

WSR 25-05-093
PERMANENT RULES
DEPARTMENT OF
NATURAL RESOURCES

[Filed February 19, 2025, 8:24 p.m., effective March 22, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: SB [ESSB] 6039 required the department of natural resources (DNR) to update its geothermal resources lease rates for DNR-managed properties so that the lease rates are competitive with geothermal resource lease rates adopted by the federal government and other western states, while also maintaining obligations to trusts and not adversely impacting federally reserved tribal rights. The rule-making process changes WAC 332-22-200 through 332-22-230. The updated rules changed the lease rates as well as changed language to improve clarity of the DNR's geothermal resources lease process. This process does not address any other regulations on geothermal resources and only affects DNR and DNR-managed properties.

Citation of Rules Affected by this Order: Amending WAC 332-22-200 through 332-22-230.

Statutory Authority for Adoption: This rule making is mandated by an amendment to RCW 79.13.590 and section 465, chapter 334, Laws of 2003, through section 2 of SB [ESSB] 6039.

Adopted under notice filed as WSR 24-24-055 on November 26, 2024.

A final cost-benefit analysis is available by contacting Kelsay Stanton, Mining and Minerals Program, 1111 Washington Street, Olympia, WA 98504, phone 360-790-8179, fax 360-907-1789, email kelsay.stanton@dnr.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 18, 2025.

Michael Kearney
 Product Sales and Leasing Manager

OTS-5987.1

AMENDATORY SECTION (Amending WSR 92-06-003, filed 2/20/92, effective 3/22/92)

WAC 332-22-200 Geothermal resources lease—Annual rental and obtaining required permits. The annual rental shall be set by the board of natural resources, but for years one through five the annual rental

shall be not less than (~~(\$1.25)~~) \$1.00 per acre or \$250 whichever is greater, and for years six through (~~(ten)~~) 10, shall be not less than (~~(\$2.50)~~) \$2.00 per acre or \$500 whichever is greater. Production facilities, except for transmission infrastructure, shall be a separate lease, subject to commercial lease procedures. Lessee shall obtain all necessary permits for exploration or development purposes.

AMENDATORY SECTION (Amending WSR 92-06-003, filed 2/20/92, effective 3/22/92)

WAC 332-22-210 Geothermal resources lease—Production royalty.

(1) Production royalty payments on geothermal resources leases shall be payable to the department for geothermal resources produced from the lease premises. The schedule of production royalty payments and method of calculating fair market value at either the well or point of shipment shall be detailed in the lease and plan of development: Provided, That production royalty rates shall be (~~(not less than)~~) based on negotiation to ensure trust beneficiaries receive fair market value and shall be the cumulative amount of (~~(τ)~~):

(a) (~~(Ten)~~) No less than two percent and no more than 20 percent of the gross proceeds received from the sale of such geothermal resources which are derived, generated or manufactured from the premises sufficient for commercial sales, including electricity; and

(b) (~~(Ten)~~) No less than two percent and no more than 20 percent of the fair market value thereof of products utilized but not sold(~~(τ)~~); and

(c) (~~(Ten)~~) Five percent of the gross proceeds for all by-products derived from the leasehold estate.

(2) The department reserves the right to assign different production royalty rates for different geothermal resources produced from the lease premises, such as electricity, heat, steam, and other products as defined by state law as geothermal resources. The department reserves the right to reassess the production royalty rate at year (~~(twenty)~~) 20 of the lease and every (~~(ten)~~) 10 years thereafter, and adjust the rate to the then fair market value, however in no case shall the adjusted production royalty be less than the (~~(10 percent)~~) lowest rate specified in this section.

(3) Lessee shall have the right to commingle, for the purpose of utilizing, selling or processing the products produced from the leasehold estate with products produced from other land, provided that the lessee shall efficiently meter or gauge the production from the leasehold estate in a manner approved by the state, in order to compute royalty payable on the products or by-products produced from the leasehold estate. The lessee shall furnish a sworn statement showing production for accounting periods required by the department and pay any royalties due.

AMENDATORY SECTION (Amending WSR 92-06-003, filed 2/20/92, effective 3/22/92)

WAC 332-22-220 Geothermal resources lease—Minimum annual royalty. At the beginning of lease year (~~(eleven)~~) 11, or at the beginning

of the year in which production starts, whichever occurs first, a minimum annual royalty of not less than (~~ten~~) two dollars per acre per year, or \$2,000, whichever is greater, shall be paid to the department, and shall replace the annual rental. Minimum annual royalty calculation shall be based off total leased acreage. Minimum annual royalty payments shall be credited against production royalties for that year. Minimum royalties paid during the term of the lease are nonrefundable and nontransferable.

The department reserves the right to reassess the minimum annual royalty rate at year (~~twenty~~) 20 of the lease and every (~~ten~~) 10 years thereafter, and adjust the rate to the then fair market value, however in no case shall the adjusted minimum annual royalty be less than the (~~ten~~) two dollars per acre, or \$2,000 specified in this section.

AMENDATORY SECTION (Amending WSR 92-06-003, filed 2/20/92, effective 3/22/92)

WAC 332-22-230 Geothermal resources lease—Unit plans. (1) The holder(s) of any geothermal resources lease may apply to the department to consolidate their leaseholding for geothermal resources with other entities, including lands not owned by the state, to collectively adopt and operate as a unit under a unit plan. Such consolidation will not serve to extend the term of the lease and all participants must agree to continue payment of royalties provided in the lease through the life of the unit and any extensions of the plan.

(2) When separate geothermal resource rights under lease cannot be developed and operated independently in accordance with an approved well-spacing or well-development program, the commissioner or the commissioner's delegate may require lessees to enter into a unit plan or drilling agreement with other entities when it is in the best interest of the state.

(3) As a condition for authorization to be part of a unit plan, the commissioner or the commissioner's delegate may alter the terms and conditions of the lease(s) so involved when it is in the best interest of the state to do so, and such authorization may be further conditioned upon, but not limited to the following:

(a) Department access to reports and documents it deems necessary, at the sole discretion of the department, to determine if consolidation of the proposed unit plan is in the best interest of the state.

(b) Leaseholds which are only partially included in the unit shall be segregated into separate leases as to the lands committed and not committed as of the effective date of the unitization. The annual rental or minimum annual royalty shall be paid on the leased acreage in the unit independently from other segregated lease areas.

(c) Any apportionment of production or royalties among the separate tracts of land comprising the unit shall include an accounting system, and the department shall have the right to audit such system to protect the interests of the state.

(d) None of the rights of the state as landholder shall be limited or subordinated.

(4) If an application for consolidation includes plans for adding production facilities to state lands, except for transmission infra-

structure, that acreage shall require a commercial lease and shall be removed from the original lease for geothermal resources.