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Director Gary Spackman  
Idaho Department of Water Resources  
322 E. Front Street  
PO Box 83720  
Boise, ID 83720

July 5, 2019

Re: Idaho Conservation League Comments on 37.03.07 – STREAM CHANNEL ALTERATION RULES (Rule 70)

Dear Director Spackman,

Thank you for the opportunity to provide comments on the Idaho Department of Water Resources (IDWR or “the Department”) Proposed Stream Channel Alteration Rules – IDAPA 30.03.07. These comments are being submitted in response to publication of the proposed rules in the June 21, 2019 publication of the Idaho Administrative Bulletin.

Since 1973, the Idaho Conservation League has been Idaho’s leading voice for clean water, clean air and wilderness—values that are the foundation for Idaho’s extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho’s largest state-based conservation organization, we represent over 30,000 supporters, many of whom are interested in ensuring that mines in Idaho are adequately regulated so as to ensure the protection of Idaho’s water quality, public health, and aquatic species.

ICL is concerned that the proposed rule does not accurately reflect the statutory direction that allows for any aggrieved person to petition the director for a hearing, unless the right to a hearing is otherwise provided by statute. Instead, the wording of the proposed rule is limited only to the “applicant.”

ICL recommends that the wording of this rule be amended to include “aggrieved person” in Rule 70.

**Current wording of Rule 70:**

070. HEARINGS ON DENIED, LIMITED, OR CONDITIONED PERMIT OR OTHER DECISIONS OF THE DIRECTOR (RULE 70).

Any applicant who is granted a limited or conditioned permit, or who is denied a permit, may seek a hearing on said action of the Director by serving on the Director written notice and request for a hearing before the Board within fifteen (15) days of receipt of the Director's decision. Said hearing will be set, conducted, and notice given as set forth in the Rules promulgated by the Board under the provisions of Title 67, Chapter 52, Idaho Code. (7-1-93)

**Current wording of Title 42, Chapter 17, Section 42-1701A – Hearings Before Director – Appeals:**

42-1701A(3)

(3) Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person aggrieved by any action of the director, including any decision, determination, order or other action, including action upon any application for a permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. The director shall give such notice of the petition as is necessary to provide other affected persons an opportunity to participate in the proceeding. The hearing shall be held and conducted in accordance with the provisions of subsections (1) and (2) of this section. Judicial review of any final order of the director issued following the hearing shall be had pursuant to subsection (4) of this section.

**Suggested wording of Rule 70, to better reflect statutory direction:**

070. HEARINGS ON DENIED, LIMITED, OR CONDITIONED PERMIT OR OTHER DECISIONS OF THE DIRECTOR (RULE 70).

Any applicant who is granted a limited or conditioned permit, or who is denied a permit, or any person aggrieved by a decision, determination, order, or other action of the Director, may seek a hearing on said action of the Director by serving on the Director written notice and request for a hearing before the Board within fifteen (15) days of receipt of the Director's decision. Said hearing will be set, conducted, and notice given as set forth in the Rules promulgated by the Board under the provisions of Title 67, Chapter 52, Idaho Code. (7-1-93)

Please contact Austin at 208-345-6933 ext. 23 or [awalkins@idahoconservation.org](mailto:awalkins@idahoconservation.org) if you have any questions regarding our comments or if we can provide you with any additional information on this matter.

Sincerely,

/s/Austin Walkins

Austin Walkins  
Senior Conservation Associate

A handwritten signature in green ink, appearing to read 'Jonathan Oppenheimer', with a stylized flourish at the end.

Jonathan Oppenheimer  
External Relations Director