the project or irrigations district*, and for purposes of determining fees, the number of acres irrigated shall be described by forty (40) acre tract or government lot*. The project or district shall submit a map of the boundary of the place of use and, when available, a digital boundary defined in Section 42-202(B)(2), Idaho Code. *(7-1-93)*(____)

***k*j.** County of Place of Use. The county(ies) in which the place(s) of use is (are) located shall be listed at item *eleven* ten (1*1*0) of the form. *(7-1-93)*(____)

***l*k.** Authority to Assert Claim. The claimant shall indicate at item *twelve* eleven (1*2*1)

of the form whether the claimant is the owner of the place(s) of use. If the claimant is not the owner of the place(s) of use, the claimant shall describe in the remarks section of the form the claimant's authority to assert the claim. Unless the claimant is a water delivery organization, the claimant shall also state the name, address, and phone number of the owner(s) of the place of use in the remarks section of the form. ~~*(7-1-93)*~~(____)

~~*m*~~l. Other Water Rights. The claimant shall describe at item twelve (12) of the form any other water rights used at the same place and for the same purpose as the right claimed. If there are no other water rights used at the same place and for the same purpose as the right claimed, the claimant shall state "NA" or "none." (____)

m. Remarks and Map. At item thirteen (13) of the form ~~*any other water rights used at the same place and for the same purpose as the right claimed. If there are no other water rights used at the same place and for the same purpose as the right claimed, the claimant shall state "NA" or "none."*~~ ~~*(7-1-93)*~~

~~***n.***~~ ~~*Remarks and Map. T*~~the claimant may submit any additional, relevant information not specifically requested ~~*at item fourteen (14) of the form. If the space provided is not sufficient, remarks shall be set forth on a separate piece of paper and attached to the form. All separate attachments must be specifically referenced in the remarks section of the form*~~. If the space provided is not sufficient, remarks shall be set forth on a separate piece of paper and attached to the form. All separate attachments must be specifically referenced in the remarks section of the form. The point(s) of diversion, place(s) of use, and the water delivery system shall be sketched on the space provided for a map of the project unless the claim is submitted electronically. Section, township and range numbers shall be indicated. The claimant may submit a separate map or drawing if the claimant so desires. ~~*(7-1-93)*~~(____)

~~*o*~~n. Basis of Claim. The basis of the claim shall be indicated at item ~~*fifteen*~~ fourteen (1~~5~~4) of the form. If a water right number has been assigned by the department to the right claimed, the water right number shall also be indicated. If a water right number has not been assigned and the water right is based upon a decree, the claimant shall list the title and date of the decree, the case number, and the court that issued the decree. If the basis of claim is a beneficial use (also known as the constitutional method of appropriation), the claimant shall provide a short description of events or history of the development of the water right. ~~*(7-1-93)*~~(____)

o. Evidence of Priority. Within thirty (30) days, unless an extension by the director or his designee is approved, the claimant shall provide evidence of the priority date to support the water right claimed. If the claimant fails to provide evidence of priority, the form may be rejected and returned with no refund of the fees paid. (____)

p. Signature. ~~*All claims must be signed and sworn or affirmed before a notary public or other person authorized by law to administer an oath or affirmation at item sixteen (16) of the form.*~~ Each claim must be signed by the claimant at item fifteen (15) of the form, unless the claim is submitted electronically by means of the Internet. Each claimant, through submission of a signed claim or through submission of a claim by means of the Internet, solemnly swears or affirms under penalty of perjury that the statements contained in the notice of claim are true and correct. ~~*(7-1-93)*~~(____)

i. ~~*Individuals shall sign at the space indicated for individuals. The form must be signed by the person*~~ For claims submitted by means of the Internet, the form shall be submitted by a person listed as the claimant at item one (1) of the form unless ~~*written evidence is submitted with the form to show that the signatory has authority to sign for the claimant. A form listing more than one (1) claimant at item one (1) must be signed by each of the claimants listed at item one (1) unless the names are joined by "or", or "and/or" at item one (1).*~~ the person submitting the form has authority to submit the form for the claimant or claimants. Claims by corporations, municipalities or other organizations shall be submitted by an officer of the corporation or an elected official of the municipality or an individual authorized by the organization to submit the form. ~~*(7-1-93)*~~(____)

ii. For claims that are not submitted by means of the Internet, the form must be signed by each of the persons listed as claimants at item one (1) of the form unless the signatory has authority to sign for the claimant or claimants. Claims by corporations, municipalities or other organizations shall be signed by an officer of the corporation or an elected official of the municipality or an individual authorized by the organization to sign the form. The signatories title shall be indicated with the signature. ~~*(7-1-93)*~~(____)

q. Notice of Appearance. If notices to be sent by the director to the claimant are to be sent to the claimant's attorney, the claimant's attorney shall list the attorney's name and address and sign and date the form at item ~~*seventeen*~~ sixteen (1~~7~~6) of the form. ~~*(7-1-93)*~~(____)

0~~6~~3. ~~*Long*~~ State Law Claim Form -- Insufficient Claims, Waivers. ~~*(7-1-93)*~~(____)

a. Claims filed on the ~~*long*~~ state law claim form that do not contain the information required by Rule 060.0~~5~~2 shall be rejected and returned along with any fees paid, unless otherwise provided by these rules. ~~*(7-1-93)*~~(____)

b. The director may waive the minimum information requirements of Rule 060.0~~5~~2 and accept the claim for good cause shown. ~~*(7-1-93)*~~(____)

0~~7~~4. Further Information. This Rule 060 sets forth minimum requirements for the filing of claims. The director may request further information in support of the assertions contained in a claim as part of the investigation of the water system and the claims pursuant to Section 42-1410, Idaho Code. (7-1-93)