

IN THE COUNTY BOARD OF COMMISSIONERS
OF THE STATE OF OREGON FOR THE COUNTY OF BAKER

BAKER COUNTY MINERAL
LEASING RULES; DECLARING AN
EMERGENCY

ORDINANCE NO. 2017-05

THE BAKER COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

ARTICLE 1:
TITLE AND SCOPE

Section 1.01 Title

This ordinance shall be known as *BAKER COUNTY MINERAL LEASING RULES*.

Section 1.02 Purpose

The purpose of these regulations is to prescribe uniform procedures for obtaining and conducting operations under and mining leases covering County-owned lands and mineral rights under the jurisdiction of the County of Baker.

Section 1.03 Application of Ordinance

The Baker County Mineral Leasing Rules applies to all areas in Baker County, except those areas within the limits of incorporated cities unless by the consent of those governing bodies, or activities for which a valid Conditional Use Permit issued by the jurisdiction is held.

DEFINITIONS

Section 1.04 Definitions

For the purpose of the chapter, the following definitions apply:

MINING CLAIM: means as defined in ORS Chapter 517.

LANDS: means County owned land.

SURFACE RIGHTS: means all property rights and usage exclusive of the mineral estate or reserved mineral rights.

VALUABLE MINERALS: those metallic mineral and uranium covered by these rules which have sufficient values to justify expenditure by a prudent man for development and extraction.

COMMERCIAL QUANTITIES: those valuable mineral, as defined herein, which exist in sufficient amount to justify expenditures by a prudent man for development and extraction.

HARD MINERAL RESOURCE: all County-owned metallic and non-metallic mineral except oil, gas and sulfur, geothermal resources and their by-products, and construction grades of rock, sand, and gravel.

DISCOVERY: finding of one or more valuable mineral in commercial quantities.

EXPLORATION: means electrical and electronic surveys, seismic, gravimetric, geochemical surveys, shallow core drilling, assay work, and other measurements of a like nature.

OPERATIONS PLAN: means the planned series of measurements, tests, surveys which a permittee expects to employ; multiple plan segments may be employed to allow sequence adjustments whenever data warrants.

QUALIFIED APPLICANT: means any United States citizen of legal age, or any firm, association, or corporation which is qualified to do business in the State of Oregon and is not in default under the laws of the State of Oregon relating to qualifications to do business within this state; and governmental units, including without limitation, municipalities; provided, that no County Commissioner or employee of the County may take or hold a lease upon County-owned mineral rights.

ARTICLE 2 **POLICY**

Section 2.01 Policy

In order to more fully manage the mineral rights in property owned by the County, the County adopts the following program policies:

1. The program should provide for environmental protection on a parcel-by-parcel basis, protect the long-term use of surface rights, and obtain an equitable return.
2. The terms and conditions of mining production shall be determined by the Board of Commissioners through adoption of the Baker County Fee Schedule and as outlined in the lease.
3. Competitive bidding should be utilized to obtain the highest available return from discovered mineral occurrences.

ARTICLE 3 **GENERAL CONDITIONS**

Section 3.01 Fees and Service Charges

The County shall collect nonrefundable service charges to cover the expense of processing the following matters:

1. Original application

2. Assignment

The fee amount will be determined per the Baker County Fee Schedule.

Section 3.02 Insurance

Prior to any operations on County-owned land, permittees and lessees shall provide evidence of insurance as follows:

1. Public liability of \$500,000.00, and property damage of \$1,000,000.00, including fire coverage; and
2. Contractual liability covering the permittee's or lessee's duty of indemnification of the County -- \$500,000.00.

Section 3.03 Bonds

Applicants for permits or mining leases shall furnish corporate surety bonds in amounts and with sureties acceptable to the County. Bonds will be conditioned on compliance with all the terms of the permit or lease.

Section 3.04 Reservations

1. The County may withdraw any mineral rights from availability for exploration or leasing at any time prior to issuing a Lease.
2. The County may refuse to grant a lease for County-owned mineral rights because of considerations of environmental quality or other public interest.

Section 3.05 Refunds and Withdrawals

1. Should an applicant desire to withdraw his application, the applicant must make a written request. If the request is received prior to the time the County approves or declines the application, all checks tendered by the applicant, except the filing fee, will be returned. If the request is received after approval, then, unless the applicant accepts the offered permit, all money tendered is forfeited to the County, unless otherwise ordered by the County Commissioners for good cause shown.
2. Should an applicant desire to withdraw an application which has been filed under competitive bidding rules, the applicant must make a written request. If the request is received before the bidding, all checks tendered by the applicant, except the filing fee, will be returned. If the request is received after a decision to approve or decline the application, then, unless the applicant accepts the offered lease, all money tendered is forfeited to the County, unless otherwise ordered by the County Commissioners for good cause shown.

Section 3.06 Records

Copies of all exploration data, including for example drilling logs, geochemical readings, and field notes, shall be deposited with the County within five years after performance of the work. If ongoing exploration work or lease performance warrants secrecy of such information, it shall be held under such conditions as the County Commissioners and permittee or lessee may agree upon.

ARTICLE 4 **MINING LEASE**

Section 4.01 Mining Lease Required

No person, association, or corporation shall dig, extract, mine, drill and sell, remove or dispose of any hard mineral resource in commercial quantities from County-owned land without a lease issued under these rules.

Section 4.02 Availability

County-owned lands are available for mineral leases if the land is located within a Sumpter Valley Management Area or has otherwise been opened to mining by the County Commissioners.

Section 4.03 Size of Leasable Tract

The County Commissioners shall establish the size and location of the County-owned property that will be available to lease on a case-by-case basis.

SECTION 5 **APPLICATION FOR LEASE**

Section 5.01 Application

In order to be eligible for a mining lease a Qualified Applicant wishing to obtain an original, amended or renewal mining lease shall first submit at least two copies of a written application on forms provided by the County Planning Department. The application must be completely filled out and duly signed by the applicant and be accompanied by the required fee and advance rental. Any false or incomplete statement may be cause for rejection. Any person purporting to act for an applicant in making application for a mining lease shall accompany the application form with a properly executed power of attorney.

Section 5.02 Receipt of Application

Applications for mineral leases will be received for filing in the office of the County during office hours.

Section 5.03 Application Information

The application shall include the following information:

1. An environmental impact report, specific to the proposed mining operation on the Leased Premises.

2. When deemed necessary or advisable, the County may require an applicant to submit copies of all technical data relied upon by the applicant as proof of discovery and insistence of Commercial Quantities.
3. A proposed plan for mined land reclamation (copy of Department of Geology and Mineral Industries Reclamation Permit application acceptable).
4. Such other information as the County advised the applicant to be necessary.
5. The County may require additional amounts of bonding from time to time during the lease term whenever the monthly proceeds from royalties exceeds 1/3 of the bond amount.

Section 5.04 Application Rejection

If application is not received by the County within the deadlines provided herein or if such application is not complete, the entire application shall be rejected and returned to the applicant with an explanation of the reasons for rejection.

Section 5.05 Application and Supplement Consideration

1. Upon receipt of a lease application, the County may cause notice of the application to be sent to affected agencies, including Oregon Water Resources Department, the Department of Environmental Quality, Department of Geology and Mineral Industries, State Fish and Wildlife Commission, Land Conservation and Development Commission, Department of Energy, and such other agencies or persons as the County deems appropriate.
2. Applicants will be advised of conditions required or recommended by state agencies those conditions shall be incorporated in the Lease. Where advisable, a conference between agencies and applicants will be held.
3. The County shall make such investigations as it considers necessary and shall notify the public of its opportunity to request a hearing or hearings upon the granting of the application, together with the timetable and procedures to be followed.
4. Upon approval by the County Commissioners, the applicant shall be provided a mining lease incorporating all conditions which are deemed necessary by the County, taking into consideration the requirements or recommendations of affected agencies, the protection of natural resources, public health, and safety.
5. The County or County Commissioners may refuse to grant a lease for County-owned minerals because of considerations of environmental quality, inadequate cost-benefit ratio, or other public interest.

ARTICLE 6

COMPETITIVE BIDDING

Section 6.01 Competitive Bidding

Upon a determination by the County Commissioners to open County-owned land for leasing, the County may offer designated parcels for competitive bidding, by sealed bids or at oral public auction, to the bidder offering the highest bonus in addition to the minimum annual rental.

Section 6.02 Notice of Bidding

The County will publish a notice of opportunity to bid for leases within the discovery area in a newspaper of general circulation in Baker County.

Section 6.03 Contents of Notice

The notice will specify the time and place of bid opening, the manner in which bids shall be submitted, a description of the mineral rights in each bidding unit, and the terms and conditions of the lease, including royalty and rental rates. The notice will also state that a proposed development and operations plan and an environmental analysis of development and production alternatives will be required before a lease can be issued.

Section 6.04 Bidding Requirements

Each bidder shall submit with his bid the application described in Article 5, the required filing fee, and a certified or cashier's check, bank draft, or money order in the amount of one-half of the amount of the applicant's bonus bid.

Section 6.05 Opening of Bids And Award Of Leases

The following procedures will be employed in opening bids and awarding leases:

1. All bids received within the deadline stated in the notice shall be opened and announced at the place, date, and hour specified in the notice. No bids will be accepted or rejected at that time.
2. The County shall have the right to reject any and all bids submitted. Incomplete and non-conforming bids shall be rejected and the bonus bid deposits thereon returned.
3. Within 30 days of the bid opening, or such longer periods as may be specified in the notice of bids, the County shall award a lease for each bidding unit to the qualified applicant who is highest qualified bidder. If the County does not award a lease within the required period, all bids shall be considered rejected.

Section 6.06 Oral Bidding Procedure

Oral bidders will be required to conform to specific directions published in the bidding notice. Within 30 days of the oral bidding, or such longer periods as may be specified in the notice of bidding, the County shall award a lease for each bidding unit to the qualified applicant who is highest qualified bidder. If the County does not award a lease within the required period, all bids will be considered rejected.

Section 6.07 Lease Execution

If a lease is awarded, a form of lease shall be sent to the successful bidder, who must execute it within 30 days of receipt, pay the first year's rental, and pay the balance of (his) bonus bid. The Lease shall be in substantially similar form and terms as Baker County Mineral Right to Lease form 001 on file with the County. Within 120 days, and prior to commencing the operations under the lease, the lessee shall file the corporate surety bond required by the County, file evidence of required insurance, and file completed agreements for environmental protection and surface management.

Section 6.08 Forfeiture of Competitive Bid Leases

If a successful qualified bidder fails to execute the lease or otherwise fails to comply with these rules, his deposit will be forfeited and the bidding unit will be reoffered for competitive leasing.

Section 6.09 Restoration of Bidding Units

If no bids are received on a bidding unit, the County, at its discretion, may offer the lands and mineral rights for non-competitive leasing.

Article 7 **LEASE TERMS**

Section 7.03 Development Requirement

The operations contemplated in each lease shall be carried on with due diligence and in a workmanlike manner. Lessees will conduct such examinations, explorations, testing, and samplings as may, in competent judgment, be necessary to determine the extent, quality, feasibility, and economic potential of the mineral resource in, upon, and under the leased premises, together with such other studies as may be necessary for it to reach a determination as to development methods, preparations, equipment, and mining of the leased premises:

Section 7.04 Royalties

All valuable minerals and specific materials removed by any person from lands or mineral rights on County-owned lands shall be subject to payment of royalties to the County in accordance with these rules, except that any person may remove minerals, sand and gravel, or rock materials in quantities not exceeding ten yards per year without payment of royalties. Royalties rates shall be charged upon the gross value of the minerals removed from the lease premises and sold or otherwise utilized by the lessee during each month of the lease, as follows:

1. For metallics and uranium: a rate per ton to be determined by the County Board of Commissioners to be fair and reasonable under the particular lease to be issued.
2. For non-metallics: a rate per ton to be determined by the County Board of Commissioners to be fair and reasonable under the particular lease to be issued.

Section 7.05 Measurement

The lessee shall accurately measure or gauge the quantity and quality of all production in accordance with the standard practices, procedures and specifications used in the industry.

Section 7.06 Basis of Value

The value of minerals or specified materials shall be determined by the gross market value at the mine mouth. In the event that minerals are not sold in raw form but are furnished to a plant owned or controlled by the lessee, the gross market value may be determined by an appraisal of values for minerals of like quality and quantity. Should the County believe that any charges imposed and deducted are excessive or that the price received by lessee is unreasonable, lessee shall, upon 30 days written notice, produce evidence that the charges or price or both comply with the above requirements.

Section 7.07 Commingling

All production shall be maintained segregated until an approved system of measurement has accounted for the quantity and quality of the leased minerals. Approval may be obtained to commingle production upon proof that royalty payable to the County shall not be diminished.

Section 7.08 Assignment

1. A mineral lease shall not be assigned, in total or in part, without prior written approval of the County Board of Commissioners.
2. Each request for total or partial assignment of lease must be accompanied by the following:
 - (a) A written request submitted to the County;
 - (b) A fee in the amount established in the county Fee Schedule;
 - (c) If a corporation, written verification that the assignee is registered to conduct business in Oregon. Registration must be through the Corporation County, Secretary of State's Office, Salem, OR 97310.

Section 7.09 Reclamation

It shall be a continuing obligation of the lessee to pay the cost of the surface reclamation necessitated by that lessee's mining operation. This obligation as to County-owned land or mineral rights shall not be limited by the bond limitations. If a lessee fails to begin reclamation of the leased premises as scheduled in the plan or within one year after termination of the mining operation, the County may conduct such reclamation operations as it finds necessary and levy the costs thereof as a charge upon the lessee. Such action shall not preclude any other action at law by the County.

Section 7.10 Relinquishment

1. A mining lease, or any portion of the mineral rights covered by such lease, may be relinquished by the lessee by filing a written statement with the County which:
 - (a) Describes the mineral rights to be relinquished by legal subdivision or survey;

- (b) States that the land surface above the mineral rights have not been disturbed, drilled, mined or otherwise affected, or if disturbed or otherwise affected, describing the manner in which such lands were restored to their original condition;
 - (c) States that all monies due and payable to workmen employed by the lessee on the leased premises have been paid;
 - (d) Is accompanied by a release from the State Department of Geology and Mineral Industries of Mined Land Reclamation Act permit.
2. A relinquishment shall take effect upon approval by the County, subject to the continuing obligation of the lessee and the lessee's surety to pay all accrued rentals, royalties and taxes, if any, and to comply with all conditions of the lease and of these rules related to the restoration of the leased premises.

Section 7.11 Investigation of Leased Premises

The County may enter the leased premises at any time and conduct scheduled and unscheduled inspections of operations conducted by the lessee under a mining lease. Upon receipt of a complaint related to the conduct by the lessee of its mineral resource exploration, development, or production, the County or any governmental official appointed to the task by it may make an investigation and collect facts and opinions.

Section 7.12 Suspension of Operation

Upon the occurrence of any of the following events, the County may issue an order suspending operations under a mining lease executed by the County:

- 1. Violation of the regulatory requirement of the Oregon State Department of Geology and Mineral Industries, the Oregon Department of Environmental Quality, the Division of Employment, Bureau of Labor, Workmen's Compensation Board, Public Utility Commissioner, Department of Revenue or other authority having jurisdiction, in excess of 30 days after notice in writing from any such agency, except that requirements undergoing further consideration or reconsideration by such agency, or appeal to the courts of such agency's decision, shall allow continued operation of the leased premises.
- 2. Any violation of the terms and conditions of a mining lease which, in the judgment of the County, jeopardizes the environment, public health, welfare, or safety of the County of Baker.

Section 7.13 Cancellation of Mining Lease

The County may commence proceedings to cancel a mining lease if:

1. A lessee is in continued violation of terms and conditions of the lease including but limited to the requirement thereof to exercise due diligence in exploring, developing, and operating under the mining lease, beyond 30 days after receipt of notice in writing of such violation from the County.
2. The lessee submitted false information in its application or in any other document required to be submitted to the County; or
3. The lessee has changed its method of exploring, developing, or producing mineral resources under the lease without first securing the approval of the County.

WHEREAS, the Baker County Board of Commissioners read Ordinance No. 2017-05 in full and by title this 18th day of October, 2017 and unanimously declared Ordinance No. 2017-05 an emergency ordinance that shall take effect immediately upon adoption.

Adopted by the Baker County Board of Commissioners this 18th day of October, 2017

BAKER COUNTY BOARD OF COMMISSIONERS:

William Harvey, Commission Chair

Mark E. Bennett, Commissioner

Bruce A. Nichols, Commissioner

Attest:

Heidi Martin, Executive Assistant
Baker County Board of Commissioners