Acquisition of Mineral Rights on State-owned Land

by

ROGER H. UNDERWOOD

State of Idaho
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IDAHO BUREAU OF MINES AND GEOLOGY

MOSCOW, IDAHO
FOREWORD

The following research paper upon the mining laws applicable to the public lands owned by the State of Idaho was made possible by the scholarship program of the Rocky Mountain Mineral Law Foundation. This Foundation is composed of the mining, oil and gas associations, the State Bars and Colleges of Law of the Rocky Mountain area. One of its major objectives is to encourage students in the study, understanding and development of our oil, gas, minerals and other natural resources.

Mr. Underwood was a senior law student in the University of Idaho College of Law at the time this paper was written under my supervision. It is an accurate and illuminating presentation of the mineral laws applicable to state-owned lands in Idaho and should prove most valuable to the oil and mining industries.

The College of Law of the University of Idaho is pleased by the recognition accorded to Mr. Underwood and the Rocky Mountain Mineral Law Foundation by publishing this paper as a part of the public service afforded to the people of the Pacific Northwest by the Idaho Bureau of Mines and Geology.

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ACQUISITION OF MINERAL RIGHTS

ON STATE-OWNED LANDS

by

Roger H. Underwood

INTRODUCTION

This paper concerns the acquisition of mineral, oil, and gas rights, through the location or leasing of state and school lands in Idaho (1). It is intended to supplement the fine work contained in the American Law of Mining (2) as to the law of Idaho. Its subject matter is almost entirely composed of statutory law; very few judicial decisions clarify their application.

A distinction should be drawn between the acquisition of mineral rights on the federal public domain and on state-owned lands. Generally, most persons associate the acquisition of mineral rights with discovery, location, and ultimately with securing a patent. Although by this process one acquires mineral rights on the federal public domain, on state-owned lands in Idaho a person who makes a discovery and a location can not acquire a patent, but only a lease of mineral rights.

STATE-OWNED LANDS

State lands

The lands owned by the state, and thereby subject to its regulation, generally are those to which title was acquired directly from the Federal Government. Moreover, the title to lands and minerals in the beds of rivers and lakes is in the state and its grantees if the rivers and lakes were navigable at the time of its admission into the Union (3). Therefore the State of Idaho owns the beds of its navigable streams between the ordinary high water marks (4).

Although the largest portion of state land was derived from public land grants from the Federal Government to the state, such grants usually excepted known mineral lands (5). It is regarded as the policy of the Federal Government that every grant of public lands to a state should be taken as reserving and excluding mineral lands in the absence of an expressed purpose to include them (6). In such cases, mineral lands remain a part of the public domain and are open to location for mining purposes (7). Such reservation, however, does not apply to lands which were not known to be mineral in character at the time they were granted to the state (8). The title to such lands granted to a state becomes vested in fee
upon the approval of the survey of such lands. The fact that in the departmental orders an exception was made reserving mineral lands, in no way affects the title of the state (9) unless the lands granted were subject to the mineral exemptions fixed by Congress (10). A grant made to the state without reservations of minerals is not affected by the subsequent discovery of minerals within the land so granted (11). Likewise, where land has been granted to the state by the Federal Government as nonmineral land and classified as such by the proper authorities, it retains its character as nonmineral land and may be disposed of as such by the state (12), even though minerals are later found on it (13).

A state may lease mineral deposits which it owns (14), provided such lease or license is not in conflict with the conditions under which it was granted to the state by the United States (15). The power to lease state-owned mineral deposits is vested in the state legislature (16), which must act through statutes that comply with constitutional provisions (17). The constitutional provisions as to the sale of public lands have been held to be inapplicable to the leasing of state-owned mineral deposits (18). The mineral lease or license must comply with the statutes of the state (19). The provisions of the particular local statute not only control, but must be examined, as to the lands subject to such lease or permit (20) as well as the amount or area that may be leased or licensed (21). Likewise, provisions of the particular local statute control as to the amount of output (22) as well as the amount of the rent or royalty (23).

School lands

A large portion of the public domain has been granted to the states for educational purposes by the Federal Government. Although general in nature, these grants, which vary from state to state, usually include sections 16 and 36, and are known as "school lands." Although inclusion of these sections is a clue that they may be school lands, such an assumption is not always true. The records must be examined to determine ownership for each tract of land under consideration, because, upon the admission of a state to the Union, one of these two aforementioned sections, for various reasons might not have been available, and therefore, the state would have been granted some other section of land in its place. These lands have been referred to both as "in lieu lands" and as "indemnity lands."

Prior to January 25, 1927, a grant of public land to a state for school purposes did not include known mineral lands. Such lands were subject to location under the federal mining law in the same manner as other parts of the public domain (24). However, where the land was not known to be mineral at the time the state's title became complete (25) or where, after January 25, 1927, the grant embraced land mineral in character (26), a subsequent federal mining location thereon is invalid.

By legislation passed on January 25, 1927, entitled "An Act Confirming in States and Territories Title to Lands in Aid of Common or Public Schools," Congress
granted to the states the minerals in the school land grants (27). It is still necessary to determine whether or not the land was known to be mineral at the time the state's rights under the original grant attached, for this Act does not validate or confirm prior unauthorized sales of known mineral lands. Also, this Act does not affect the title to school section lands which were not known to be mineral in character on the effective dates of the grant, even though minerals may have been subsequently discovered in them. Prior to 1927 the state acquired no mineral lands where such lands were known to be mineral in character at the time the grants took effect. Therefore, there may be instances where, if mining locations had been made prior to January 25, 1927, on known mineral lands, these locations would be valid and the state would have acquired no title.

This same federal statute not only gives to the states the minerals in the school land grants, but it also directs the states in the manner of their disposition of such minerals (28). The statute conditions the grant to the states by requiring in all sales, grants, deeds, or patents of these lands by the state, a reservation to the state of all the minerals therein (29). The statute also provides for leasing of the mineral deposits therein by the state: the mineral deposits therein "shall be subject to lease by the state as the state legislature may direct, the proceeds and rentals and royalties therefrom to be utilized for the support or in aid of the common or public schools" (30).

County and city lands

Various state agencies or political subdivisions, such as counties, cities, school districts, and other municipal corporations sometimes acquire land for various needs, such as for highways, schools, and other public purposes. They may find that such property contains valuable deposits of minerals. It must be then determined whether the political subdivision acquired title to both the land and the minerals therein, or whether the mineral deposits were reserved to either the state or Federal Government. In such cases, if the political subdivision is found to own the minerals therein, then it may permit the mining and leasing of them, in the event appropriate statutory authority exists (31). It is sufficient at this time to state that some statutory authority does exist in Idaho for the leasing of mineral deposits by political subdivisions and municipalities. One such statutory provision, which dates back to 1917, authorizes a city to lease its mining property (32). Then in 1961, the state legislature enacted a new chapter containing three statutory sections authorizing mineral leases by political subdivisions and municipalities (33). These provisions will be examined and discussed at a later place in this paper (34).
ACQUISITION OF MINERAL RIGHTS BY LOCATION ON STATE-OWNED LANDS

Who may locate

In general, one may say that any person may locate who complies with the statutory requirements of the Idaho Code (35). Very broad and seemingly not too helpful, this statement, it will be seen, is no less specific than the statute itself. Section 47-703 refers to "the discoverer of a mineral deposit", and to "a person desiring to prospect for mineral" (36). However, the general reference is to "the locator" (37), and though there is no case law in Idaho defining that person, a fair conclusion might be that any person who is the discoverer of a mineral deposit or who desires to prospect for minerals on state-owned land, may be considered as a locator. Would being a locator be sufficient, in itself, to allow such a person to locate his claim? The answer here must be no. Any right held by such a person must be derived from the owner of the land--here, the state. This authorization is particularly applicable to mineral rights on state lands, because section 47-701 speaks in terms of persons authorized by the state to prospect for, mine, and remove such mineral deposits (38). Therefore, the locator, spoken of in the statute, must be a person who as a discoverer or one desirous of becoming a prospector, or both, has been authorized by the state to make a location and who also complies with all the other requirements of the statute.

Lands subject to location

Section 47-703 of the Idaho Code sets forth the various lands upon which a location may be made. A location "may be made upon lands belonging to the State of Idaho in which the mineral rights are reserved or belong to the state, including the beds of all navigable rivers in the State of Idaho and all portions of said navigable rivers between high water marks" (39). Since March 8, 1923 (40), all mineral rights on state-owned lands have been reserved to the State of Idaho, even though such lands are subsequently sold by the state. A purchaser of such lands from the state after March 8, 1923, acquires no right, title or interest in the mineral deposits in the land, and takes the land subject to the reservation of the mineral deposits by the state (41). Such lands, even though not owned by the state, are subject to location or leasing of the mineral rights therein (42). Lands purchased from the State of Idaho prior to March 8, 1923, carried with them the mineral rights therein, as between the purchaser and the State of Idaho, because the state had not reserved the mineral rights. Therefore, the minerals in these pre-1923 lands sold by the state are not subject to location or leasing by the state.

The statute also provides that "no mining location may be made on any lands for which a mining lease application has been made and is pending" (43). Therefore, such lands would not be subject to location. Reference must also be made to section 47-704, which provides that "no locations may be made for oil and gas deposits or lands" (44). Therefore, lands containing oil and gas deposits would not be subject
to location. In addition, the last sentence in section 47-703 provides that the right to prospect and locate "shall not extend to lands in the possession of a purchaser under contract or sale from the state" (45).

It would appear from these provisions that the locator may make his location on all lands owned by the state in which it has reserved the mineral rights or which belong to it, including the beds of navigable rivers between the high water marks. Locations cannot be made for oil and gas deposits, as these are subject only to leasing (46). If the state has had the mineral rights at one time, but now no longer possesses them or is in the process of giving them up, then these mineral rights are not subject to location. This would be the case of lands upon which the mineral rights were already subject to a pending lease, or lands which were in the possession of a purchaser under contract or sale from the state.

**Necessity of discovery**

With respect to the requirement of a discovery to make a valid location, the statute appears to give the locator in Idaho an option of being either a discoverer or a prospector (47). Section 47-703 speaks in terms of a discovery of the deposit by the locator; yet it provides for the posting of a notice by the locator on the claim declaring that he has made a discovery or that he desires to prospect for minerals (48).

There is no question that a discovery is necessary for a valid location of a mining claim on land of the federal public domain (49). However, on state-owned land in Idaho, because of the apparent statutory option, it would appear that the locator may be only a person desiring to prospect for minerals, without having made an actual discovery (50). If the locator, as a prospector, has also discovered a vein or lode, this discovery would strengthen his right to claim a valid location.

**Location, marking the boundaries, notice of discovery, and recording**

Mining claims located upon the federal public domain may be either lode-type locations (51) or placer-type locations (52). Likewise, locations of mineral claims upon state-owned lands may be either lode or placer, depending upon the type of deposit discovered by the locator (53).

The statute provides that when made upon surveyed land, such locations must conform to the legal subdivisions (54). However, when made upon unsurveyed land or upon beds of navigable rivers, such lode or placer locations must be marked and described in the same manner as required for location of either lode (55) or placer (56) claims, respectively, on the federal public domain. The statute allows a maximum-sized location not to exceed 20 acres on either surveyed or unsurveyed land; however, on surveyed land designated as a lot, the location may equal one-half of the size of the lot (57).
About locating claims on beds of navigable rivers, the boundaries of which have meandered, the statute is quite explicit. It provides that such claims "shall be described and staked in conformity as near as may be with the lotting of the fractional subdivisions bordering upon the navigable rivers, and the description of the claim shall be so accurately drawn and tied to the government corners that the ground may be accurately located and so described that the claim may be accurately platted" (58).

The locator must immediately post conspicuously on each claim, that he desires to locate, a notice declaring that he has made such discovery, or that he desires to prospect for minerals, or both (59). This notice must also include the date of the discovery or declaration. Then, within 20 days, the locator must file a certificate of location with the State Board of Land Commissioners, designating and describing the claim. Such certificate recorded in the office of this board as of the date of filing, and the location is entered on the plat books (60). It is important to note the difference here between the filing and recording requirements with respect to state lands and those for a lode or placer claim on the federal public domain. The filing for record of the notice of location of a lode or placer claim on federal public domain takes place in the office of the County Recorder (61). A certificate of location on state-owned land must be filed for record in the office of the State Board of Land Commissioners (62). The time within which to file a notice of location for record varies with the nature of the claim. The time requirements, measured from the date of location are as follows: (1) 90 days for the federal lode claim (63); (2) 30 days for the federal placer claim (64); (3) 20 days for either lode or placer claim on state land (65).

These differentiations between the location requirements on federal public domain and on state-owned land as well as those mentioned in the following section of this paper (66), should indicate the need for accurate knowledge of the specific statutes under which title to a mining or placer location is perfected.

**Discovery shaft**

The locator on state-owned lands must make an excavation or dig a discovery shaft, depending upon whether it is a placer location or a lode location. This excavating must be accomplished within a certain period of time, and in compliance with certain requirements specified in the statute. Section 47-703 provides that "within ninety days from the date of location the locator of a placer location shall make an excavation as provided in section 47-617" (67). This latter section (68) provides for placer locations on the federal public domain and says that the excavation must be not less than 100 cubic feet, for purpose of prospecting the claim. Even though the excavation requirement on placer claims is the same on state-owned land as it is on the federal public domain, there is a difference in the time requirement. The locator of a placer claim on federal public domain must make his excavation within 15 days after making the location (69) whereas, the locator on state-owned land must make his excavation within 90 days from the date of location (70).
Section 47-703 also provides that within 90 days from the date of location, the locator of a lode location "shall dig a shaft at least 10 feet deep and 4 feet square, or make an open cut having a 10-foot face" (71). These requirements on a lode location differ, both in size and time, from the lode location requirements on the federal public domain. Under the latter, section 47-603 requires the shaft to be sunk to the depth of at least 10 feet from the lowest part of the rim of such shaft at the surface, and of not less than 16 square feet area (72). A recent amendment, section 47-603A (73), which provides for an open cut in lieu of a discovery shaft, states that the open cut must cut the vein 10 feet in length and with the face of the cut 10 feet in height (74). The time requirement within which the discovery shaft or open cut must be made upon federal public domain is 60 days after location (75); whereas, on state-owned lands, such shaft or open cut must be made within 90 days (76).

These differences between the federal public domain requirements of a discovery shaft and those on state-owned lands are very important. A failure to comply with the appropriate statutory requirements may be very costly to the prospective locator.

**Annual assessment work**

The work the locator performs in making an excavation of a placer location, or in digging a discovery shaft or making an open cut on a lode location, upon state lands, is sufficient to hold the ground located from the date located until the next July first (77). However, the locator may hold this claim for an additional two-year period by performing such annual assessment work as is required by the statute (78). He must perform one hundred dollars worth of work (79) during each year for each 20-acre tract or fraction thereof (80).

If the claim is located within 90 days preceding July first of any year, development work must be begun before that July first, but the locator may have until the succeeding July first to complete one hundred dollars worth of work on each tract (81).

This annual assessment work shall consist of tunnels, shafts, or other mining excavations or development; it shall not include trails, roads, buildings, machinery, or other surface improvement (82). The work need not be performed in any certain place on the claim, but rather may be performed at as many places on the claim as the locator may desire. Further, if more than one claim is under the same ownership, then the work performed upon any one or more claims may be counted as the required work done on all of them.

There is one restriction as to work performed for the benefit of a group of contiguous claims under common ownership: the work shall be of material benefit to each and every claim forming the group (83). The statute enumerates two types
of work that are considered good assessment and valid improvement for all claims contiguous and under common ownership (84). One is that drilling by conventional method and pits or shafts sunk to determine the value of the gravels is valid in the case of placer claims. The other work enumerated as valid is the building and operation of a dredge of suitable type to recover the values in the navigable rivers (85).

The statute requires filing of written proof of the assessment work with the State Board of Land Commissioners (86). The statute does not specify any time requirement for this filing, but it would appear that such written proof would have to be filed within a reasonable time after completion of the annual work by July first each year.

After the locator has complied with these provisions, what is the nature of his rights? After complying with the location requirements upon the federal public domain, the locator is entitled to apply for a patent (87), but he can not so apply if he has located on state-owned lands. The locator on state-owned lands is entitled to retain possession of and prospect the claim for a period of two years. At the end of that time, he is required to take a lease upon such terms as may be agreed upon by the State Board of Land Commissioners (88).

ACQUISITION OF MINERAL RIGHTS BY LEASING ON STATE-OWNED LANDS

Minerals subject to leasing

Section 47-704 of the Idaho Code provides for leasing of mineral rights in state lands (89). However, it excepts from its provisions the leasing of oil, gas, and other hydrocarbons (90). To determine what minerals are not excepted, refer in Ch. 7 of Title 47 to section 47-701, which enumerates the various types of minerals subject to leasing (91): coal, phosphate, sodium, asbestos, gold, silver, lead, zinc, copper, antimony, and all other minerals of whatsoever kind or character.

As has been stated earlier in this paper, the beds of its navigable rivers between the high water marks thereof are owned by the State of Idaho. Section 47-714 provides that the state is authorized to lease for mining purposes these beds of the navigable streams (93). In considering what minerals are subject to leasing, one should note that section 47-716 provides that leasing of beds of navigable rivers and streams "shall apply only to deposits in their natural state and not apply to dumps and tailings" (94).

The other minerals on state-owned lands subject to leasing are set forth in Chapter 8 of Title 47 of the Idaho Code, which chapter provides for oil and gas leases on state and school lands. Oil, gas, casinghead gas, casinghead gasoline, and all other hydrocarbons are subject to leasing by the State of Idaho (95).
It would seem that any mineral of any type found upon state-owned land would be subject to leasing by the State of Idaho. This inference is based upon the fact that the statute, after enumerating many minerals which are subject to the leasing laws, provides "and all other mineral lands, minerals or deposits of minerals of whatsoever kind or character" (96).

Persons eligible to lease

As in the statute's provisions concerning mining locations on state lands and eligible locators, the leasing provisions do not specify who is eligible to lease mineral rights on state-owned lands. But there seems to be no question that any person who is eligible to be a locator is eligible to lease mineral rights on state-owned land (97).

It would seem that any person, association, firm or corporation may lease such mineral rights in accordance with the provisions and requirements of the statutes. The basis for this conclusion is the wording in sections 47-717 and 48-804. The former provides that "it shall be unlawful for any person, association, firm or corporation to remove in commercial quantities any ores, minerals, or deposits from state lands before securing a lease for said lands from the State Board of Land Commissioners" (98). A fortiori, any person, firm or corporation is eligible to secure a lease for state lands. The latter section provides "that one person, firm or corporation may hold more than one lease" (99). Here again, this section seems to be another indication that the Legislature intended any person, firm, or corporation to be eligible to lease mineral rights on state-owned land.

In Arizona, any citizen of the United States, any partnership or association of citizens, or any corporation organized under the laws of the United States or of any state or territory thereof is authorized to lease state mineral land (100). This right to locate minerals on state lands seems to be the usual or general rule (101), and this may be the rule in Idaho even though the statute does not so specify.

Location of mineral claims and discovery as preliminaries to leasing

Some states' statutes provide for prospecting permits, for a system of locating mineral claims, and for discovery, or both, as preliminaries to leasing of mineral rights on state-owned land. A very important question is whether such a preliminary step toward securing leases is mandatory or permissive. Or, to ask the questions another way, may the state issue a lease upon an application made by one who has not previously secured a prospecting permit or located a mineral claim? These questions have been answered in Washington (102) and Montana (103) (both of which use prospecting permits) by special statutes, expressly providing that a mineral lease may be issued although no prospecting permit has been theretofore issued.
However, in Idaho, where there are provisions for locating mineral claims and for discovery (104), there is no special statute as to whether these preliminaries are permissive or mandatory. The answer to our questions in the State of Idaho is apparently that a mineral lease on state land can be secured by a person who has not made a discovery (105) and a location of the mineral claim. The location would be a permissive, not a mandatory, preliminary step in securing the mineral lease. The location in Idaho would give to the locator, however, a preferential right to a mineral lease upon the land so located (106). There is no case law in Idaho which may be of assistance in answering the questions I have raised. Rather, I have based my opinion on some of the wording of the statutory provisions and inferences drawn therefrom.

Section 47-702 in its elaborations of what lands are free and open to exploration, states that lands which have not been located or leased in accordance with the terms of the statutory provisions are open to exploration (107). The important portion of that section is the words "located or leased." The following inferences may be drawn from these words: that by the use of the word "or" the Legislature intended to allow for either location or leasing of state lands, and did not intend that one be dependent upon the other; that if it had been the intent of the Legislature that a person must locate before he is entitled to lease, then the Legislature would have used the word "and" instead of the word "or."

The third paragraph of section 47-704 provides for applications for mineral leases. It provides that "if the applicant for a lease has previously filed a certificate of location . . . upon any part of the land desired to be leased, such application shall be given a preferential right to the land covered by his location" (108). The word "if" is important here; the word implies a permissive or optional approach to the idea of locating prior to leasing. The provision giving the locator a preferential right to the land covered by his location, also supports this writer's opinion stated above. The inference drawn from such provision is that the locator is preferred to the nonlocator as to the leasing of only the land upon which he has located. This recognizes the existence of the nonlocator as a possible lessee, and also recognizes that the locator received no preferential right to land he has not located.

This same section (109) provides further that "no lands upon which a mineral location has been duly made and recorded . . . shall be leased for mining purposes during the two-year periods to any applicant except the person having made such location." The inference to be drawn from this statement is that a person who desires to lease, but who has made no location, is only prevented from leasing lands upon which a location has already been made; it does not prevent him from leasing other state-owned lands upon which no location has been made.

The statute provides "that no locations may be made for oil and gas deposits or lands" (110). However, section 47-801 provides that the state may lease state and school lands for oil and gas development (111). It is very clear, therefore, that
location can definitely not be prerequisite to the securing of an oil or gas lease.

The conclusion drawn from these provisions and my inferences is that in Idaho mineral rights on state-owned land may be leased either with or without a prior location; that all the location does is to give to the locator a preferred right to a mineral lease. This conclusion for Idaho is consistent with the construction placed on similar statutes in other states (112).

As a practical matter, very rarely would a person apply for a lease of mineral rights unless and until he had made some type of discovery of the mineral deposits on the land and had done some work on the claim. In other words, a person would have complied, in many aspects, with the location requirements in the statute before ever applying for the lease. In addition, the statute provides that the applicant for such a lease shall specify the particular mineral or minerals in the land for which the lease is requested (113). This provision, of course, would not require a discovery and location prior to securing the lease, but would indicate to the conscientious and cautious applicant that he would be wise to have done so in advance.

Application to lease. Requisites to and issuance of lease

The application for a mineral lease must be in writing and must be made under oath in the form prescribed by the State Board of Land Commissioners (114). In this application, the applicant must describe the land, indicate the amount of the annual rental and royalty that he offers to pay, specify the particular mineral or minerals, and give any other additional information required by the State Board of Land Commissioners (115).

An applicant may have preferential rights based upon a location of mineral claims (116), but to obtain the benefit of such preferential right he must apply for the lease within the two-year period specified by the statute (117).

If the application to lease is for any lands that belong to the State by reason of being situate between the high water marks of navigable rivers of the State, then the procedure to be followed provides for a published notice, a hearing, and an investigation (118). The statute states that upon receipt of such an application, the State Board of Land Commissioners shall cause a notice of such application to be published once a week for two issues in a newspaper of general circulation in the county or counties in which the lands described in the application are situated (119). The applicant must bear the cost of publishing such notice (120). The form of the notice, which must be substantially followed, is set forth in the statute (121).

Notice of such application for leasing the bed of navigable rivers must be sent to the State Reclamation Engineer, who, if he thinks advisable, shall make an investigation (122). The expense of this investigation must be borne by the applicant (123). The purpose of the investigation is to determine whether the rights of in-
terested parties may be jeopardized by the issuance of the proposed lease; if so, then the State Reclamation Engineer shall give notice of such application to the parties to be affected thereby (124). A hearing is then held by the State Board of Land Commissioners, who shall deny the application for the lease if it appears that the leasing of beds of navigable rivers will be injurious to the rights of any person or persons having the right to the use of the waters thereof for irrigation, power, or any other lawful purpose (125).

One requisite to the issuance of a lease arises where there have been improvements made upon the mineral deposits belonging to the state. When an applicant applies to lease the mineral deposits upon which such improvements have been made, he must pay the owner of these improvements the value thereof (126). The statute also requires the applicant to file in the office of the State Board of Land Commissioners a receipt showing that he has paid the owner the price of the improvements as agreed upon between the parties or as fixed by an appraisal (127). Until these requirements have been met by the applicant, the Board shall not issue the lease.

The State Board of Land Commissioners is authorized to prescribe by rules and regulations not only the form of the application, as mentioned hereinbefore (128) but also the form of the lease and the amount of filing and recording fees (129). Because the statute states that the State Board of Land Commissioners "may lease" (130), it would appear that this Board has discretionary powers in prescribing rules and regulations related to leasing. Likewise, the Board would be able to use its discretion in determining whether to issue a lease or deny an application. If the applicant complies with the statutory requirements and the rules and regulations prescribed by the Board, the chances of the Board denying the application and refusing to lease, in the exercise of their discretion, would be minimal.

**Area limitations, duration and other terms and conditions**

The maximum area that may be covered in one lease for mineral rights on state-owned land is 640 acres (131), which is equivalent to one section. Some questions arise from the wording of the statute authorizing the leasing. The statute states that the State Board of Land Commissioners "may lease in tracts not exceeding 640 acres for prospecting and mining purposes and mineral deposits, except for leases for oil, gas and other hydrocarbons" (132). First, does this mean that one person may lease one whole tract containing one section? Or, is he limited to separate tracts of only 20 acres each (under provisions of locating on a claim (133)) but allows a maximum number of 32 such tracts in one lease so that his total area of lease is 640 acres?

At this point consider for a moment the statute providing a limitation on the area to be leased for oil and gas leases (134). This statute provides that "no single oil or gas lease . . . shall be for an area exceeding one section" (135). It will be
noted that this statute does not mention or refer to "tracts" or to "acres," but rather only to "one section." It would seem, therefore, that for mineral leases, other than oil and gas leases, one lease may cover an area of no more than 640 acres to be composed of 20-acre tracts, not to exceed thirty-two in number. This stipulation would not be true of the oil and gas leases. A single oil and gas lease may cover an area of no more than one section, but there is no requirement that this section be broken down into tracts of no more than 20 acres.

The question arises, also, as to whether a lessee under section 47-704 (136) may hold more than one lease for mineral rights on state-owned lands. If not, then he is limited to leasing only 640 acres. Reference must again be made to the statute on oil and gas leases (137). This statute specifically provides "that one person, firm or corporation may hold more than one lease" (138). There is no such provision in the statute authorizing leases for mineral rights other than oil and gas (139). Nor, does any provision mention anything about the number of leases that any one person may be entitled to. The only clue as to what the Legislature may have had in mind may possibly be found in section 47-704, which authorizes oil and gas leases from the limitation of 640 acres that was placed on all other mineral leases (140). Then, the statute for oil and gas leases provides that a person may have more than one lease, and, therefore may lease more than one section, that is more than 640 acres (141). It would seem that if the Legislature had intended to allow one person to hold more than one lease (more than a total of 640 acres) on minerals, other than oil and gas, they would have so specified in section 47-704, as they have done in section 47-804. Therefore, the lessee of mineral rights, other than oil and gas, on state-owned lands in Idaho seems to be limited to one lease covering no more than a total of 640 acres. Whether such lessee could have several leases, the total area of which did not exceed 640 acres, is an open question.

The statute provides that the term of all mineral leases, except oil and gas leases, shall be for a term of 10 years (142). The statute does not, however, limit a person only to the 10-year period. The lessee is allowed to continue to lease so long thereafter as the minerals are produced in paying quantities, or as much longer thereafter as the lessee in good faith shall conduct mining operations thereon (143).

The statute also provides that the lease shall grant to the lessee the right to use and occupy so much of the surface of the land as may be required for all purposes reasonably incident to his mining operations (144). This also includes the right to construct and maintain thereon all works, buildings, roads, or other structures necessary to the full enjoyment thereon for the purpose of the lease (145).

One condition to which the lessee is subject when leasing minerals on state-owned lands, is that the State Board of Land Commissioners has the right at all times to inspect the mines or works, and may cause an inspection to be made of all mines or works operated under leases as often as they shall deem necessary (146).
The duration of the mineral lease and the right of the lessee to continue mining operations thereunder depend upon his compliance with the terms of the lease and the requirement of the statutes. The lease is conditioned upon payment of the rental in advance annually, and upon payment of the royalty as provided for in the lease (147). The rentals and royalties provisions will be discussed in a later section of this paper (148). For failure to comply with any of these conditions, the lessee may lose his lease, at the option of the State Board of Land Commissioners, under the forfeiture provisions of the statute (149). These forfeiture and cancellation provisions will be discussed in a later section of this paper (150).

Rentals, royalties, and other fees

The State Board of Land Commissioners is authorized to prescribe the annual rental, the amount of royalty, and the basis upon which the royalty shall be computed (151). The statute seems to allow the board to set the amount of such annual rental as it may deem fair and in the interest of the state, but it does set a minimum annual rental of not less than 25 cents per acre per annum (152). The amount of the royalty payment upon the minerals produced is also left to the discretion of the Board as it may deem fair and in the interest of the state, but provides that the minimum royalty shall not be less than 2.5 percent (153). The annual rental fee for oil and gas leases is a set fee of 25 cents per acre per annum, but there is a minimum royalty for oil and gas leases which is much greater than the 2.5 percent for minerals (154). The rental and royalty payments for oil and gas leases will be discussed in a later section of this paper (155).

The annual rental must be paid in advance and the royalty payments must be made in accordance with the terms of the lease (156). The rental paid for any year shall be deducted from the royalties as they accrue for that year (157).

There are some other fees which the Board is authorized to fix and collect, such as the filing and recording fees (158). Also, the Board is authorized to charge to the applicant who applies to lease the bed of navigable rivers, the expense of the published notice and the expense of an investigation (159). The statute gives the Board the express power and authority to collect the royalties and other payments due the State of Idaho under mineral leases (160).

Appraisal of improvements and forfeiture thereof

The statute defines the word "improvements" as it is used in the discussion of appraisal and forfeiture of improvements. It "shall be construed to mean work performed in the development of the property, the estimated value of all known or probable mineral contained in the land that has been discovered or developed through mining excavations made by lessee, and all buildings, dwellings, mill machinery, mine machinery, trails, roads, and all equipment used, constructed and necessary for the operation of the mine, mill or plant" (161).
As mentioned earlier in this paper (162), where improvements have been made upon mineral deposits belonging to the State of Idaho there are special provisions governing such a situation. Before the lease shall issue to any applicant, other than the owner of the improvements, the applicant shall pay to the owner of the improvements the value thereof and shall file in the office of the State Board of Land Commissioners a receipt showing such payment in full (163). This receipt must show that the price of the improvements was agreed upon by the parties or was fixed by appraisal under the authority of the Board (164). If the applicant cannot show such a receipt, then he must make satisfactory proof that he has tendered to the owner of the improvements the price of the improvements as agreed upon or as fixed by appraisal (165).

The improvements upon the property may revert to and become the property of the state, if the mineral lease on such property has been canceled for a period of one year and a new lease has not been issued during that time (166). The cancellation of mineral leases on state-owned land will be discussed in the following section of this paper (167).

**Forfeiture of leases**

As mentioned hereinbefore (168), all mineral leases are conditional upon payment of the rental in advance annually, and upon the payment of the royalty provided for in the lease. The lease shall also be conditioned upon any other provisions provided by the State Board of Land Commissioners (169). Should the lessee violate any of the conditions, the Board may, at its option, cancel the lease (170). Prior to this cancellation, however, the Board must give the lessee 30 days' notice by registered mail of the forthcoming cancellation (171).

The State Board of Land Commissioners is granted the authority by the statute to declare a forfeiture of the mineral lease, and all rights of the lessee thereunder, for a violation of any of the terms or conditions of the lease (172). Such a forfeiture may also be declared by the Board for a violation by the lessee of any rule or regulation of the Board with respect thereto or of any of the provisions of the statute (173).

It would seem that the lessee has the right to appeal to the courts for a review of the order of the State Board of Land Commissioners declaring the lease forfeited (174).

**Rights and liabilities of lessees**

The lessee would have those rights and liabilities contained in the lease, and, undoubtedly, many of the same rights and liabilities which a lessee would have under any other type of lease. In the case of mineral leases, the Idaho statute concerning the rights and liabilities of the lessee is quite specific (175). The lessee has the right at all times to enter upon the lands covered in his lease for the purpose of pros-
pecting and mining (176). The statute also provides that he shall not injure, damage, or destroy the improvements of the surface owner, for if he does any damage to the surface of the land or to the improvements thereon he is liable to and must compensate the owner thereof (177).

The lessee may occupy so much of the surface as may be required for all purposes reasonably incident to the mining and removal of the minerals (178). However, it is not so simple that he may just occupy such amount of surface without some showing of good faith on his part. The statute is quite specific and gives the lessee three alternative choices of action: first, he must secure the written consent or waiver of the surface owner; or, second, where he and the owner agree as to the amount of damages to the surface of the land and the improvements, he must pay this amount to the owner thereof; or, third, he must execute, file with and have approved by the Board, a good and sufficient bond, or undertaking, to the State of Idaho, for the use and benefit of the owner of the land to secure the payment of such damages, as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction (179).

The lessee must erect and keep closed gates in all fences which may be opened, and enclose or keep covered all shafts, holes, or open cuts (180). The purpose of these requirements by the statute is to protect fully the rights of all agricultural and grazing leases which have been or may be granted.

Oil and gas leases

It should be noted at this time that in the preceding nine sections (181) concerning acquisition of mineral rights by leasing on state-owned lands, there has been little discussion or examination of oil and gas leasing. Those nine sections concern generally leases on state-owned lands for all minerals and mineral deposits other than oil and gas. Whatever of oil and gas leases have been mentioned within those nine sections, such reference has been generally for the purposes of comparison. The Legislature has seen fit to treat oil and gas leases on state lands separately and apart from all other mineral leases on state lands. Therefore, the oil and gas leases on state-owned lands are here to be considered separately and analyzed in light of the statutes enacted by the Legislature concerning such leases.

Here, also, the authorized leasing agency is the State Board of Land Commissioners. The Board may lease for development any state or school lands which may contain oil, gas, casinghead gas, casinghead gasoline, or other hydrocarbons (182).

There is a limitation on the area to be leased: no single oil or gas lease shall be for an area exceeding one section (640 acres); however, one person, firm or corporation may hold more than one lease (183). It would seem, therefore, that there is no limitation upon the amount of land which could be leased to one person or to one oil company.
The term of the oil or gas lease given by the Board is to be for 10 years, and as long thereafter as oil or gas is produced in paying quantities, or as much longer thereafter as the lessee in good faith conduct drilling operations thereon (184).

The annual rental for oil and gas leases is a set amount of 25 cents per acre, which must be paid in advance, and this rental payment for any one year shall be deducted from the royalties as they accrue for that year (185). The amount of royalty on oil and gas lands shall be determined by the State Board of Land Commissioners; however, the statute provides that such royalty shall not be less than 12.5 percent of the oil or gas, or both, produced and saved from the lands under the lease (186).

The rules and regulations governing the issuance of oil and gas leases, and covering the conduct of development and mining operations to be carried on thereunder, are to be prescribed by the State Board of Land Commissioners (187). The written consent of the Board must first be obtained before any oil or gas lease on state-owned lands may be assigned or transferred (188).

The lease gives to the lessee the right to use and occupy so much of the surface as may be required for all purposes reasonably incident to the prospecting, exploration or drilling for the production, refining and marketing of the oil and gas produced from the lands (189). In addition, the lessee has the right to construct and maintain on the surface all works, buildings, roads, communication lines, tanks, or other structures necessary to the full enjoyment thereof for the purpose of the lease (190).

Where the State Board of Land Commissioners has leased state or school lands for grazing or agricultural purposes, it is also authorized to issue oil and gas leases covering such lands (191). The oil and gas lessee is given by statute the paramount right to the use of so much of the surface of the land as is necessary for the purposes of his lease, and he is given the right of ingress and egress at all times during the term of his lease (192).

Where the oil or gas lease covers lands, the surface of which has been sold or leased, then the statute provides that the Board shall require the oil or gas lessee to execute a bond in the amount of one thousand dollars in favor of the State of Idaho conditioned on the payment of all damages to the surface and improvements thereon (193). When operations for the drilling of any well begin the lessee must furnish a bond in the amount of six thousand dollars which bond shall be in lieu of the one thousand dollar bond and shall cover all subsequent operations on the lease (194).

The State Board of Land Commissioners not only has the authority to cancel any oil and gas lease upon failure by the lessee to exercise due diligence and care in the prosecution of his operations in accordance with the terms and conditions in the lease and with the laws of the State, but the Board is required to insert into every
such lease the appropriate provisions for such cancellation (195). The test set forth in the statute for the Board in exercising its cancellation powers, is that it may cancel a lease only if there has been a substantial violation of the terms (196). However, even then, before the board may cancel the lease it must notify the lessee in writing, by registered mail, of the existence and exact nature of the cause of cancellation, and allow the lessee 90 days from the mailing of the notice within which to remedy such cause of cancellation (197). If these requirements are complied with, and the lessee does not remedy the cause of cancellation within the 90-day period, then the board may cancel the lease. It should be noted, however, that nonpayment of rentals or royalties is excepted from these requirements (198). It would appear, therefore, that the board could cancel the lease for nonpayment of rentals or royalties, without meeting the "substantial violation" test, without giving the notice in writing to the lessee, and without allowing the lessee a 90-day grace period. This conclusion would follow from the wording of the statute. However, I believe that the lessee is entitled to written notice of his default in payment in order to satisfy all of the requirements of due process of law (198a).

The statute provides "that no default by the lessee in the performance of any of the conditions or provisions of such lease as to any well or wells on any legal subdivision of the land covered by such lease shall affect the right of the lessee to continue the lessee's possession or operation of any other well or wells, situated upon any other legal subdivision of the land" (199). This would mean that the lessee could default as to the well or wells on one parcel of land without being considered to have defaulted as to the wells on all other parcels of lands. The minimum size of a legal subdivision or parcel of land, for oil and gas lease purposes, is 40 acres surrounding such a well (200). Its size may be larger than this 40 acres as would be the case when a subdivision as established by the United States Land Survey under an approved well-spacing program, turns out to be larger than 40 acres in size (201).

In discussing cancellation provisions concerning oil and gas leases, one should note that the forfeiture and cancellation provisions concerning mineral leases, other than oil and gas (202), shall not apply to oil and gas leases issued under the authority of the Board (203).

The lessee of any oil and gas lease is allowed to surrender and terminate the lease as to all or any part of the lands covered by such lease (204). The lessee is required, however, to give a written notice to the State Board of Land Commissioners not less than 30 days prior to such surrender or termination, and have paid the rentals then accrued (205). Under compliance with these requirements, the lessee is relieved from liability for rental and all other obligations so to the acreage so surrendered, but is not relieved from liabilities which may have accrued in connection with the lease prior to the surrender (206). If there is a total surrender by the lessee, there will be no subsequent rental payments required; however, if the surrender is only partial the annual rental thereafter payable is reduced in proportion to the amount of land surrendered (207).
It should be noted that the State Board of Land Commissioners is authorized to join on behalf of the State of Idaho in cooperative or unit plans of development of oil and gas lands (208). Likewise, all of the political subdivisions and municipalities in the State of Idaho are also authorized to join in such cooperative or unit development (209). Such cooperative or unit development of oil and gas lands will not be discussed in any further detail in this paper. Reference is made specifically to the statutory sections (210).

**Mineral leases by political subdivisions and municipalities**

Historically, the leasing of mining property owned by a city was first authorized in the State of Idaho by the Legislature in 1917 (211). This statute authorized a municipal corporation to grant leases for mineral deposits upon lands which are owned by such municipal corporation (212). Such a lease is granted by ordinance upon a vote of three-fourths of the members of the governing body of the municipal corporation, whether it be a council or board of trustees (213).

Such a lease cannot be made for a greater period than 25 years, and it shall provide for such royalties and other terms and conditions as the council or board of trustees may deem proper (214). The mineral lease gives to the lessee the right to mine for and extract the minerals from the land, but the statute provides that the lessee shall in no way disturb or interfere with the surface of the land (215). If this last statement is construed literally, the lessee would be rather strictly confined in his method of operations. It would seem, however, that the lessee could make such use of the surface as is reasonably necessary and incident to his right to mine for and extract the minerals from the land.

This statute was amended in 1961 by the Legislature (216); however, the only change made in the statute was the addition to the first of the statute of the phrase: "except as otherwise provided by law." Otherwise, the original statute of 1917 was left intact. It would appear that this phrase was added so that this statute would be construed in conjunction with the three new statutes (217) that the Legislature enacted in 1961.

In 1961 the Idaho Legislature enacted statutory provisions for oil and gas mineral leases by political subdivisions and municipalities (218). The first of these statutory provisions (219) authorized the governing body of any county, city, town, village, school district or other municipal corporation or political subdivision of the State to lease or enter into a community lease with respect to any mineral interest owned by such municipal corporation. Such lease is to be for the exploration, development and production of oil, gas, or other hydrocarbons. The municipal corporation may also make other contracts for such exploration, development and production, upon such terms as the governing body may determine (220).
The second statutory provision (221) authorized the municipal corporation to include by lease, contract, or other agreement any of its mineral interests in any plan for cooperative or unit development for oil and gas. The municipal corporation is given a very broad power in this respect, in that it may modify and change any and all terms of any lease or contract heretofore entered into under the provisions of this act (222). The governing body may extend the terms of such lease for the full period of time which the cooperative or unit plan may remain in effect. They may make any other changes in such a lease or contract so that it will conform to the terms of the cooperative or unit plan.

The third of these statutory provisions (223) sets forth some of the basic terms for such leases by the municipal corporation. The governing body of the municipal corporation is authorized, in its discretion, to make such rules and regulations governing the issuance of such leases and contracts as it deems proper. The lease or contract may only be entered into by the municipal corporation pursuant to a resolution duly adopted by the governing body (224). The term for such a lease or contract is to be 10 years and as long thereafter as oil and gas are produced in commercial quantities (225). Such term may be extended pursuant to the provisions for cooperative or unit development (226). The lease or contract must reserve to the governing body of such municipal corporation a royalty of not less than one-eighth of all oil and gas produced from the lands (227). There is no provision in the statute for an annual rental fee. However, as the governing body may make and establish such rules and regulations as it deems proper, it would appear that they could provide for such an annual rental fee in the lease or contract.

It is well to remember that the statutory provisions for issuance of mineral leases by political subdivisions and municipalities apply only to lands and minerals which are owned by such political subdivision or municipality. They would not apply to lands owned by the municipality if the minerals therein were either owned by someone else or were reserved to the State of Idaho or the Federal Government.

SUMMARY AND CONCLUSION

In the beginning of this paper it was pointed out what lands were State lands, or, to state it in another way, what lands were subject to control by the State of Idaho as to the acquisition of mineral rights therein. These lands were found to be: (1) lands granted to the State by the Federal Government that included the grant of the minerals therein, and which lands the State still owns; (2) all lands in the beds of the navigable rivers, below the ordinary high water marks, located in the State of Idaho; (3) school lands granted by the Federal Government to the State, or lands in lieu thereof; and (4) all lands once owned by the State and sold by it subsequent to March 8, 1923, as the mineral rights therein were reserved to the State in the sales. The mineral rights in these above-mentioned lands are subject to the location or leasing laws, or both, of the State of Idaho.
It was seen that the statutory methods of acquiring mineral rights on State lands in Idaho were (1) location, or (2) leasing. The statutes governing both methods were found to be explicit in most aspects. Amendments to the statutes are suggested at appropriate places.

First, the statutes are not clear as to whether a person must make a location prior to being allowed to secure a mineral lease from the State. Therefore, the Legislature should clarify such problem with one simple statement as to the approach it desires to take. It is suggested that the Legislature should make the location a mandatory prerequisite to the securing of a lease.

Second, there is the question of who is entitled to locate or lease. The statutes are not clear at all in this respect. The Legislature should amend its Code to specify who is eligible and entitled to locate and/or lease, or both.

Finally, there are questions as to how many leases one person may obtain, how much land may be included in one lease, and how much land may be leased by one individual. It would seem that each lessee should be entitled to have as many leases as he desires, and lease as much land totally as he desires, but that as one lease he may only lease one section (640 acres) of land.

The Idaho Legislature has treated oil and gas leasing separate and apart from other mineral leases, and has set forth a separate group of statutes dealing with them. The well-drafted oil and gas leasing statutes in Idaho leave very little room for any doubts, and, therefore, should be left intact. These statutes are specific, and, therefore, the prospective oil or gas lessee should examine them carefully.

Although more and more of our government today is becoming centralized, there is still much need for some controls of local problems at the local level. Such is the case when municipalities and other political subdivisions find themselves owning parcels of land and the mineral rights therein. It is fitting that the Idaho Legislature enacted a fine group of statutes in 1961 authorizing the local political subdivision to lease these mineral rights or to join in cooperative or unit plan development of these mineral resources with some other governmental agency.

In conclusion, one should first understand the many differences which exist in the statutory requirements for acquiring mineral rights on state or federal lands. Second, one must realize that his ultimate right on state lands is that of a mineral lessee; whereas, on federal public domain he could possibly be a patentee. Third, one must, therefore, first determine who owns the particular land in question and who owns the minerals therein. This determination may require an extensive search of the chain of title; however, it will prove beneficial in determining whether the mineral rights are owned by himself, by someone else, or have been reserved by either the State or Federal Government. Fourth, and last, if the mineral rights prove to be those
subject to the control of the State, then one must refer to and comply with the particular Idaho statutes on location and leasing of such minerals. These will be his guide, and, the prospective acquirer of mineral rights on State lands in Idaho should make sure that he follows their requirements with meticulous care.
FOOTNOTES

2. 2 American Law of Mining §§ 12.1 through 12.21 (1960).
4. United States v. Wallace, 157 F. Supp. 931 (Idaho 1957); Gasman v. Wilcox, 54 Idaho 700, 35 P.2d 265 (1934) (it is settled law in Idaho that the state holds title to the beds of all navigable lakes and streams below the natural high water mark for the use and benefit of the whole people, subject always to the rights of the public in such waters and to the paramount power of Congress to control their navigation so far as may be necessary for the regulation of commerce among the states and with foreign nations); Callahan v. Price, 26 Idaho 745, 146 Pac. 732 (1915) (ordinary high water line).
6. Id.
10. Supra note 8.
11. Supra note 8.
13. Id.
27a. State v. Tracy, supra note 25.
32. Idaho Code §§ 50-1148 (Supp. 1961). This statute was passed in 1917, and was amended in the 1961 Session Laws, chapter 102, section 1, page 151. This amendment left intact the entire 1917 statute, except for the addition of the following phrase to the beginning of the provision: "Except as otherwise provided by law." Presumably, this was added so that this section would be considered in conjunction with the other new sections added in 1961 which are cited infra note 33.
33. Idaho Code §§ 47-1401, 47-1402, 47-1402 (Supp. 1961). These sections were passed in the 1961 Session Laws, chapter 100, sections 1, 2, and 3, page 149. This act enumerates the various political subdivisions of the state which may lease minerals. They are: counties, cities, towns, villages, school districts or other municipal corporations or political subdivisions of the state.
34. See infra p. 19 of the text.
49. Ambergris Min. Co. v. Day, 12 Idaho 108, 85 Pac. 109 (1906); but see Allen v. Laudahn, 59 Idaho 207, 81 P.2d 734 (1938) (wherein the court said that it is not essential that the locator make the discovery himself, but that it is sufficient if he knew that a discovery had been made by someone within the limits of his location).
50. There is no Idaho case law on this point. However, this writer feels that this is a fair conclusion to be drawn from a careful reading of Idaho Code § 47-703 (Supp. 1961).
64. Idaho Code 47-617 (1947); see Brabazon v. Gordon, 65 Idaho 446, 145 P.2d 484 (1944) wherein court said that California case of Dripps v. Allison's Mines Co., 45 Cal. App. 95, 187 Pac. 448 (1919) held that failure to record notice of location of a placer claim within the time required by the statute concerning public domain land does not work a forfeiture or invalidate the location, and that the same reasoning would apply to recording locations on state lands.
66. See infra p. 6 of the text.
73. This section was added in 1957 by Idaho Sess. Laws 1957, ch. 71 § 1, at 118.
75. Idaho Code 47-603 (1947).
79. 30 U.S.C.A. § 28 (1958) (this statute provides for $100.00 worth of annual assessment work and its other requirements are substantially the same as those required by the State of Idaho on state lands).
90. These exceptions are provided for in Idaho Code §§ 47-801 through 47-812 (1947).
95. Idaho Code § 47-801 (Supp. 1961) (this section will be discussed infra
p. 16-19 of the text.
105. It would appear from Idaho Code § 47-703 (Supp. 1961) that a discovery is
a prerequisite to a location, but is not a mandatory preliminary step to
securing a lease any more than the location itself would be.
116. See supra p. 9-11 of the text.
118. Idaho Code § 47-704 (Supp. 1961) (nothing appears in the statute requir-
ing a published notice, a hearing, and investigation when making an ap-
lication for lease of minerals on any other state-owned lands).
121. Idaho Code § 47-704 (Supp. 1961): "Notice is hereby given that ________
of ________, has applied to the State Board of Land Commissioners
of the State of Idaho for a lease, for prospecting and mining purposes
and mineral deposits that may be contained in any portion of the lands
in the bed of the following navigable river, to wit: ____________________
and that, on the ____ day of ________, A.D. 19____, at ____________,
before the State Board of Land Commissioners, or its authorized agent,
the opportunity will be given to any and all persons to appear and present
for its consideration any reason or reasons why a lease of the aforesaid
lands for the aforementioned purposes should not be granted."
128. See note 114 supra and accompanying text.
148. See infra p. 14 of the text.
150. See infra p. 15 of the text.
155. See infra p. 16-19 of the text.
159. Idaho Code § 47-704 (Supp. 1961) (this published notice and investigation were discussed earlier in this paper supra p. 11-12 of the text).
162. See supra p. 11-12 of the text.
167. See infra p. 15 of the text.
168. See supra p. 12-14 of the text.
181. Supra p. 8-16 of the text.
204. Idaho Code § 47-809(b) (Supp. 1961).
211. Idaho Sess. Laws 1917, ch. 28, § 1, at 69.
218. Idaho Sess. Laws 1961, ch. 100 §§ 1, 2, 3, at 149.