

Negotiated Rulemaking Meeting Notes, 04/28/2021

Name of Negotiated Rulemaking: Easements on State-Owned Submerged Lands and Formerly Submerged Lands (IDAPA 20.03.09)

Docket number: 20-0309-2101

Location: Boise, Idaho and teleconference/web conference

Date/Time: Wednesday, April 28, 2021 – 10:00 a.m. to 10:37 a.m. MT

Attendees: See sign-in sheets/participant list

Facilitated by: Andrew Smyth, Public Trust Program Manager, Idaho Department of Lands

This is the first of 2 scheduled meetings during the public comment period April 7 – June 30, 2021.

Andrew Smyth of the Idaho Department of Lands (IDL) presented an overview of rulemaking, participation guidance, and a summary of draft rule changes. Andrew invited participants to offer comments or ask questions throughout the presentation on the following draft changes to the rules:

- Fewer and less restrictive words
- Change “submerged lands and formerly submerged lands” to “navigable waterways”
- Fee increase (Rule 020.01) to cover actual cost to process an application
- Assignment fees (Rule 050.01) and removing the rule in 050.03 about multiple assignments
- Appraisals and removing the provision that they will be done by an IDL employee
- Applications (Rule 070.01) only one copy of documents required
- Decision on Application (Rule 070.04 and 05)

Discussion

Aubrey Harkey: I haven’t had to do any of the submerged land applications as of yet, so I haven’t had to go through the current process as it is. At this time, I don’t have any comments.

Jim Riley: My specific interest is to look at the provisions that might occur when a submerged land lease or easement might be permitted in way that would interfere with other uses of the waterbody, particularly encroachment permits on the surface, such as commercial permits for storage for docks or other materials on waterbodies in front of or adjacent to private property. I’m not familiar enough with these rules to know if there are provisions that speak to that issue.

Andrew Smyth: What I’d like to do is address part of that question outside of this meeting to be mindful of other people’s times. One of the things to point out about these easement rules is one of the conditions of obtaining a submerged land easement is first to obtain, if required, an encroachment permit under the Lake Protection Act or a permit from the Idaho Department of Water Resources under the Stream Channel Protection Act. When it comes to dock storage areas, I’d like to address that with you outside of this meeting.

Eric Wilson: IDL is looking to handle the dock storage issue under the submerged land leasing rules, which are IDAPA 20.03.17. These easement rules should have no effect on dock storage.