

IDAHO DEPARTMENT OF LANDS

In Re: )  
IDAPA 20.03.01, Rules ) Docket No. 20-0000-1900F  
Governing Dredge and Placer )  
Mining Operations in Idaho )  
\_\_\_\_\_ )

PUBLIC HEARING ON PROPOSED RULE

FACILITATED BY:

ERIC WILSON

Date: August 15, 2019, 12:00 p.m.  
Location: Idaho Department of Lands Eastern  
Supervisory Area  
3563 Ririe Highway,  
Idaho Falls, Idaho

REPORTED BY:

JANET FRENCH, CSR NO. 946

Notary Public

## 1 P R O C E E D I N G S

2

3 MR. WILSON: So good afternoon. My name is Eric  
4 Wilson. I'm the bureau chief for resource protection  
5 assistance, and we are here today to talk about our  
6 rule making process.

7 So we've gone through the introduction. We  
8 are going to talk about the history of placer mining  
9 regulation in Idaho, for the Department of Lands  
10 anyway, what is required by IDL through statutes and  
11 rules, why this rule making is being conducted, and  
12 then we will take any testimony that you have.

13 So placer mining is the extraction and  
14 concentration of heavy minerals or metals from a  
15 placer deposit, often using running water.

16 Gold historically is our most important  
17 target for placer mining in Idaho. Monazite and other  
18 radioactive minerals have also been extracted in the  
19 past up in Bear Valley area, central Idaho. Garnet is  
20 currently the -- has the most production -- industrial  
21 garnets up in northern Idaho, the Fernwood area, and a  
22 few places where they also placer mine for the star  
23 garnet, which is our state gem.

24 There is some pretty deep historic roots for  
25 placer mining in Idaho. It helped settle the Idaho

1 Territory. It was first discovered in Orofino Creek  
2 by Elias Pierce in 1860, and then in the Salmon River  
3 Boise Basin, Owyhee County, and finally Loon Creek and  
4 Yankee Fork.

5 Placer mining started out with some pretty  
6 simple tools, panning and sluicing. It spread all  
7 across the state. People got excited when they found  
8 a lot of gold, and as they got more investment, then  
9 they got bigger equipment and more expensive  
10 operations going -- Pioneerville and Rocky Bar, both  
11 in Boise Basin.

12 And in addition, they had bucket line  
13 dredges in several places across the state. If you've  
14 never been up to Yankee Fork, you should really go  
15 there in the summertime. They give tours of the  
16 dredge with some volunteers. It's pretty fantastic.  
17 But they had a lot of these bucket line dredges in  
18 many places, and this is what they left behind. This  
19 is also in Yankee Fork. There is miles of this where  
20 the river used to be: Grimes Creek, again, in the  
21 Boise Basin; the middle fork of the Boise, and a lot  
22 of other places across the state.

23 So a lot of that large scale dredge and  
24 placer mining took place until the 1950s. Several  
25 hundred miles of streams were impacted. Sportsmen

1 grew tired of all these sediment filled streams.  
2 Salmon and trout fishing was very big in the state of  
3 Idaho throughout the early 1900s, guiding services and  
4 that sort of thing. So in 1954, by initiative vote --  
5 this is a vote of people -- they passed the Idaho  
6 Dredge and Placer Mining Protection Act, Idaho Code  
7 47-13.

8           It required plans, bonding, maintaining  
9 water quality standards and reclamation when the  
10 mining was completed. It's been a very active program  
11 throughout the 1990s, but it has tapered off. Again,  
12 garnet mining is currently the largest volume that we  
13 see.

14           Here is all the permits we have statewide by  
15 our area offices. Cataldo is way up north in the  
16 Silver Valley. St. Joe -- that is where most of the  
17 garnet occurs, and then on down into Southern Idaho.  
18 Not a lot going on in Southern Idaho for the permits  
19 that the Department of Lands administers.

20           So when do we require a permit? When the  
21 disturbance exceeds a half acre of cumulative  
22 disturbance, then a permit is required. Operators are  
23 not allowed to work a half acre and then reclaim it  
24 and then work another half acre on the same property,  
25 et cetera, without a permit; so it is a half acre

1 cumulative disturbance. Anything less than a half  
2 acre we consider that exploration.

3 We get a lot of questions about suction  
4 dredging. Our statute only applies to suction dredges  
5 larger than 8 inches in diameter. We have not  
6 received any of those applications in the last 20  
7 years.

8 Idaho Department of Water Resources, they  
9 are the ones who handle the regulatory requirements  
10 for suction dredges 8 inches and smaller through their  
11 recreational suction dredge permitting or they have an  
12 individual permit for that 5- to 8-inch diameter  
13 range. So we don't regulate recreational suction  
14 dredging at the Idaho Department of Lands as a  
15 regulatory program.

16 So what types of activities do we regulate  
17 for dredge and placer mining? Usually it's activities  
18 that occur outside of stream channels and usually  
19 those areas adjacent to the streams. Traditional  
20 excavating equipment, backhoes, excavators, that sort  
21 of thing feed to wash plant where then those gravels  
22 are washed and processed and the minerals extracted.  
23 There is often settling ponds. Backfilling and  
24 reclamation, of course, is required after mining.

25 Operations may mine through the stream

1 channels, but it's entirely permissible. Some of the  
2 garnet operations have been able to do that and make  
3 it worth their while, but we haven't seen any gold  
4 operators with those kinds of operations because they  
5 are just not finding deposits that have enough gold to  
6 justify that level of activity.

7           So let's talk a little bit about our  
8 rulemaking process. Rules are governed by the  
9 Administrative Procedures Act, Idaho Code 67-52. All  
10 rules expire on July 1 of each year, unless the  
11 legislature, during the session, extends those rules  
12 for another year.

13           In this last session, 2019, the legislature  
14 failed to extend the rules. It's not just our rules.  
15 It's all rules for all agencies in the state of Idaho.  
16 So then all the state agencies had to initiate  
17 temporary and proposed rulemakings to fill in that  
18 regulatory gap.

19           We adopted temporary rules that were  
20 effective on June 30, 2019. And all we did was -- the  
21 rules that were in effect at the end of legislative  
22 session, we adopted those as a temporary rule until we  
23 can get this proposed rulemaking completed. And,  
24 again, we didn't propose any changes from what was in  
25 effect at the end of the last legislative session.

1           So where do rules fit in the grand scheme of  
2 things in the state of Idaho? Well, the ultimate  
3 authority in the state, for state government anyway,  
4 is the Idaho constitution, of course.

5           Underneath that are statutes. That's the  
6 Idaho code. That's what the legislature passes when  
7 they are in session.

8           And then underneath that, agencies have  
9 administrative rules that they construct and go out  
10 for public comment and public involvement, and then  
11 those agency rules actually go to the next legislative  
12 session for approval or disapproval. The legislature  
13 can either give them the thumbs up or the thumbs down.  
14 The cannot edit the rules. They can only approve or  
15 deny.

16           So currently we are in the proposed  
17 rulemaking stage. Normally, if you are going to have  
18 substantive changes in one of these administrative  
19 rules, you go through the negotiated rulemaking  
20 process so that you can get some feedback from the  
21 affected parties and other interested people and talk  
22 about the changes and work through them and come up  
23 with a set of rules that everyone is comfortable with.

24           Because of the timelines with the  
25 legislature not approving the rules and the agencies

1 not being able to start until after the legislature  
2 adjourned, we did not have time to go through  
3 negotiated rulemaking. We have to start that process  
4 back in March or April and -- but, again, we are not  
5 proposing any changes to what was in effect at the end  
6 of the legislative session; so we are not really  
7 trying to negotiate any changes. We are just trying  
8 to have the existing rules carried forward.

9           So there is a public comment period during  
10 proposed rulemaking, and we had a number of petitions  
11 that we received during that comment period, and if we  
12 have enough petitions received, then we have to have  
13 hearings and so we scheduled, based on the petitions  
14 that we received, three hearings. We were in Coeur  
15 d'Alene last night. Today we are in Idaho Falls.  
16 Tomorrow we will have one in Boise. And then we are  
17 accepting written public comments also through  
18 tomorrow.

19           So if there are any changes to be made to a  
20 proposed rule, you can only make those changes based  
21 on written comments received or oral testimony given.

22           So our comments on the rule and any possible  
23 changes that we want to make based on those comments  
24 we are going to take those to the September land board  
25 meeting. And then at the October land board meeting,



1 we have to submit the final pending rule to the land  
2 board for their approval. Because by October 16, we  
3 have to give the pending rule and the notice to the  
4 office of administrative rules. That is a cannot miss  
5 deadline on October 16. If you miss that deadline,  
6 then you don't have rules that go to the next  
7 legislative session so that's -- that's kind of why we  
8 are locked into this tight time frame. And then those  
9 rules will be reviewed by the legislature.

10 So the hearing format is prescribed by that  
11 Administrative Procedures Act. And, again, since this  
12 isn't negotiated rulemaking, there is really no  
13 discussion. We can have some Q & A before we get into  
14 the testimony, but once we get into the testimony,  
15 then we just receive the testimony until folks are  
16 done and then the hearing is over. So that is the  
17 format that is prescribed by the Administrative  
18 Procedures Act for the proposed rulemaking.

19 We don't have a lot of people signed up; so  
20 we will take as much testimony as folks want to give.  
21 And, again, written comments are also accepted; so if  
22 you want to bounce some written comments later today,  
23 tomorrow, just get those into us before the end of  
24 tomorrow.

25 Do you have any questions?

1 MR. ERLANSON: I got a couple.

2 MR. WILSON: Okay. Go for it.

3 MR. ERLANSON: Number one, since this is --

4 THE COURT REPORTER: What is your name?

5 MR. ERLANSON: Dave Erlanson, Senior, Swan  
6 Valley, Idaho.

7 THE COURT REPORTER: How do you spell your last  
8 name?

9 MR. ERLANSON: E-R-L-A-N-S-O-N.

10 THE COURT REPORTER: Thank you.

11 MR. ERLANSON: Since this is dealing with mining,  
12 even though you've proposed no new changes, why  
13 weren't the mining districts in the state of Idaho  
14 notified of these meetings?

15 MR. WILSON: So for the proposed rulemaking, we  
16 advertised in the administrative bulletin as we are  
17 required to do under the administrative procedures,  
18 and we notified those folks -- our permittees that we  
19 thought might be interested.

20 Mining districts are not an official  
21 designation. They are kind of an informal thing.

22 MR. ERLANSON: Do you realize that according to  
23 the Congress of the United States mining districts are  
24 on the same part as the BLM and the U.S. Forest  
25 Service?

1 MR. WILSON: That may be, but under State of  
2 Idaho regulations, there is no recognition in mining  
3 districts. And in any part of state government, there  
4 is no recognition of mining districts.

5 MR. ERLANSON: I would have to contest that  
6 because in the Idaho constitution it actually states  
7 about mining districts.

8 MR. WILSON: And our regulations apply to all  
9 state, private and federal lands, regardless of if  
10 there is a mining district or not. So there is no  
11 recognition in our rules or statutes for mining  
12 districts.

13 MR. ERLANSON: Okay. Do you receive your  
14 authority from the constitution or from a legislative  
15 action?

16 MR. WILSON: We receive our authority from the  
17 legislature because they pass and administer laws, and  
18 through that voter initiative in 1954, that's when  
19 they enacted our --

20 MR. ERLANSON: Right. That is that 47-13 that  
21 you had up there?

22 MR. WILSON: Exactly. Yep. And under that, we  
23 have then rulemaking authority.

24 MR. ERLANSON: Okay.

25 MR. WILSON: To further flesh out that statute,

1 give definitions where definitions are needed so that  
2 everybody can agree on what is the terminology, what  
3 is the permitting process. It provides more fleshed  
4 out framework than the statute.

5 If we just tried to implement the statute as  
6 it was, we would probably be in court a lot arguing  
7 about what terms mean and how the statute should be  
8 interpreted. So the rules fill in that gap, just to  
9 try to --

10 MR. ERLANSON: Oh, I understand completely. I  
11 don't have a problem with that.

12 Do you have any type of written paper that I  
13 can -- could take with me on what you've presented?

14 MR. WILSON: No. But we are going to be posting  
15 this and the sign-in sheets on our website. And,  
16 again, we have had all this information on our  
17 website.

18 MR. ERLANSON: Okay. That's good. So you just  
19 go to Idaho Department of Lands and then what do you  
20 have to do to get this information?

21 MR. WILSON: I can actually show you. Let's see.  
22 I think we are -- because we have some -- this is  
23 where all our area offices are.

24 MR. ERLANSON: Sure.

25 MR. WILSON: Let me click out of here.

1 MR. ERLANSON: Yeah, because I'm not a computer  
2 genius; so take it easy on me.

3 MR. WILSON: Let's see. I don't want Omni join.  
4 That's weird. Okay. So Department of Lands. So here  
5 is our home page.

6 MR. ERLANSON: Okay.

7 MR. WILSON: On the right near the top, there is  
8 a place for rulemaking.

9 MR. ERLANSON: Wait a minute. Where were you?

10 MR. WILSON: So this is our home page. If you  
11 Google Idaho Department of Lands, this is where it  
12 will take you.

13 MR. ERLANSON: I got you. Where did you go to  
14 the rulemaking?

15 MR. WILSON: Down here on the bottom right.

16 MR. ERLANSON: Oh, okay. On "Popular Pages"?

17 MR. WILSON: Yep. Go to "Popular Pages," and we  
18 are in the "Omnibus Rulemaking."

19 MR. ERLANSON: I got you.

20 MR. WILSON: And let's see. Todd, do we have a  
21 separate --

22 MR. DRAGE: No. Over to the right it says  
23 "Submit Public Comment." There is an email there, or  
24 you can actually fill it out through IDL web. If you  
25 go up one to where it says "here," Eric.

1 MR. WILSON: Uh-huh.

2 MR. DRAGE: That quick link will take you right  
3 to comments.

4 MR. WILSON: Okay. To leave comments?

5 MR. DRAGE: Yeah.

6 MR. WILSON: So we are going to post our other  
7 stuff --

8 MR. ERLANSON: Well, how do you get the posting  
9 of the presentation that you just went through some?

10 MR. WILSON: It's not up here because we are  
11 still giving these presentations. It will probably  
12 be -- let's see. Here is our hearings for forest  
13 practice -- dredge and placer. It will be down here.  
14 So towards the bottom of this omnibus rulemaking page  
15 will have the information on the dredge and placer  
16 mining in here.

17 MR. ERLANSON: Okay. So after -- are you telling  
18 me that after Friday -- tomorrow, the deal that you  
19 are going to have in Boise, then you'll have this  
20 presentation up on this website?

21 MR. WILSON: Yep.

22 MR. ERLANSON: Okay. Good. I got you. Okay.  
23 Thank you on that.

24 MR. WILSON: You bet. And here is -- we have  
25 copies of all the petitions from the hearing posted so

1 you can look through all that.

2 MR. ERLANSON: Oh, that's interesting.

3 MR. WILSON: And here's written comments we've  
4 gotten on things up to this point.

5 MR. ERLANSON: Those written comments, does it --  
6 what does that say? Mike Gibbs or something up there?

7 MR. WILSON: Mike Hibbs.

8 MR. ERLANSON: Okay. Does it state he's a member  
9 of something or other?

10 MR. WILSON: I have no idea. I haven't looked at  
11 these, actually.

12 MR. ERLANSON: That's a pretty good comment.

13 MR. WILSON: That is, yeah. It's -- there it is.  
14 We are on a slow Internet connection here; so...

15 MR. ERLANSON: You think it's slow here. You  
16 ought to see where I live.

17 MR. WILSON: Yeah. And this was on the dredge  
18 and placer mining, yeah. "Recreational placer mining  
19 should continue to be allowed."

20 And, again, we don't regulate the  
21 recreational suction dredging. Water Resources does.  
22 I just want to make sure that's clear.

23 MR. ERLANSON: Oh, yeah. That's one of the  
24 reasons I came today because when I -- I just found  
25 about this a couple hours ago through an email that I

1 got and I says, "What is this all about?" So since  
2 I'm a retired old guy, I decided to come and snoop,  
3 you know.

4 MR. WILSON: That's fine. You are welcome to  
5 snoop. You can snoop on our website until you fall  
6 asleep if you want.

7 MR. ERLANSON: Well, I'm happy I came.

8 Now, the other thing is that you mentioned  
9 something about the legislature, and you mentioned --  
10 you gave some time frames there. And the one thing I  
11 thought about the Idaho legislature was that if a rule  
12 wasn't acted upon in -- a proposed rule in 60 days,  
13 that it actually became a rule. Now, that -- I wonder  
14 about that.

15 The other thing that I was surprised at.  
16 You say under this 47-13 that operations may go  
17 through an existing stream channel.

18 MR. WILSON: Yep.

19 MR. ERLANSON: I mean, I'm a miner, but I am an  
20 environmentalist too, but I would like to -- I mean,  
21 I've never heard of that before. I mean, that --

22 MR. WILSON: Yeah, it's entirely possible.

23 So when we receive an application -- and our  
24 rules have all the requirements. So if you check all  
25 the boxes in the application and submit all the maps



1 and plans, we take that application, and we send it to  
2 the Idaho Department of Water Resources, DEQ, and  
3 Idaho Fish and Game for review and comment.

4 MR. ERLANSON: Okay. Now the Department of  
5 Lands, i.e., Lands -- do you assert any jurisdiction  
6 over the waters in the state of Idaho?

7 MR. WILSON: So you are talking water rights?

8 MR. ERLANSON: No, I'm not. I'm talking use of  
9 water, basically.

10 MR. WILSON: Use of water is water rights in most  
11 cases.

12 MR. ERLANSON: Well, there is appropriated for  
13 beneficial uses, okay, which mining in the Idaho  
14 constitution is stated, then there is unappropriated.  
15 And I just wondered if the Idaho Department of Lands  
16 has any jurisdictional clout, whatever, on -- you  
17 know, on appropriated waters -- beneficial waters?

18 MR. WILSON: We have water rights associated with  
19 some of our endowment lands that we manage, but that  
20 has nothing to do with this regulatory program.  
21 Because we also manage the state endowment lands that  
22 generates money for schools and other public  
23 institutions. So on some of our endowment lands, we  
24 have water rights.

25 MR. ERLANSON: Okay. Why are you -- if there is

1 a dredge -- didn't you say something about 8 inches  
2 and up or something on dredge?

3 MR. WILSON: Yeah. That's when our regulations  
4 become effective.

5 MR. ERLANSON: Okay. But you are still dealing  
6 with the water; right?

7 MR. WILSON: No.

8 MR. ERLANSON: In a suction dredge. An 8-inch  
9 suction dredge you said you get -- you haven't got any  
10 applications.

11 MR. WILSON: Right.

12 MR. ERLANSON: And I'm wondering why, because I  
13 actually did apply twice to the IDWR. I did the 3804  
14 B permit.

15 MR. WILSON: Was that up on the Red River area?

16 MR. ERLANSON: No. It was on McCoy Creek,  
17 actually.

18 MR. WILSON: Okay. I don't know where that is.

19 MR. ERLANSON: Bonneville County. And they never  
20 even looked at it. And also I wanted an extended  
21 season on the South Fork Clearwater River, and Aaron  
22 wouldn't even look at it. So we went through a  
23 hearing process. It was all cut and dry, you know.  
24 Well, I don't have to get into that.

25 But anyway, I was wondering why you were

1 never notified that we applied -- the three of us?  
2 Why wouldn't you have been notified, is my question.

3 MR. WILSON: So if there is -- we don't get  
4 notified for the recreational dredging applications,  
5 which goes from -- zero up to, I think, 5 inches is  
6 Water Resources recreational --

7 MR. ERLANSON: Yeah. Because EPA basically  
8 states that anything 5 inches and down is not a source  
9 of -- and the Army Corps verifies that.

10 MR. WILSON: Yeah. And so then from 5 to 8  
11 inches you have to get the individual permit from  
12 Water Resources for stream channel alteration.

13 MR. ERLANSON: Well, individual under NPDES in  
14 the state of Idaho.

15 MR. WILSON: Yeah, and we don't get involved with  
16 the NPDES. But we do get copies of those individual  
17 permits that go to --

18 MR. ERLANSON: You are talking 3804 B permit?

19 MR. WILSON: The Water Resources permit -- stream  
20 channel operation. Yeah, we get copies of all the  
21 individual permit applications.

22 If we don't have a dog in the fight, we may  
23 not offer a comment. It depends on what water body it  
24 is in.

25 If it's on a state owned navigable river, we

1 may offer some comments.

2 MR. ERLANSON: Okay. Now, you know -- I'm sure  
3 you are aware of -- what is your name? Mr. Wilson?

4 MR. WILSON: Yeah.

5 MR. ERLANSON: Mr. Wilson, I'm sure you are aware  
6 that there is a big jurisdictional problem with the --  
7 overreaching the EPA on what is and what is not a  
8 navigable river.

9 MR. WILSON: With the EPA or with the Corps or  
10 with the Coast Guard or BLM? There is --

11 MR. ERLANSON: There is a lot of difference.

12 MR. WILSON: Yeah.

13 MR. ERLANSON: The EPA got greedy and said  
14 that -- in their 502s, which is the definitions and  
15 stuff. They said that any water that flows into  
16 another water that flows into another water and ends  
17 up in the contingency zones that run the 48 states and  
18 Alaska or the territories is a navigable water.

19 Now, Trump has been trying to do away with  
20 that since 2015. He's been -- it's completely -- you  
21 know, he makes it. A judge says, "No, you can't do  
22 it." And then he makes another and the judge says,  
23 "No, you can't do it."

24 MR. WILSON: There is a difference between what  
25 is considered waters of the U.S. under the Clean Water

1 Act and what is considered a navigable stream.

2 MR. ERLANSON: Well, a navigable stream in Idaho  
3 is supposed to be an 8 foot log, 6 inches around.

4 MR. WILSON: Exactly. That's what we are talking  
5 about.

6 MR. ERLANSON: In high-water, it is supposed to  
7 be able to go down the stream.

8 MR. WILSON: Yeah. And so on our website -- on  
9 our Department of Lands website, we have a list of  
10 what we consider to be the state recognized navigable  
11 rivers and lakes. Now, that list is not exhausted.  
12 We can add to it or subtract in the future, but at the  
13 current time that is what we believe are the navigable  
14 streams and rivers in Idaho.

15 You can go and download that on our website  
16 at any time.

17 MR. ERLANSON: That's on your website?

18 MR. WILSON: Yeah.

19 MR. ERLANSON: Department of Lands. That's  
20 interesting.

21 Now, as far as the Idaho legislature is  
22 concerned, they recognize that is the only navigable  
23 rivers in the state of Idaho?

24 MR. WILSON: Well, the legislature really doesn't  
25 have a thing to say about it. It's up to the state

1 land board. Because the state land board has been  
2 entrusted by the legislature to manage those navigable  
3 waters. And the state land board has the authority to  
4 determine what is navigable and what's not.

5 MR. ERLANSON: Okay. You are going faster than  
6 me. But now let's go with the state land board.

7 And you are saying that the state land board  
8 has the authority -- legislative authority -- this is  
9 informative. I'm glad I came -- the state land board  
10 has the legislative authority to administer the  
11 navigable waters.

12 Now, would you put down as proposed by the  
13 Department of Lands?

14 MR. WILSON: It's -- we don't know --

15 MR. ERLANSON: As listed by --

16 MR. WILSON: No one has challenged our list.  
17 That list has been around for longer than I've been  
18 around.

19 MR. ERLANSON: Okay. Good. I'm just asking you  
20 how I'm supposed to write this down.

21 So what would you put? As proposed or as  
22 listed?

23 MR. WILSON: I would say as listed.

24 MR. ERLANSON: Okay. As listed.

25 MR. WILSON: Now, keep in mind, the courts have

1 determined that they are actually the final  
2 arbitrators of what's navigable and what is not.

3 So the land board weighs in on it,  
4 ultimately, though, it could be up to the judge.

5 MR. ERLANSON: Well, under the 1955 Submerged  
6 Land Act that was just adjudicated March 29 of this  
7 year, Sturgeon v. Frost, an Alaska case, the lands  
8 under all navigable waters are, in fact, properties of  
9 the state.

10 MR. WILSON: Yeah, exactly. Yep.

11 MR. ERLANSON: So that was a big ruling. So  
12 that's why I'm asking you about your list of navigable  
13 waters, because your list of navigable waters, I'm  
14 sure, does not include all the waters in the United  
15 States.

16 MR. WILSON: No, it does not. Again, those are  
17 two completely different things.

18 MR. ERLANSON: That's right. So that's what I'm  
19 interested in.

20 So there is a conflict, let's say.

21 MR. WILSON: I would not say there is a conflict.  
22 They are different definitions, different terms for  
23 different purposes.

24 MR. ERLANSON: Oh, I'll grant you that. I'll  
25 grant you that. Yeah, that's interesting.

1           Okay. That state board has legislative  
2 authority, what is -- are you familiar with that law?

3           MR. WILSON: Yeah. It's Idaho Code 58-109.

4           MR. ERLANSON: Did you say 58?

5           MR. WILSON: Yeah.

6           MR. ERLANSON: Okay. Go ahead.

7           MR. WILSON: Dash 109. And then I can't remember  
8 the rest of it.

9           MR. ERLANSON: That's fine. You are good. I  
10 appreciate that.

11           Okay. That's good. That's good to know.

12           MR. WILSON: Or is it 104, sub 9? Maybe it is  
13 104, sub 9.

14           MR. DRAGE: What are you looking for?

15           MR. WILSON: You know, I might be able to find  
16 it.

17           It is 104. I'm sorry.

18           MR. ERLANSON: 104.

19           MR. WILSON: 104 and sub 9.

20           MR. ERLANSON: Can you just hold it there a  
21 second?

22           MR. WILSON: Uh-huh.

23           MR. ERLANSON: February 18 -- uh-huh. I've been  
24 studying the Idaho stuff. I've really never looked at  
25 this one. This is interesting. I like it.



1 MR. WILSON: When the state came into the union,  
2 we came in under the equal footing doctrine; so any  
3 new state that was added to the union, and we came in  
4 in 1891. They entered the union on an equal footing  
5 with other states. The other states got title to the  
6 beds of their navigable waters; so did Idaho.

7 MR. ERLANSON: Yeah. A lot of that had to do  
8 with the territorial deal too with geographic  
9 boundaries.

10 MR. WILSON: Well, yeah. It goes back to -- a  
11 lot of our laws are based on English common laws, and  
12 that was actually derived from Justinian Codes and  
13 Emperor Justinian and the Holy Roman Empire.

14 MR. ERLANSON: Yeah, you are looking -- that's a  
15 little far for me.

16 MR. WILSON: It has some deep roots.

17 MR. ERLANSON: But I do know about the articles  
18 of confederacy, and I do know that people in the state  
19 of Idaho don't have any idea that the BLM property,  
20 the national forest property, they are not -- they are  
21 not part of the state of Idaho. They are still  
22 territorial properties of the United States, and as  
23 such, aren't covered under the constitution, but they  
24 are supposed to be under Downes v. Bidwell in 1901.

25 MR. WILSON: We have a Supreme Court ruling from

1 Northern Idaho that --

2 MR. ERLANSON: Oh, I might be interested in this.  
3 Keep talking.

4 MR. WILSON: It was I think Click v. Andrus, and  
5 it established that our -- and it was for placer  
6 mining, actually -- our placer mining regulations do  
7 apply to federal lands --

8 MR. ERLANSON: Wow.

9 MR. WILSON: -- in the state of Idaho.

10 So when we get an application --

11 MR. ERLANSON: Are you kidding me?

12 MR. WILSON: No. I'm dead serious.

13 MR. ERLANSON: You know what? I could buy you a  
14 beer.

15 MR. WILSON: I would love a beer, unfortunately,  
16 I'm on the clock.

17 MR. ERLANSON: Well, I know that. Holy smokes.  
18 I can't believe it. Now, wait a minute. Hold on.  
19 Don't say nothing. Tell me the case.

20 MR. WILSON: Click v. Andrus.

21 MR. ERLANSON: Click, meaning C-L-I-C-K?

22 MR. WILSON: Yes, exactly.

23 MR. ERLANSON: Click v. Andrus.

24 A-N-D-R-U-S?

25 MR. WILSON: Andrus, as in Cecil.

1 MR. ERLANSON: When was this?

2 MR. WILSON: It was in the '70s. I can't give  
3 you an exact date.

4 MR. ERLANSON: Okay. But it is a Supreme Court  
5 case. It's not a circuit case?

6 MR. WILSON: Idaho Supreme Court.

7 MR. ERLANSON: Oh, Idaho Supreme Court. That's  
8 different. Okay. Idaho Supreme Court case, Click v.  
9 Andrus.

10 In the '70s?

11 MR. WILSON: I think it was, yeah.

12 MR. ERLANSON: Yeah, I know Idaho has the privacy  
13 over the water, because they are one of the 11 western  
14 states that allocate water.

15 MR. WILSON: For water rights, yeah.

16 MR. ERLANSON: That's right. They are west of  
17 the 98th meridian; so I understand that fact.

18 So this -- but this surprises me here.

19 MR. WILSON: So when we get an application for a  
20 project on federal lands, we send it to those state  
21 agencies I mentioned earlier. We also send it to that  
22 federal agency, BLM or Forest Service. We want an  
23 operator to come up with one plan to satisfy  
24 everybody's requirements.

25 MR. ERLANSON: Well, that's the way it should be.

1 This BS that is going on today with the placer miners  
2 in the state of Idaho -- I mean, we are fighting tooth  
3 and nail now. Because I've been in litigation with  
4 the EPA for five years.

5 MR. WILSON: That will stop in a couple years  
6 because the State of Idaho is getting permitting  
7 primacy over point source discharges.

8 MR. ERLANSON: I know. I understand that. But  
9 by the same token, they are adopting illegal actions  
10 to satisfy the EPA.

11 MR. WILSON: I have no comment on that.

12 MR. ERLANSON: And I'm not going to get into  
13 that. But there is a deprivation of use here. And  
14 I'm glad you mentioned the Administrative Procedures  
15 Act because that's another thing that the water  
16 resource board ignores. But we will get into that  
17 some other day.

18 But I'm really glad that you mentioned about  
19 this case.

20 MR. WILSON: Yeah, it's an important case.

21 MR. ERLANSON: That's a real important case.

22 MR. WILSON: We rely on that a lot in our  
23 other -- in our mining regulatory program as well;  
24 so...

25 MR. ERLANSON: Yeah. I'm surprised that you say

1 this case says -- and it hasn't -- the Forest Service  
2 and the BLM, as far as you know, haven't tried to  
3 overturn this ruling?

4 MR. WILSON: No. We have a pretty good  
5 cooperative relationship as far as reviewing plans and  
6 permitting.

7 MR. ERLANSON: I'm going to have to get a retired  
8 job working for you people.

9 MR. WILSON: Recognizing -- so when you post a  
10 bond with one agency, if it satisfies the requirements  
11 of both agencies, we recognize that.

12 MR. ERLANSON: Yeah, I've been involved with the  
13 Forest Services for years. Okay. Well, that's -- I  
14 never knew about this. This was worth the whole trip.

15 MR. WILSON: Okay, good. I'm glad we made it  
16 worth your while.

17 MR. ERLANSON: No. I'm serious. I really  
18 appreciate that. That's very important.

19 And that's on federal ground?

20 MR. WILSON: Yeah, it was on Forest Service land.  
21 The guy was doing a bunch of placer mining without  
22 getting any permits at all -- the -- I think this was  
23 maybe before the Forest Service had forest service  
24 management regulations; so...

25 MR. ERLANSON: Yeah, that's interesting. Now,

1 the only last question I have -- because I don't have  
2 to testify. I've been opening my big mouth enough,  
3 but the last question I have for you is: According to  
4 the state water plan, no federal or state agency has  
5 jurisdiction over the water except the water resource  
6 board.

7 MR. WILSON: For water rights.

8 MR. ERLANSON: Well, it doesn't just say water  
9 rights. Unfortunately it doesn't just say water  
10 rights.

11 So I'm wondering if 47-13 doesn't conflict  
12 with -- I think it's 17-34 or 17-43 or something like  
13 that.

14 MR. WILSON: I don't think it does. So part  
15 of --

16 MR. ERLANSON: You know, I'm trying to --

17 MR. WILSON: Right. So part of our dredge and  
18 placer act, 47-13, down toward the end of it, it has  
19 some withdrawn river segments, and then the land board  
20 has added to those withdrawn river segments, as they  
21 have authority to, and a lot of those withdrawals are  
22 from recommendations from the water resource board.  
23 In their water planning efforts through the last 30  
24 years, they have said, "You know what? This stream is  
25 such an important fishery and has all these other

1 uses, we think it should be closed to mineral entry,"  
2 and the land board has said, "Okay."

3 And we have that list on our website as  
4 well, all the mineral withdrawals that are in forests  
5 across the state; so...

6 MR. ERLANSON: That's interesting.

7 MR. WILSON: And, again, we have a pretty  
8 cooperative with the stream channel protection folks,  
9 Aaron and others.

10 MR. ERLANSON: You can bet that I'm going to get  
11 on your site. Because I'll tell you the truth, I've  
12 never looked at it. The Department of Lands -- what  
13 does it say? Lands; so I have never given it a  
14 thought about water.

15 And then when I -- here a couple hours ago  
16 when I saw dredging and placer, I thought, "I better  
17 get my ass up there and see what is going on."

18 But I appreciate your help. I learned a lot  
19 and that's good.

20 MR. WILSON: Okay. Do you have any other  
21 questions?

22 MR. ERLANSON: No. I'm good.

23 MR. WILSON: Okay. Did you want to provide any  
24 testimony?

25 MR. ERLANSON: My testimony is I just appreciate

1 you coming around.

2 I do wish more miners would have been aware  
3 of these meetings. I will say that. You know, and so  
4 I --

5 MR. WILSON: The folks who submitted the  
6 petitions, we notified them, and we, again, had it  
7 advertised on our website, and the administrative  
8 bulletin.

9 MR. ERLANSON: Yeah. Well, it's just like  
10 putting something in the federal register.

11 MR. WILSON: Kind of.

12 MR. ERLANSON: Yeah. You know, I mean, how many  
13 times do you look at the federal register? There is  
14 40,000 things in there; you got to pick out the one  
15 thing. And if you blink when you are going down  
16 through them, you miss them.

17 MR. WILSON: Just like when we drove across Raft  
18 River this morning, I think Todd blinked, and he  
19 missed it.

20 MR. ERLANSON: Oh, yeah, that's quite possible.

21 Well, I appreciate you taking the time to  
22 come up here and, I guess, tell me and some employees  
23 about it.

24 MR. WILSON: These are all my fellow  
25 conspirators.



1 MR. ERLANSON: Well, there you go. There is  
2 nothing wrong with that.

3 MR. WILSON: Yeah. We have a lot of good  
4 information on our website. And we are going to be  
5 sending out some email notifications; so if you have  
6 an email address --

7 MR. ERLANSON: I threw it on there.

8 MR. WILSON: Okay. We will keep you updated as  
9 this goes forward.

10 MR. ERLANSON: Yeah. Because I got three mining  
11 districts that I called this morning. I said, "Do you  
12 know anything about this?" Nobody knew anything about  
13 it. I said, "Well, I'm going."

14 MR. WILSON: Most of the activity is recreation  
15 mining, which we don't regulate.

16 MR. ERLANSON: Yeah. That's why I wondered what  
17 was going on here. So, I mean, it's -- I'm glad I  
18 came.

19 MR. DRAGE: These are the points of contact for  
20 mining in this area right here, Gary and Connor.

21 MR. ERLANSON: I never saw either one of you  
22 guys.

23 MR. BILLMAN: I saw your applications.

24 MR. ERLANSON: Well, a couple years ago.

25 MR. BILLMAN: Oh, you didn't do it recently?

1           MR. ERLANSON: No. I just withdrew my bond up  
2 there on the Forest Service. But anyway, yeah, I  
3 finally got my bond back after seven years. That's  
4 pretty good. You know what? I was thinking about  
5 charging them 19 percent interest. But the  
6 government, you know what they would have said.

7           MR. WILSON: That's a little above prime.

8           MR. ERLANSON: Yeah.

9           MR. WILSON: Okay. Well, great then. I think we  
10 are done.

11                           (The hearing concluded at 12:45 p.m.)

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REPORTER'S CERTIFICATE

I, JANET L. FRENCH, CSR No. 946, Certified Shorthand Reporter, certify:

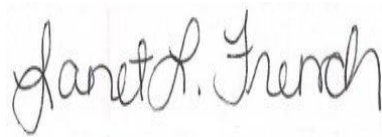
That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction;

That the foregoing is a true and correct record of all testimony given, to the best of my ability;

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in this action.

IN WITNESS WHEREOF, I set my hand and seal this 28th day of August, 2019.



---

JANET L. FRENCH, CSR, RPR

Notary Public

P.O. Box 2636

Boise, Idaho 83701-2636

My Commission Expires 11/3/2022

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