

# Summary of Comments Received on IDAPA 20.03.01, Rules Governing Dredge and Placer Mining Operations in Idaho

v0906

	<b>Rule Section</b>	<b>Comment</b>	<b>Response</b>
1	001.02 Scope 012.01 Policy	The ability to accept or reject applications due to the "benefit in the public interest" may be contrary to the Idaho Constitution's protections of mining.	Idaho Code § 47-1312 has similar language as the rule, so the rule language is in keeping with the statute. The only mention of mines or mining in the Idaho Constitution is: Article 1, Section 14 (Right of Eminent Domain); Article XIII, Section 2 (Protection and Hours of Labor) and Section 4 (Child Labor in Mines Prohibited); Article XV, Section 3 (Water of Natural Stream - Right to Appropriate - State's Regulatory Power - Priorities). The Idaho Constitution does not appear to prohibit the regulation of mining activities.
2	010.25 Placer or Dredge Exploration Operation	012.28 has no definition of a placer exploration operation.	There is not a 012.28 section. However, the definition does exist in Subsection 010.25. In addition, Subsection 013.06 specifically exempts suction dredges with an intake diameter of 8 inches or less.
3	012.04 Compliance With Other Laws	A mine operator should not have to also acquire a Stream Channel Alteration Permit for dredge exploration or operation.	IDL has successfully implemented a Joint Review Process for over 30 years. This process resolves potential conflicts between overlapping authorities and jurisdictions. By far the majority of suction dredging in Idaho is classified as recreational, and is only regulated by IDWR through their Letter Permit.
4	013.02 Types of Operations	013.2.b does not mention suction devices that are hand operated, hand dug, electric, or motor driven pump suction on dry land and beaches.	Any hand-worked placer operation that exceeds 1/2 acre would require a permit. See Subsection 010.26 and 27. A complete list of all "motorized earth-moving equipment" is not practical or needed. Electric or motor driven pump suction devices used outside of a streambed would be subject to this rule. Up to 1/2 acre could be disturbed during exploration.
5	013.06 Suction Dredges	No reclamation should be required for suction dredging unless the stream channel is changed.	Subsection 013.06 states that these rules do not apply to the use of suction dredges with an intake diameter of 8 inches or less.

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6	013.06 Suction Dredges	Riverbed mineral leasing rules should also not apply to suction dredges with an intake diameter of 8 inches or less.	The Riverbed Mineral Leasing Rule, IDAPA 20.03.05, is a completely separate rule that only applies to state-owned navigable rivers. The purpose of IDAPA 20.03.05 is to manage the leasing and extraction of minerals from these state-owned lands; it is not to regulate suction dredging. IDWR regulates recreational suction dredging under the Stream Channel Protection Act and rules. Under IDAPA 20.03.05, any use of a suction dredge with an intake diameter over 5 inches is a commercial endeavor, and the state must be compensated through rents and royalties. Rents go to the Public Trust dedicated fund used to manage state-owned navigable waters. Royalties go to the Public School Endowment Fund.
7	020.03 One-Half Acre Limit	Roads should not be included in the half-acre of disturbance threshold for exploration versus mining.	Roads are also included in the definitions of Disturbed Land in Idaho Code § 47-1313(c) and Placer or Dredge Exploration Operation in Idaho Code § 47-1313(j). Road is defined in Idaho Code § 47-1313(m) and only includes those ways constructed solely for access to a mining or exploration operation. This would not include a public road or a road used for multiple purposes. A rule change cannot modify the statute, so the requirement would remain. Roads are often a primary source of sediment pollution, so eliminating them from exploration activities may expose the state's waterways to increased pollution.
8	020.04 Reclamation Required	If a road already exists, does it get reclaimed back to a road?	As used in this rule, "Road" is defined in Idaho Code § 47-1313(m) and IDAPA 20.03.01.010.30. Road only includes those ways constructed solely for access to a mining or exploration operation, and they would normally be reclaimed. This would not include a public right of way or an access route used for multiple purposes.
9	021.01 Approved Reclamation Plan Required	A permit from a federal agency supersedes a state permit and makes the state permit illegal.	This is incorrect. The Idaho Supreme Court has affirmed the applicability of state regulations on federal lands. See State ex rel. Andrus v. Click, 97 Idaho 791, 554 P.2d 969 (1976).

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10	021.01 Approved Reclamation Plan Required	Are existing mining operations grandfathered?	The Idaho Dredge and Placer Mining Protection Act was passed by voter initiative in 1954. The rules apply to placer and dredge mining activity conducted from 1955 to the present.
11	021.03.a Incomplete Applications	If landowner signature is required, will the Forest Service sign the application?	The Forest Service will sign as the landowner. Typically, this occurs after they have gone through their NEPA analysis, and before the Land Board reviews the permit. IDL reviews the application package with the Forest Service and other state agencies to ensure that one plan meets all the agencies' requirements.
12	021.04 Requirements of Maps	7.5 minute maps are no longer sold, so are they still required?	As stated in this subsection, an equivalent map may be used. Several digital elevation models are available that mimic the 7.5 minute topographic maps.
13	021.04.g Requirements of Maps	The reclamation section appears to be hiding the requirement for filtering the output of a suction dredge.	All suction dredging with an intake diameter of 8 inches or less does not require a permit under these rules. For dredges with an intake diameter greater than 8 inches, the rule is very specific about the application requirements for describing filtration.
14	022.04 Interagency Comments	Requiring a miner to fill out a permit for all state and federal agencies to dig a hole smaller than 1/2 acre will require too much review time. The operator would spend all their time filling out forms each year.	If the cumulative disturbance is 1/2 acre or less, then no permit is needed. If the cumulative disturbance will be over 1/2 acre, then the operator should develop one plan to mine through a project area. The plan should meet the requirements of all permitting agencies, and then the agencies will review it at the same time. The plan could include keeping the unreclaimed disturbance down to a small level, like 1/2 acre, in order to satisfy the Forest Service if needed. Then only one plan review is needed for the entire property. While annual inspections may be made, no further plan reviews should be required.

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15	022.05 Stream Alteration Permits	IDAPA 20.03.01.022.05 should exempt suction dredges with an intake diameter of 8 inches or less.	These rules do not apply to the use of suction dredges with an intake diameter of 8 inches or less. See Subsection 013.06, Applicability, Suction Dredges.
16	022.06 Water Clarification	Will water quality be tested at high water or low water? Water is already muddy at high water, and distance from the mining project may also affect results.	In general, the water quality standards cannot be exceeded regardless of the condition of the receiving water. If discharge is direct to surface waters, then a stormwater permit or Idaho Pollution Discharge Elimination System permit may also be needed. The potential need for these permits will be determined through the Joint Review Process if a permit is processed under this rule. It is recommended that an operator contact EPA or IDEQ in advance to inquire about their permit requirements. Those agencies' needs can then be incorporated into the application.
17	022.07 Permit Denial Authority	IDAPA 20.03.01.022.07 should clarify that suction dredging is not covered by this rule because suction dredging cannot cause permanent damage to a stream channel.	Subsection 013.06 states that these rules do not apply to the use of suction dredges with an intake diameter of 8 inches or less. Suction dredging that does not follow the IDWR Letter Permit can damage a stream channel. The banks of rivers and streams are often unconsolidated gravel that is subject to erosion. Stacking dredge spoils or undermining stream banks can alter the flow of a stream and cause bank erosion. Stripping vegetation from streambanks can also cause bank erosion.
18	022.10 Permit Offering	Should an operator submit 20 applications, get approval for the first one right away, and then keep working on the other applications so he can continuously work on mining?	If the cumulative disturbance is 1/2 acre or less, then no permit is needed from IDL. If the cumulative disturbance will be over 1/2 acre, then the operator should develop one plan to mine through a project area. The plan could include keeping the unreclaimed disturbance down to a small level, like 1/2 acre, in order to satisfy the Forest Service if needed. Then only one plan review is needed for the entire property. While annual inspections may be made, no further plan reviews should be required.

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19	026 Deviation from an Approved Permit	If a miner digs 2 feet outside of a designated boundary, he should be able to get approval from an inspecting agency without going through the amendment process.	If a plan is developed for an entire mine site, this can easily be accommodated if all the excavation occurs within the permit boundary and does not cause instability of the excavated slopes.
20	050 Termination of a Permit	Can the ending time of a permit be indefinite?	If mining operations are continuous and bonding is kept up to date, then the permit never expires. If mining does not commence within two years of permit approval, then it may be cancelled as per Paragraph 050.02.b. If mining or reclamation operations have not occurred for one year, then they are presumed to have ceased and reclamation must begin within the following year. A deferral of the final reclamation may be requested. See Subsection 040.16 for more details.
21	051.01.a	No mention is made of BLM lands for inspection fees.	Correct. Placer permits on BLM lands would be assigned a \$250 inspection fee. Only operations on USFS land have a \$100 inspection fee.
22	060.02 Mining Withdrawals	Withdrawn lands and waterbodies raises concern over whether or not these lands are within the jurisdiction of federal land managers. Mineral development should proceed on federal lands that are more valuable for such mineral deposits due to the strategic national interests.	The list of waterbodies withdrawn from mineral entry by statute or Land Board action is available here: <a href="https://www.idl.idaho.gov/lakes-rivers/riverbed/withdrawn-rivers_rev.pdf">https://www.idl.idaho.gov/lakes-rivers/riverbed/withdrawn-rivers_rev.pdf</a> . All of these waterbodies are considered navigable by the State of Idaho, and are therefore owned by the State of Idaho. At the current time, only garnet and gold are being mined from placer deposits in Idaho. Neither one of these commodities is considered to be a strategic mineral by the U.S. Government. The list of strategic minerals can be found here: <a href="https://www.usgs.gov/news/interior-releases-2018-s-final-list-35-minerals-deemed-critical-us-national-security-and">https://www.usgs.gov/news/interior-releases-2018-s-final-list-35-minerals-deemed-critical-us-national-security-and</a>
23	General	Is IDL hiring mine inspectors? With the thousands of mining claims in Idaho, an estimated 500 inspectors are needed with a budget of over \$20 million.	IDL does not inspect each mining claim in Idaho. Only mining sites with active dredge and placer permits are regularly inspected. 28 permits are currently active. Jobs are posted on the state's website here: <a href="https://www.idaho.gov/jobs/find-a-job/">https://www.idaho.gov/jobs/find-a-job/</a>

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24	General	Mining districts should be contracted for inspections.	Inspections should be carried out by trained staff knowledgeable in IDL's program. Hiring is governed by the state hiring process, and mining districts have no statutory authority for conducting inspections.
25	General	Is a mining permit needed to dig a basement or drill a well on a patented claim?	General construction and water well development on a patented claim does not require a permit from IDL. If the construction takes on the nature and appearance of a mining operation, then a permit or reclamation plan may be required.
26	General	Why can't miners fill in abandoned mines on Forest Service lands and get paid for it?	IDL does have an Abandoned Mine Lands program, and IDL has done reclamation projects on Forest Service lands through cooperative agreements with them. IDL is bound by our agency's contracting guidelines and the state procurement processes. All contracts over a certain dollar amount must be advertised for bid, and the lowest qualifying bid must be selected. Insurance and other requirements exist for contractors hired by IDL. If an operator is qualified to bid on these projects and wants to be contacted for future reclamation projects, they should contact the local IDL office.
27	General	The rulemaking timeframe is very compressed and does not give much time for comment and analysis.	The proposed rule does not modify the rule that was in place prior to June 29, 2019. It is the same rule approved during the last legislative session. The compressed timeframe is due to the omnibus rulemaking schedule developed in response to the lapse of rules on July 1.
28	General	Recreational Mining should continue to be allowed.	Recreational Mining is generally not regulated by this rule. Suction dredges with an intake diameter of 8 inches or less are regulated by IDWR under the Stream Channel Protection Act and associated rules, not by IDAPA 20.03.01. See Subsection 013.06.
29	General	More restrictions on sluicing and dredging is not needed.	The proposed rule does not add any additional restrictions to the rule that was in place prior to June 29, 2019. It is the same rule approved during the last legislative session. This rule also does not apply to recreational suction dredging with an intake diameter of 8 inches or less, which is the majority of the operations in the state.

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30	General	The rules should acknowledge that suction dredging does not alter streams and the Stream Channel Protection Act should not apply to suction dredging.	IDAPA 20.03.01 only regulates the use of suction dredges with an intake diameter over 8 inches. No applications for this type of activity has been submitted in at least 25 years. IDL has observed the deleterious effects of recreational suction dredging (intake diameter smaller than 5 inches) in smaller streams where material was piled up to block the flow of a stream, vegetation was stripped from the banks, and the banks were undermined by suction dredging. Those activities are in violation of the Letter Permit used by IDWR for recreational suction dredging, which suggests that this activity does in fact need to be regulated.
31	General	Permits should not be required unless the operation involves stream changes or pollution above what naturally occurs and has occurred in the past.	Permits are required to ensure that the affected lands are reclaimed. Exploration does not require a permit under these rules if kept to a disturbance of 1/2 acre or less, and all suction dredging with an intake diameter of 8 inches or less does not require a permit under these rules.
32	General	If reclamation is successful, can the bond be applied for succeeding projects?	If a portion of one mine is reclaimed, then the bond could be applied to disturbance on additional parts of the same mine. Separate mines can be covered with one blanket bond, but the amount of bond allocated to each mine must be specified. If the amount allocated to each mine changes, then the allocation modification must be documented.
33	General	If a bond is required by the BLM and Forest Service, does IDL also require a bond?	IDL can recognize a federal bond if it meets the requirements of Idaho Code § 47-13.
34	General	Operators with at least 5 successful mine reclamations should be given preference for IDL reclamation projects. A list of good miners could be contacted to see if they wanted to perform the reclamation before other contractors are notified.	IDL is bound by our agency's contracting guidelines and the state procurement processes. All contracts over a certain dollar amount must be advertised for bid, and the lowest qualifying bid must be selected. Insurance and other requirements exist for contractors hired by IDL. If an operator is qualified to bid on these projects and wants to be contacted for future reclamation projects, they should contact the local IDL office.

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35	General	IDWR is inhibiting development of a riverbed mineral lease, so compliance with IDWR's rules should not be required by the riverbed mineral leasing rules.	Riverbed mineral leasing is governed by IDAPA 20.03.05. Money is not the only factor used by IDL to manage riverbed mineral development. The river resources are subject to the Public Trust Doctrine, and are used by many other segments of the population. As stated in IDAPA 20.03.05 "The Board of Land Commissioners is delegated discretionary power to regulate and control the use or disposition of lands in the beds of navigable lakes, rivers, and streams, to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use;" If IDWR believes that a proposed mining activity jeopardizes other uses of the river, then they should deny a permit. An operator should be able to discuss the mining proposal with them and modify it to address their concerns. IDAPA 20.03.01, however, has no bearing on this issue.
36	General	Federal and state agencies reviews and bonding should be streamlined and better coordinated.	If a project requires a permit from IDL, then IDL does coordinate with other state and federal agencies on the permit reviews. Both federal and state agencies accept proof of bonding with the other agency if it is one of the standard bond types (cash, CD, Letter of Credit, surety) and meets both agencies' requirements. The bond amount will be agreed upon by the agencies prior to the permit being reviewed by the Land Board.