

Negotiated Rulemaking Meeting Notes – April 19, 2023

Name of Negotiated Rulemaking: Rules Governing Riverbed Mineral Leasing in Idaho (IDAPA 20.03.05)

Docket number: 20-0305-2301

Location: Riggins, Salmon Rapids Lodge and on Zoom/Teleconference

Date/Time: Wednesday, April 19, 2023 – 3:00 p.m. to 5:00 p.m. MT

Attendees: See participant list

Facilitated by: Marde Mensinger, Navigable Waterways Program Manager – Resource Protection and Assistance Bureau, Idaho Department of Lands (IDL)

This is the first of 2 scheduled meetings during the public comment period April 4 – April 26, 2023.

Marde Mensinger presented an overview of rulemaking and reviewed the draft rule changes.

Discussion:

- Questions about Section 030. Rental and Royalty and Late Payments – Increasing minimum annual rent to 500 dollars, and whether royalties can cover the annual rent. It can, and this would only apply to new leases.
- Questions about IDL's jurisdiction over certain stretches of river, and the federal agency jurisdiction about other stretches of river. This was all part of larger discussion about what IDL exploration location permits do, which is making sure permittees have exclusive control over that stretch of river for 2 years. There was also discussion about how permittees cannot simply renew year after year, and must get a lease if they want to retain control over that stretch.
- There was discussion about what additional permits a lessee may need, which include the IDWR Stream Channel Alteration Permit, and the Idaho Department of Environmental Quality IPDES permit. There may also be federal permits that are needed, depending on certain stretches of navigable rivers.
- There was some discussion around how a 5" suction dredge or less is casual exploration. Casual exploration does not require written approval from IDL.
- This rule does not regulate perennial streams because they are not navigable waterways.
- There was a question asking if a lease is not in production, if it gets cancelled. The answer is that if the lease expires and it hasn't produced any quantities, it may not be considered for renewal. But that is generally the management on endowment land leases.
- There was a larger conversation had about whether IDL has the authority to deny exploration location permit applications. The idea behind that is that Exploration Locations could potentially be an encumbrance on navigable waters, and there is a belief that the public has a right to object and the Land Board can deny any Exploration Location based on the Kootenai Environmental Alliance vs. Panhandle Yacht Club case. Eric Wilson gave some history of the department's actions on exploration locations, and pointed to the statute (47-703) that does not give IDL authority to deny an exploration location permit. Exploration Locations made for the proper commodities on lands open for mineral entry cannot be denied by IDL, so there is no public review.
 - The public can access current exploration location records via the Activity Map online and via IDLs public records portal.
 - It was pointed out that the current IDL website claims that exploration locations could be denied, but the suggestion is that they will be denied because they do not meet the requirements of exploration locations outlined in statute.

- There was a question of what navigable rivers in Idaho have gold in them. The Salmon, Clearwater, Middle Snake River, South Fork Payette (recreationally), and potentially the south fork of the Boise (regulated federally).
- There was a question of navigability, and being able to float logs down the river. The rivers considered navigable are designated through Land Board actions, but changing navigability status of rivers is extremely rare, and it's unlikely that any of the streams considered navigable now would be changing.
- Royalty rates are set by Land Board policies, regardless of the price of certain metals, like gold, so prices could increase, but it would take Land Board action to make that happen.
- IDL defers to regulation per IDWR Stream Channel Alteration Permits for casual exploration.