

## **STATE BOARD OF LAND COMMISSIONERS**

September 13, 2019

Information Agenda

### **Subject**

Summary of Comments Received on Proposed Rule, IDAPA 20.03.01, *Rules Governing Dredge and Placer Mining Operations in Idaho*

### **Background**

The Idaho Dredge and Placer Mining Protection Act (Title 47, Chapter 13, Idaho Code) promotes responsible resource extraction while protecting the lands, streams, and watercourses of the state. Dredge and placer mining regulated under this statute is the extraction of minerals from an alluvial deposit containing particles of gold or other valuable minerals. Extraction is done using motorized earth-moving equipment, including suction dredges with an intake nozzle over 8 inches in diameter. A placer deposit can be in a natural watercourse or an ancient stream channel high above an existing stream. Attachment 1 answers frequently asked questions about dredge and placer mining.

Under Idaho Code § 47-1316, the Idaho State Board of Land Commissioners (Board) is designated the administrative agency of the Idaho Dredge and Placer Mining Protection Act and has the power and duty to adopt rules and regulations for its administration. The Board has delegated to the Idaho Department of Lands (Department) administration of IDAPA 20.03.01, *Rules Governing Dredge and Placer Mining Operations in Idaho*. These rules allow removal of minerals while preserving water quality and ensuring rehabilitation for beneficial use of the land following mining. The rules were amended in 2018 through the negotiated rulemaking process and approved by the 2019 Idaho Legislature.

### **Discussion**

After the legislature adjourned the 2019 legislative session without reauthorizing Idaho's administrative rules, the governor and his staff directed state agencies to republish all necessary rules as temporary and proposed rules. On May 21, 2019, the Board approved the reauthorization of IDAPA 20.03.01. The rules are necessary to "protect the lands, streams, and watercourses within the state, from destruction by dredge mining and by placer mining, and to preserve the same for the enjoyment, use and benefit of all of the people, and that clean water in the streams of Idaho is in the public interest" (Idaho Code § 47-1312).

On June 19, 2019, the rules were published concurrently as temporary and proposed in a special edition of the Idaho Administrative Bulletin, Volume 19-6SE. Attachment 2 is the *Notice of Omnibus Rulemaking* for docket number 20-000-1900F, which includes the publication of the previously approved and codified chapter of IDAPA 20.03.01 as temporary and proposed rules, with a 21-day comment period and a 14-day period for requesting a public hearing.

The Department received one individual request and eight petitions for a public hearing on IDAPA 20.03.01. The petitions included at least 25 signatures and were from the following counties: Ada, Bonner, Canyon, Fremont, Idaho, Kootenai, and Shoshone.

The Department held three public hearings on the proposed rules for IDAPA 20.03.01, *Rules Governing Dredge and Placer Mining Operations in Idaho*. A public hearing was held in Coeur d'Alene on August 14, in Idaho Falls on August 15, and in Boise on August 16, 2019. The Department also extended the written comment deadline to August 16, 2019. All written comments and transcribed oral comments received are on the Department's website on the omnibus rulemaking page.

Five people testified at the public hearings, and written comments were received from seven people. The majority of comments were related to recreational mining, which is regulated by the Idaho Department of Water Resources (IDWR). Suction dredges up to 5 inches in diameter may receive a Recreational Mining Authorization through a Letter Permit available on the IDWR website. Guidelines for operating these dredges is in the Letter Permit. Applications for suction dredging either outside the Letter Permit guidelines or for suction dredges larger than 5 inches are processed as an Individual Stream Channel Alteration Permit.

A number of comments were directed at other state or federal agencies or other rules that cannot be addressed by changes to IDAPA 20.03.01. Several attendees were unaware of the permitting requirements in IDAPA 20.03.01 because their recreational mining is not regulated by this rule.

Comments that did pertain to IDAPA 20.03.01 appear to be due to a misunderstanding of the scope of these rules and how the rules are administered. Most of the participants engage in recreational mining, and they were not aware that this activity is not regulated by IDAPA 20.03.01. A summary of all comments is included in Attachment 3. The Department did not identify any rule changes needed based on these comments. The Department also did not identify any issues that would justify the initiation of negotiated rulemaking for IDAPA 20.03.01 in 2020.

## Attachments

1. Dredge and Placer Mining – Frequently Asked Questions
2. Notice of Omnibus Rulemaking – Temporary and Proposed Fee Rulemaking, pages 4160 to 4164, and pages 4169 to 4192.
3. Summary of Public Comments Received on Proposed Rule