

Negotiated Rulemaking Meeting Notes – April 26, 2023

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

Docket number: 20-0305-2301

Location: Idaho Department of Lands Boise Bureau Office Garnet Conference Room and on Zoom/Teleconference

Date/Time: Wednesday, April 26 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 second 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:

- There was a question about the requirement of IDL to provide public notice to different agencies and public notice to request a hearing. Section 025 of the rule outlines the process to hold a hearing. The requirements of having a hearing include having no less than ten (10) signatures from aggrieved parties. There is a requirement to notify the Idaho Department of Water Resources by statute. The public hearing would inform the decision-making process.

03. Petition for Hearing. The Board or its authorized representative will hold a public hearing on the application, if requested in writing no later than thirty (30) days after the last published notice by ten (10) person whose lawful rights to use the waters applied for may be injured thereby, or by an association presenting a petition with signatures of not less than ten (10) such aggrieved parties; provided that the Board may order a public hearing in the first instance. The Board will consider fully all written and oral submissions respecting the application.

(3-18-22)

- There is no public notice given for exploration locations. This is due to the statute (47-703.3.). The discoverer must post their exploration certificate on each ½ river mile.
- There was some discussion about IDLs regulatory overlap with IDEQ and IDWR. There is some room for that idea to be explored in the rule. There is a suggestion to add that a valid IPDES permit must be obtained in addition to the IDWR permit.
- Schokel vs. Dunn is a case that mentions that agencies cannot issue permits in conflict with other agencies. It is suggested that we review this case to better inform the draft rule.
- It is determined that if exploration is casual, i.e. 5 inch intake suction dredge or less, it has an insignificant impact on the environment. This is referring to IDWR and the statute's definition of casual exploration.