

Summary of Negotiated Rulemaking

IDAPA 20.03.04

Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho

Docket No. 20-0304-1901

Reason for Rulemaking

This rulemaking was initiated for the following reasons:

- To consider fees for encroachment permit applications for single-family docks, two-family docks, water-intake lines, and assignments; to ensure fees cover the respective processing costs
- To clarify how notice of application is provided to adjacent property owners

Notice of Intent to Promulgate Rules and Stakeholder Outreach

Notice of Negotiated Rulemaking was published in the June 5, 2019 issue of the Idaho Administrative Bulletin. The Idaho Department of Lands (IDL) issued a press release and emailed 65 stakeholders to invite their participation in the negotiated rulemaking process.

Negotiated Rulemaking Meetings

IDL held five meetings across the state in June 2019 to seek public comments on the draft changes to IDAPA 20.03.04, *Rules Governing the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho*. The table below is a summary of the meeting locations and public participation:

Date	Location	No. of public participants (and affiliation)
June 12, 2019	Pocatello	0
June 17, 2019	Sandpoint	3 (2 marine contractors and 1 environmental group)
June 18, 2019	Coeur d'Alene	3 (2 marine contractors and 1 member of the general public)
June 19, 2019	McCall	1 (1 realtor)
June 20, 2019	Boise	0

Summary of Meeting Discussions

There were no objections to the draft changes during the public meetings, and comments were in favor of raising the fees. One marine contractor indicated the recommended fees are small in comparison to the cost to build a dock, estimated to be around \$40,000, and the cost to purchase lakefront property.

Because IDL has seen an increase in the number of hearings in 2019, participants raised concerns that IDL would ask for further fee increases next year if this trend continues. IDL will continue to analyze the number of hearings to determine whether the recent increase is an anomaly or a new trend.

A marine contractor recommended requiring a fee from an objector to an encroachment permit application to help cover the expenses of the resulting hearing, but this idea was met with concerns about equal access to justice.

Written Comment

IDL received one written comment. Wild Idaho Rising Tide's (WIRT) comments were mostly related to a specific encroachment permit application, and the WIRT comments related to the rulemaking are summarized as follows, and the IDL response is provided below.

Comment: WIRT suspects that IDL is raising the fees and adjacent landowner notification standards for noncommercial navigational encroachments to shift the burden to Idaho property owners of the huge costs and rules deficiencies of other encroachment types and recommends raising fees and notification standards for other encroachment types as well.

Response: IDL found the current permit application fees for commercial and nonnavigational encroachments, in general, cover the direct costs to process such applications (which range from \$550 to \$2,000). For this reason, IDL did not seek raising the fees for these types of encroachments this year. In addition, statutes and current rules already allow for IDL to provide notice of application for these other types of encroachments to adjacent littoral owners, government agencies, as well as to the public through a newspaper publication (see [I.C. § 58-1306](#) and [IDAPA 20.03.04.030.01 and .03](#)).

Concluding Negotiated Rulemaking

With no issues left unresolved, IDL concluded the negotiated rulemaking process and submitted the negotiated rule changes for publication as a proposed rule in the September 2019 edition of the Idaho Administrative Bulletin.

The rulemaking record is available for review upon request, and key documents are available at <https://www.idl.idaho.gov/rulemaking/20.03.04-2019/index.html>.