



Negotiated Rulemaking Meeting

Idaho Department of Lands

Docket No. 20-0301-2301

May 10, 2023, 2:00 p.m. (MT)

Salmon, Idaho and Zoom

Negotiated Rulemaking Meeting Notes – May 10, 2023

Name of Negotiated Rulemaking: Rules Governing Dredge and Placer Mining in Idaho (IDAPA 20.03.01)

Docket number: 20-0301-2301

Location: Salmon, Main level at Sacajawea Event Center and on Zoom/Teleconference

Date/Time: Wednesday, May 10, 2023 – 2:00 p.m. MT

Attendees: See participant list

Facilitated by: Eric Wilson, – Resource Protection and Assistance Bureau Chief, Idaho Department of Lands (IDL)

This is the last of the 4 scheduled meetings during the public comment period April 4 – June 16, 2023.

Eric Wilson presented an overview of rulemaking and reviewed the draft rule changes.

Discussion:

- Question was asked about the removal of the “reclamation plan” language. IDL stated that the title of Subsection 021.01 removes this term and just refers to the “permit” now. A “plan of operations” is now used in Section 021 to describe this portion of the application. The term “reclamation plan” has created confusion in the past because that is the term used in the Mined Land Reclamation rules. The Forest Service and BLM use the term “plan of operations”, so this change should also reduce confusion for permittees working on applications that cover these federal lands.
- Question was asked about the removal of the withdrawn streams in Section 060. These are repeated from statute, so the withdrawal does not need to be repeated in the rule. A list of all state lands withdrawn from mineral entry is posted on the IDL website.
- Question was asked about how the state owns navigable waters. IDL explained the Equal Footing Doctrine and related topics.
- Question was asked about how suction dredges smaller than 8 inches would be addressed in the rule. The discussion continued around IDL’s role and the role of the Idaho Department of Water Resources (IDWR). The definition of motorized earth moving equipment in Idaho Code 47-13 and the requirement for permits when disturbance exceeds a 1/2 acre of land may create some ambiguity. IDL believes that the statute does not require permitting of the smaller suction dredge sizes under Idaho Code 47-13, and if we did it would be redundant with the IDWR permitting for suction dredges with an intake diameter of 8 inches or less. It is also not realistic for a suction dredge to affect more than ½ acre given their operational limitations and where the gold is typically found. More discussion occurred regarding dredge mining in navigable rivers with public trust resources. IDL will still defer to IDWR to regulate those dredges under 8 inches.
- A comment was made regarding the elimination of definitions and how this may impact operators preparing permit applications. IDL believes that changing a lot of the wording in the permit processing sections will make the process easier to understand.
- Discussion was had on the direction from the Division of Financial Management (DFM) regarding definitions from statute being repeated in the rules. An Idaho Department of Agriculture rule was allowed to repeat statutory definitions, so some discretion on this issue may be possible. IDL stated that this was not their understanding and not the direction they had been given by



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- A discussion of the federal Section 228 regulations was held in regard to the ability of an operator to use the state's Bond Assurance Fund. IDL stated that the USFS does not recognize state bond pools as a valid form of financial assurance, so a different type of financial assurance would be required.
- Question was asked regarding MOUs between agencies. IDL stated that these documents have no legal authority, but they are valuable to help direct agency staff when they coordinate with each other.
- Question was asked about the Bond Assurance Fund being mandatory or optional. IDL replied that the Bond Assurance Fund rules were modified a few years ago to allow operators to opt out if they provided sufficient bonding.