

IDWR IDAPA 37.03.07.61 Rulemaking - Comment and Response Summary Table

Comment No.	Name	Agency or Organization	Type of Comment	Date of Comment	Comment	IDWR Response to Comment
1	Barry Turner	N/A	Oral	06/02/21	Mr. Turner commented that he appreciates the opportunity for miners to engage in rulemaking in Idaho, to implement a permit process.	The Idaho Department of Water Resources ("IDWR") appreciates public engagement in all of its negotiated rulemaking efforts.
2					Mr. Turner commented that he supports the proposed rule changes and the draft rule.	IDWR acknowledges the support.
3	Brian Koch	N/A	Oral	06/02/21	Mr. Koch commented that he is confused by the permitting process on the South Fork of the Clearwater River and the 15 permit limit. He generally questioned how the permit process for the three agencies (IDWR, IDEQ, US Forest Service) worked with respect to the permit limit, permit sequencing, and the timing of filing permit applications.	Rule 61 is not applicable to dredge mining activities on the South Fork of the Clearwater River. The State Water Plan regulates the permitting process required on the SFCWR.
4					Mr. Koch commented that the Idaho Conservation League ("ICL") does not "make the rules" in Idaho and they do not "enforce the rules" in Idaho.	IDWR agrees with this comment, however, the rulemaking process is negotiated and involves all parties desiring to participate.
5					Mr. Koch commented, that the term "mechanized equipment" is hard to define. He referenced paddles in a raft as an example of a "mechanical lever." He also commented that standards for mechanized equipment should not "single out" dredge miners or treat them unfairly in comparison to other recreational user groups.	See applicable response above. IDWR generally agrees that all recreational activities that modify stream channels should be regulated equitably.
6	David Arthaud	The National Oceanic and Atmospheric Administration ("NOAA")	Written	05/14/21	NOAA commented "[g]enerally, these rules promoting instream suction dredge mining and its discharge of metals and sediment pollutants are expected to cause take of ESA-listed salmonids and degradation of their critical habitat. Section 9 of the ESA prohibits the unpermitted take of listed species and destruction of their designated critical habitat."	IDWR does not agree that Rule 61 will necessarily cause "take" of ESA-listed salmonids and degradation of their critical habitat. IDWR regulates the impacts of small scale dredge mining activities on ESA-listed species and critical habitat through the opening and closure of waterways in the state. Furthermore, Section 9 of the ESA prohibits the "unpermitted" take of listed species and this rulemaking affects minimum standards for the "permit process" governing small scale suction dredge mining.
7					NOAA commented "deleting "sluice" does not technically prevent the use of machines. As proposed in 061.03, mechanized equipment would be allowed to alter stream channels. Machines (pulleys, winches, wires, sluices, etc.) are not precluded by the proposed language and together could be allowed to work with suction dredges to excavate/fill/disturb 33% (061.06) of critical habitat throughout large reaches of rivers and streams. Engines of unlimited size above the ordinary high water mark ("OHWM") would technically also be allowed to power such machines."	IDWR proposes to remove the term "sluice" only from the definition of "non-powered equipment" as defined in proposed rule 01.11 IDWR proposes to include the term "power sluices" and "power sluice" in proposed Rule 61. The term powered equipment is clarified in proposed rule 01.13 as "equipment which is powered by means other than human strength such as a gasoline engine or electric motor." Proposed rule 61.03 still limits the use of powered equipment to the suction dredge or power sluice and any life support equipment necessary to operate the dredge or power sluice. Ropes, pulleys, cables, chains, and the like located below the mean high water mark ("MHW") and attached to any powered equipment, whether the powered equipment is located above or below the MHW, is prohibited under Rule 61. IDWR therefore disagrees that engines of unlimited size above the MHW could be allowed or used with attached cables, ropes, pulleys, wires or similar equipment below the MHW.
8					NOAA commented that IDWR should keep the following text in the current rule, "moving more than one-quarter (1/4) cubic yards per hour."	The 1/4 CY per hour limitation in the current Rule 61.01 is a limitation applied to non-powered equipment. In the proposed rule, this limit has not been removed but relocated to Rule 25.03 where it is still used as a de minimis threshold permit requirement for non-powered equipment.
9					NOAA commented that "IDWR suction dredge permits would be issued at a drainage basin scale or at a large portion thereof (061.02). If spawning/incubation areas exist anywhere within a drainage basin, the proposed language would not limit harm to these critical habitats or the sensitive life stages of listed fish that may be present."	Rule 61.02 has been revised. The terms "drainage basin" and "large portion of a drainage basin" are deleted from the proposed sub-rule.
10					NOAA commented that Rule 61.04 should be modified to "prevent damage to streambanks; require revegetation and reclamation."	The proposed rule prohibits the undercutting of the streambank. If that permit limitation is violated IDWR would pursue enforcement that may include revegetation, reclamation, or other mitigating activities.
11	Don Dorman	Idaho Gold Prospectors Assoc. (682 individuals)	Oral	04/27/21	Mr. Dorman testified that he generally supports the changes to the "non-powered" and "powered" equipment distinction and the rules as drafted.	IDWR acknowledges the support.
12	Don Dorman	Idaho Gold Prospector's Assoc.	Oral	6/2/201	Mr. Dorman testified that he liked the changes in the rules so far, and likes "where [the rules] are sitting right now."	IDWR interprets this comment as support for the draft rule.
13					Mr. Dorman commented, people use "high bankers" below the MHW and feed the equipment with a shovel...sometimes in the stream sometimes on the bank...in the past he has directed members to get a letter permit for high banking activity. He also commented that high bankers are powered equipment with a "motorized sluice." He commented that he wants to ensure that the letter permit covers high banking activity conducted below the MHW, as has been allowed in the past. He emphasized that he does not want Rule 61 to exclude high banking.	IDWR agrees that it has historically used the minimum standard rule for dredge mining to permit high banking activity conducted below the MHW. The Proposed Rule will continue to allow this practice and rule 61.01 authorizes the issuance of an expedited permit for "power sluicing." Rule 61.01 further states, "[a] power sluice and high-banker are synonymous for the purposes of this rule."
14					Mr. Dorman commented on "mechanical equipment" language in the rule indicating IDWR should modify the wording to clarify that anything that uses "gas" or "electricity" is not "human powered."	In its Proposed Rule, IDWR modified the definition of powered equipment from previous drafts to be, "[e]quipment which is powered by means other than human strength such as a gasoline engine or electric motor."
15					Mr. Dorman commented on high banking, noting that high banking should be treated like dredging when its below the MHW, but that most high banking occurs above the MHW. High banking below the MHW should be treated like dredging and not get into vegetation. Typically, high bankers have intake hoses that are 1-2 inches in diameter, their discharge "is much smaller than dredge," and you use a "shovel" not "suction" to feed the rock material into the machine.	IDWR agrees that high banking activity is authorized under the minimum standard rule and should be limited to the area below the MHW. IDWR modified Rule 61.03 to clarify this issue.
16					Mr. Dorman commented on high banking, noting that high bankers need to get a "Temporary Application for Temporary Approval of Water Use" if they are working above the MHW.	IDWR concurs.
17					Mr. Dorman commented, under Rule 30.04, change language to add "high banker" to the language "...operate a vacuum or suction dredge" so that it read "...operate a vacuum or suction dredge or a high banker." And also add "high banker" to the end of the rule. He commented that Rule 61 could also be modified to include "high banker" with the "suction dredge" terms to be consistent through out the rules.	See previous comments.
18	Mr. Dorman commented that he considers a "power sluice" to be the same thing as a "high banker." He commented that power sluices are almost always used in a stream because you have to suck water in through a hose to operate them.	See previous comments.				

IDWR IDAPA 37.03.07.61 Rulemaking - Comment and Response Summary Table

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19	Eric Wilson	IDL	Written	05/14/21	IDL supports the retention of the 5-inch diameter nozzle standard to keep dredging activities to a "de minimis level."	IDWR interprets this comment as support for the draft rule.
20					IDL supports the draft rule language on "powered equipment."	IDWR interprets this comment as support for the draft rule.
21					IDL noted that Rule 61 "does not conflict with IDL authorities."	IDWR views IDL's concurrence in this rulemaking effort as essential as a result of the agencies' shared permitting responsibilities related to stream channel alteration.
22	Eric Wilson	IDL	Written	06/17/21	IDL commented that an "a" should be added to Rule 61.01.	IDWR notes that the "a" IDL proposes is unnecessary as stream channels is plural in the proposed rule.
23	Gary Bowling	N/A	Oral	04/27/21	Mr. Bowling testified that he generally supports the draft strawman rule as written.	IDWR acknowledges the support.
24	Gary Bowling	N/A	Written	05/13/21	Mr. Bowling generally supports the draft rules as written.	IDWR acknowledges the support.
25					Mr. Bowling noted dredges will "not" typically move the amount of material claimed by the manufacturers.	No response.
26					Mr. Bowling noted that "wilderness restrictions" should not apply to Rule 61.	IDWR did not consider "wilderness restrictions" in drafting its Proposed Rule.
27					Mr. Bowling supports the delineation of acceptable machinery between human powered and non-human powered machines.	No response.
28					Mr. Bowling supports regulation of filling current dredge hole before moving to another one as adequate limitations on moving rocks.	No response.
29					Mr. Bowling does not support regulating mining to the point that is "impossible to do."	No response.
30	Gary Bowling	N/A	Written	06/02/21	Mr. Bowling interpreted the proposed rule 61.01 to require a permit for any non-powered operation, which would be a departure from IDWR's historical practices. To address his concern, he suggested removing "non" from "non-powered" at the end of rule 61.01.	Mr. Bowling's comment was to Strawman V.1. Rule 60.01 was updated in subsequent rule drafts. In the Proposed Rule draft, rule 25.05 clarifies that an exemption from permitting requirements exists for certain qualifying non-powered activities as set forth in the rule.
31	Gary Bowling	N/A	Oral	06/02/21	He commented regarding motorized equipment, is a "come along considered mechanized equipment." He commented that he thinks "non powered equipment" includes a come along, a pry bar, a shovel, a pick, which are human powered and not mechanized equipment.	IDWR proposes to remove reference to "mechanized" equipment and instead draw a regulatory distinction between "powered" and "non-powered" equipment. The key is whether the equipment is human powered or not.
32					He questioned, where is the line, how can we word the rule, to address/define what is mechanized.	See previous comments.
33					He commented that he supports and "is good with" the rule distinction as written.	IDWR acknowledges the support.
34					He commented that there needs to be additional number, language, or paragraph to address high banking and its treatment under Rule 61. Does a "gravity syphon" with a high banker legal? When there is no permit	IDWR agrees the rules need to address high-banking and has modified Rule 61.01 to clarify that power sluicing and high banking are synonymous activities. The use of a gravity syphon, therefore, would depend on whether it was powered or non-powered. Rule 61 clarifies when the use of powered equipment is permitted below the MHWM.
35					He commented that in 61.01, and the language "and non-powered equipment" be interpreted to mean a permit is required to "pan" or "hand sluice"? He commented that 61.01 should not limit or require a permit for panning or hand sluice boxing.	IDWR agrees that non-powered mining activities such as panning do not require a permit when moving less than 1/4 cubic foot per hour as stated in Rule 25.03.
36	Gary Bowling	N/A	Written	06/22/21	Written Comment 1	IDWR modified Rule 25.05 to include specific citation to Rule 61.05.
37					Written Comment 2	The Director has the statutory, discretionary authority to permit the alteration of stream channels pursuant to I.C. 42-3803. However, to avoid ambiguity in proposed Rule 61.01, the clause "or as otherwise determined by the Director" has been removed.
38					Written Comment 3	It is through the negotiated rulemaking process that stakeholders may provide input on rulemaking. The comments provided are used to alter and amend and affect the rules governing the regulated activity. However, to avoid confusion in proposed Rule 61.01, the clause "and all applicable rules" has been removed.
39					Written Comment 4	IDWR disagrees with this comment and will keep reference to non-powered equipment in proposed Rule 61.02.
40					Written Comment 5	Rule 61 addresses minimum standards for suction dredging and power sluices. Any activity not covered by the minimum standard would be subject to the joint application for permit (3804B).
41	Gay Richardson	N/A	Oral	06/02/21	He commented that he wants "more time" or a longer season to mine on the SFCWR and the ability to use a power winch.	Rule 61 is not applicable to dredge mining activities on the South Fork of the Clearwater River. The State Water Plan regulates the permitting process required on the SFCWR.
42					He commented that on-site claim surveys should be expanded so that the survey includes the whole claim with multiple identified segments so that when the permitted segments don't bare gold, and they want to move to a new segment, they don't have to wait for another site survey before they can move.	See previous response.

IDWR IDAPA 37.03.07.61 Rulemaking - Comment and Response Summary Table

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43	Jan Higdem	N/A	Written	05/14/21	She supports the "rescission of Rule 61 in [total], with NO replacement."	IDWR continues to conclude that suction dredge mining alters stream channels and should be permitted pursuant to the Stream Channel Alteration Act. See I.C. 42-3801 et seq. As a result of its conclusion, IDWR notes that the removal of Rule 61 would not result in the elimination of the permitting of these activities. Instead, the removal of Rule 61 would likely result in IDWR using the Joint Application Permit (3804B) as the de facto permitting process.
44					She supports the legislative revision of the word "alter" to exclude "suction dredge mining," because the activity does not permanently alter the stream channel.	Modification of the statutory definition of "alter" (I.C. 42-3802(b)) is outside the scope of this rulemaking. Further, IDWR continues to conclude that suction dredge mining alters stream channels and should be permitted pursuant to the Stream Channel Alteration Act. See I.C. 42-3801 et seq.
45	Jeff Bowman	Mount Pigsah Mining District	Written	05/14/21	MPMD supports the "standard regulation of 5" and 15 horse power."	IDWR interprets this comment as support for the draft rule.
46	Jeff Bowman	Mount Pigsah Mining District	Oral	06/02/21	Mr. Bowman commented that his mining district met (38 members/claim owners) and they agreed to support the 5"/15 hp minimum standards included in the rule. And they have submitted a letter stating their support of the draft rule.	The Proposed rule maintains the 5" and 15 hp standard.
47					Mr. Bowman commented that he wants to reinstate the "letter permit" process on McCoy Creek for qualifying dredging activities. He commented that miners should have to use the standard joint application permit for activity in excess of 5"/15 hp. Don stated the Forest Service would support reinstating the letter permit process. He commented that the FS has issued a new EA that loosened restrictions.	The scope of this rulemaking is limited to Rule 61 and does not address the opening or closing of specific waterways. However, IDWR staff are open to meeting with miners, the forest service, and other interested parties to explore changes to current permitting limitation on McCoy Creek.
48					ICL noted it is important that the rule be written to ensure protection of public resources from the more intensive mining operations and activities that could be permitted pursuant to the (short form) Letter Permit.	IDWR agrees with this comment and concludes that the Proposed Rule will continue to facilitate the expedited permitting of certain qualifying mining activities that meet an acceptable level of de minimis impact to the stream.
49					ICL noted the current "1/4 cubic yard per hour" limit is an important protection and the removal of this protection may result in direct impacts to Public Trust Water and Submerged Lands.	The 1/4 CY per hour limitation in the current Rule 61.01 is a limitation applied to non-powered equipment. In the proposed rule, this limit has not been removed but relocated to Rule 25.05 where it is still used as a de minimis threshold permit requirement for non-powered equipment.
50					ICL commented, the definition of powered "equipment" should properly include any connected cables, ropes, pulleys, or connections.	The current and proposed Rule 61.03 limits the use of powered equipment below the MHW to the suction dredge or power sluice, and any human life support equipment necessary to operate the dredge or power sluice. Proposed Rule 61.03 does not authorize the use of any ropes, cables, chains, and the like, attached to the dredge or power sluice (powered equipment). IDWR agrees with ICL that ropes, cables, chains, and the like located below the mean high water mark ("MHW") and attached to any powered equipment, whether the powered equipment is located above or below the MHW, is prohibited under Rule 61.
51	Jonathan Oppenheimer	Idaho Conservation League ("ICL")	Written	05/06/21	ICL noted, IDWR should provide information on the evaluation of current use of winches, whether hand, or powered.	IDWR does not have record of any specific or general impacts to stream channels from past winching associated with dredge mining conducted under Rule 61. IDWR staff has not observed the use of hand or powered winches when inspecting suction dredge operations although some miners have anecdotally told staff they occasionally use hand winches or come-along to mover larger rocks. Several miners commented at the April 27, 2021 public meeting that most miners do not use hand or powered winches to move larger rocks or boulders because it is not practical to do so.
52					ICL commented, the definition of "powered equipment" should appropriately include hand-operated mechanical winches, pulley, or other instruments.	IDWR disagrees with ICL's comment. The proposed rule attempts to distinguish un-permitted (Rule 25.05) and prohibited activities (Rule 61.03), associated with Rule 61, on the basis of whether the piece of mining equipment is "powered" or "non-powered." Where proposed rule 01.11 defines "non-powered" as "equipment which is powered by only human strength," hand operated "winches," "pulleys," or "come-along" are powered by human strength and therefore are defined as "non-powered" equipment under the proposed rule.
53					ICL noted, IDWR is modifying Rule 61 without adequate justification, analysis, or consideration.	IDWR is only considering changes to the long standing rule governing minimum standards for small scale suction dredging where such activity can be approved using the Letter Permit.
54					ICL commented, the published rules should be updated to include legible figures and diagrams on pages 15-23 of the rules in Appendix B through Appendix P.	IDWR agrees that all figures and diagrams in the proposed rule should be legible and will work with the Office of the Administrative Rules Coordinator to ensure the final published rule is legible throughout.

IDWR IDAPA 37.03.07.61 Rulemaking - Comment and Response Summary Table

Comment No.	Name	Agency or Organization	Type of Comment	Date of Comment	Comment	IDWR Response to Comment
55	Jonathan Oppenheimer	ICL	Oral	06/02/21	ICL commented that the proposed rule change would authorize the use of mechanical equipment below the ordinary high water mark ("OHWM") that is prohibited by the current rule. Current rule prohibition applies to winches, come alongs, cables, ropes, chains, ties, hooks, pulleys, and other attachment to the mechanized equipment are part of the equipment.	IDWR disagrees that the current rule clearly prohibited the use of all mechanical equipment below the MHW. The term "mechanical equipment" was not defined in the previous rule, and was interpreted differently by different parties. Dredge miners have informed IDWR in the past of the use of varying degrees of hand powered mechanical equipment such as a come-along. The lack of clarity and uniform enforcement of the use of mechanical equipment is why IDWR is proposing a new standard of "powered" vs. "non-powered" equipment in the proposed rule. Dredge miners have reported that the use of hand operated mechanical equipment is sometimes a necessary safety precaution.
56					ICL commented that the current rules allow "take" of ESA species and this new rule would propose to "modify and weaken" the rules and could cause "more take."	IDWR disagrees that the changes to the rule would necessarily result in increased "take" of ESA species. IDWR regulates the impacts of dredge mining activities on ESA species through the opening or closing of waterways. Refer to IDWR responses above to related comments by NOAA.
57					ICL commented that it is concerned with the draft Rule 61.01 because the removal of the "1/4 CY per hour" limit will lead to increased impact to the waters of Idaho as it relates to the Clean Water Act, the Endangered Species Act, and other concerns.	The 1/4 CY per hour limitation in the current Rule 61.01 is a limitation applied to non-powered equipment. In the proposed rule, this limit has not been removed but relocated to Rule 25.03 where it is still used as a de minimis threshold permit requirement for non-powered equipment.
58					ICL commented on high banking, noting that IDEQ's general permit for small scale placer mining in Idaho does not cover high banking. And any discharge from a high banking operation to waters of the US will require an individual IPDES permit.	Rule 61 is part of IDWR's regulatory regime governing stream channel alteration. A "discharge" under the Clean Water Act is governed by DEQ's IPDES permitting regime. IDWR's letter permit is conditioned to require the permittee to obtain an IPDES permit from DEQ before carrying out any mining activities authorized by the permit. See Letter Permit Condition 6.
59					ICL commented that high banking operations "could be authorized" when they are not discharging to water of the US.	See IDWR response directly above.
60					ICL commented that the issuance of permits by IDWR, which conflict with permits issued by other agencies, is prohibited as determined by the ISC in its Shokal v. Dunn decision, 1979.	See IDWR response directly above.
61					ICL commented, that the IDEQ's IPDES "Suction Dredge Inter-Agency Coordination Meeting Agenda" permit documents states "high banking is not covered under the suction dredge permit. Return water should not be directly routed to water of the United States or could require a permit."	See IDWR response directly above.
62	Jonathan Oppenheimer	ICL	Written	06/09/21	Does IDWR interpret the prohibition on powered equipment below the OHWM to include ropes, cables, chains or other attachments to the powered device?	IDWR agrees the term powered equipment under proposed Rule 61.03 includes any ropes, cables, chains, and the like, attached to the powered equipment.
63	Jonathan Oppenheimer	ICL	Written	06/22/21	ICL commented that IDWR failed to provide a rationale, basis or justification for the proposed rule changes. ICL argues "IDWR has failed to demonstrate how the agency can better meet its statutory duties by <u>loosening existing rules and restrictions</u> related to suction dredge mining and moving large rocks in stream channels. Specifically, IDWR has authority under Title 42, Chapter 38, Idaho Code, to regulate the alteration of stream channels for the health, safety and welfare of the public and to protect stream channels from alteration for protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality."	IDWR disagrees that it is "loosening" existing rules and restrictions. IDWR's intent with this rulemaking is to clarify the minimum standards related to small scale dredge mining in Idaho. While IDWR has reframed certain terms (i.e., mechanized vs. powered), it has not substantively changed the underlying meaning and intent of the rule which is to establish an expedited de minimus dredging activities permit process.
64					ICL commented that IDWR did not provide any evidence of the effects of current winching practices associated with Rule 61 activities, specifically whether winching has obstructed the "free navigation of the channel."	IDWR is not aware of any specific or general impacts to stream channels from past winching associated with dredge mining conducted under Rule 61.
65					ICL commented that the Idaho Department of Lands ("IDL") failed to provide analysis or evidence related to small scale mining and its relation to public trust responsibilities, including navigation, fisheries, and other public trust uses.	Consistent with I.C. 42-3803(c), IDL was offered, and did participate in the rulemaking effort. IDL provided specific comment regarding Rule 61. IDWR's response to these comments are included in this Comment and Response Summary Table.
66					ICL argues the proposed rule will increase ESA take and, therefore, increases the State of Idaho's potential liability under the ESA.	Please see IDWR response to NOAA's Comment located within this Comment and Response Summary Table.
67	Josh Collette	N/A	Oral	06/02/21	Josh, commented that his understanding was that under the existing and proposed rule, non-powered equipment (e.g., panning and sluicing) that meet the requirements 61.05 and 61.06 do not require any type of permit.	See applicable response above and new Rule 25.03.

IDWR IDAPA 37.03.07.61 Rulemaking - Comment and Response Summary Table

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68	Ken Byers	N/A	Oral	06/02/21	Mr. Byers commented on "spill bag" requirements in the rule. Generally, he does not agree with spill bag requirements because they are impractical. He commented that spill kits are useless in a moving body of water, even if its on the dredge, "ready to go." He commented that if there is a spill the gas goes directly into the water where it can't be cleaned up and as a result the spill bag has no practical use. He also commented that he doesn't have to carry a "spill kit" on his jet ski, even though you refill jet skis on the water too. He acknowledged that spill bag requirements are not part of Rule 61.	The scope of this rulemaking is limited to Rule 61 and does not address the use of spill bags. However, IDWR disagrees that the use of a spill kit is impractical or ineffective. IDWR views the use of a spill kit as a reasonable best management practice to mitigate the risk of fuel spills.
69					Mr. Byers commented that IDWR should not have the 1/4 CY per hour limit in rule 61.01 because it is unenforceable.	IDWR disagrees with this comment. It believes the 1/4 CY per hour limit is enforceable and is an appropriate permitting threshold for non-powered equipment. IDWR did however, relocate the 1/4 CY per hour limit from rule 61.01 to rule 25.05.
70					Mr. Byers commented that when a dredge miner is dealing with big boulders, a winch is the safest way to move large boulders. Without the ability to safely move large rocks dredge miners could get killed.	Dredge mining is an activity that has inherent risk to the miner. It is the responsibility of the miner to avoid engaging in mining activities that put himself/herself or the public at risk, such as destabilizing a boulder to the point that it could roll onto and crush the miner.
71					Mr. Byers, commented that in "boulder filled" stream beds it would be hard to meet the 1/4 CY per hour limit. He also commented that he does not support any limit because it is an "unenforceable regulation" because staff can't confirm the rate of material moved by a dredge miner.	Refer to IDWR's previous response to Mr. Byers' related comment above.
72					Mr. Byers commented that there is a lot of confusion on which rivers are closed and by which agency.	IDWR acknowledges that different state and federal agencies tasked with regulating suction dredge mining activities have inconsistent stream closures. This inconsistency is due to the fact that different agencies have different authorities and different considerations when closing streams to suction dredge mining. For example, IDWR regulations may designate a stream as closed, or as having special limits, to conform the Stream Channel Alteration permitting process with the Idaho State Water Plan, where as this may not be a consideration for other agencies.
73					Mr. Byers commented that he doesn't agree that dredge mining activities constitute a "takings" of endangered species.	Refer to IDWR's responses above that address comments submitted by NOAA regarding ESA takings.
74	Mr. Byers commented that generally, IDWR should not promulgate rules that are unenforceable.	Generally, IDWR promulgates regulatory rules that are enforceable.				
75	Larry Domingo	N/A	Written	04/29/21	He noted, dredge nozzles typically suck up material considerably smaller in diameter than the nozzle diameter.	No response.
76					He noted, when dredging is done efficiently only 1/10th of the nozzle diameter is sucking up material.	No response.
77					He stated, overall the first rulemaking meeting achieved what was intended to present a rule that stands to reduce the onerous language and procedures from the mining permitting process.	IDWR interprets this comment as support for the draft rule.
78	Larry Lorenzo	N/A	Oral	04/27/21	Mr. Lorenzo testified that he supports the draft strawman rule as written. "You've done a good job."	IDWR acknowledges the support.
79	Michael Edmondson	N/A	Written	05/11/21	Mr. Edmondson commented that IDWR should remove the phrase "to alter the stream channel" from the proposed rules 61.03.	IDWR's Proposed Rule draft of Rule 61 does not include the phrase "to alter the stream channel" in sub-rule 61.03.
80					Mr. Edmondson noted that he does not support a rule 10.01 definition of "alteration" that is ultimately "determined by the director."	IDWR has not proposed any changes to sub-rule 10.01 through this rulemaking process and does not support the removal of the phrase "determined by the director" through this rulemaking process.
81					Mr. Edmondson commented that he does not support the idea that the mere use of a dredge "alters a stream channel."	IDWR's acknowledges Mr. Edmondson's comment but continues to conclude that suction dredge mining alters stream channels and should be permitted pursuant to the Stream Channel Alteration Act. See I.C. 42-3801 et seq.
82	Richard Wist	N/A	Written	05/28/21	Mr. Wist noted, if rule does not allow boulders to be moved, dredging will not be feasible on many claims.	The Small Scale Mining Permit allows for use of non-powered equipment to move boulders. Further, powered equipment may be used to move boulders when permitted under the Joint Application Permit (3804B).
83					Mr. Wist noted, on streams with few boulders its possible to move up to one cubic yard of material an hour, but on other claims you can't move the same amount of material without moving boulders.	IDWR agrees that the rate of material movement is likely a function of the streambed's particle size distribution at any given mining location.
84					Mr. Wist noted, it is impossible to move large boulders, to maintain a rate of one cubic yard of dredged material an hour without "power."	No response.
85					Mr. Wist noted, moving a cubic yard of material comprised of boulders is no less "disruptive than moving a cubic yard of material without boulders."	No response.
86					Mr. Wist noted that by limiting the size/amount of boulders that can be moved under the rule IDWR would be discriminating against claims where lots of boulders are present.	Some of the discussion during the two rulemaking public meetings focused on if and how to limit the movement or removal of rocks associated with mining activities authorized by Rule 61. There was not unanimous support for any one approach to limiting rock removal. In the end, Proposed Rule 61 addresses rock removal by prohibiting the use of "powered" equipment to move rocks and allowing the use of "non-powered" equipment, such as a come-along, to move rocks. Further, powered equipment may be used to move boulders when permitted under the Joint Application Permit (3804B).

IDWR IDAPA 37.03.07.61 Rulemaking - Comment and Response Summary Table

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87	Robert Taylor	N/A	Written	05/14/21	Mr. Taylor supports a rule change in favor of using mechanical methods to move rocks "over 24 inches."	See IDWR response directly above.
88					Mr. Taylor supports a rule because "suction dredgers should be allowed... "	IDWR acknowledges the support.
89	Ron Miller	N/A	Written	04/28/21	Expressed desire and commitment to testify at the second negotiated rulemaking meeting.	IDWR appreciates all stakeholder participation during the negotiated rulemaking process.
90					Mr. Finnegan noted that he did not object to the proposed strawman rule.	IDWR interprets this comment as support for the draft rule.
91	Pat Finnegan	N/A	Written	06/02/21	Mr. Finnegan commented that regarding dredge mining under a "letter permit", IDWR's permit process and guidance are confusing, and perhaps contradictory to other related state and federal permit processes, making it unclear to the public which rivers are open or closed to dredge mining. E.g., Salmon River from Cherry Creek to Hammer Creek.	IDWR, IDEQ, and other state and federal regulatory agencies have distinct regulatory authorities related to suction dredging. As a result, IDWR recognizes some discrepancies exist between its permit regulations and the related suction dredging permit regulations of other state and federal agencies. Regardless, IDWR is committed to working with stakeholders and other regulatory entities to establish as much consistency and agreement as is possible but it expects that complete agreement is unfeasible.
92					Mr. Finnegan noted that he has personally observed dredge miners conducting dredge mining without all required permits. E.g., IPDES/NPDES permit.	In the past, IDWR has brought enforcement action against dredge miners who were mining inconsistent with or contrary to conditions and limitations of their stream channel alteration permit. In the future, IDWR will continue to enforce against miners who violate the conditions of their permit.
93					Mr. Finnegan noted he has personally observed unclaimed dredge mine sites.	See previous response.
94	Pat Finnegan	N/A	Oral	06/02/21	Mr. Finnegan testified that he supports IDWR's effort to "strengthen and clarify" the regulation. He does not "object" to the Rule 61 draft.	IDWR acknowledges the support.
95					Mr. Finnegan commented that he objects to the current letter permit guidance because it is confusing and contradictory and identifies some stream reaches as open in some documents, which should be closed. Conflict between written documents and mapping tools. Also, the guidance conflicts with DEQ IPDES permit guidance.	IDWR agrees its guidance and mapping tools should be consistent in identifying open and closed waterways. IDWR will review and update its guidance as needed. IDWR, IDEQ, and other state and federal regulatory agencies have distinct regulatory authorities related to suction dredging. As a result, IDWR recognizes some discrepancies exist between its permit regulations and the related suction dredging permit regulations of other state and federal agencies. Regardless, IDWR is committed to working with stakeholders and other regulatory entities to establish as much consistency and agreement as is possible but it expects that complete agreement is unfeasible.
96					IDEQ, supports draft rule's attempt to align IDWR permitting processes with IDEQ's Idaho Pollution Discharge Elimination System ("IPDES") permitting processes to the extent practical.	No response.
97	Troy Smith	Idaho Department of Environmental Quality ("IDEQ")	Written	05/04/21	IDEQ noted that there is no "one quarter (1/4) cubic yard per hour" standard in the current IPDES General Permit IDG37000, except that section II.B.1 limits GEM [Grimes, Elk, and Mores] creeks permittees to "...processing an average of 2 cubic yards per hour..."	IDWR acknowledges differences in permit requirements between its Small Scale Mining Permit process and DEQ's IPDES General Permit for Small Suction Dredge Miners (IDG37000) process.
98					IDEQ noted that IPDES General Permit IDG37000 Section II.D.8 prohibits, "Explosives, motorized winches, or other motorized equipment to move boulders, logs, or other natural obstructions..."	IDWR acknowledges differences in permit requirements between its Small Scale Mining Permit process and DEQ's IPDES IDG37000 process.
99					IDEQ noted the IPDES General Permit IDG370000 Section II.D.9 prohibits, "mechanized equipment" below the mean high water mark, with the exception of the dredge. Note that IDEQ plans to reissue IPDES General Permit IDG37000 before its expiration in 2023.	IDWR looks forward to the opportunity to participate in DEQ's IPDES IDG37000 permit re-issuance process scheduled for 2023. The prohibition of motorized equipment in the IPDES GP is consistent with IDWR's prohibition of powered equipment below the mean high water mark in Rule 61.03 except for the dredge and any human life support system.
100	Troy Smith	IDEQ	Oral	06/02/21	Mr. Smith clarified that high banking that does not return water to the stream does not require an IPDES permit.	See IDWR response to IDEQ's 6/22/21 written comments below.
101					Mr. Smith stated that if high banking activities are returning water to the stream, the activity (1) may be covered under the general permit, or (2) it may require an individual permit.	See IDWR response to IDEQ's 6/22/21 written comments below.
102					IDEQ expressed appreciation for being a part of the rulemaking process and working to better align IDWR's rules with IDEQ IPDES permitting processes.	No response.
103					IDEQ noted typos in rule 61.01 (an "or" for an "of") and 61.02 (unnecessary "and").	IDWR fixed both typos in the Proposed Rule draft.
104	Troy Smith	IDEQ	Written	06/22/21	IDEQ commented that "power sluices" that do not "fit the definition of a small suction dredge in the IPDES General Permit IDG370000 and accompanying fact sheet are not covered by the General Permit as currently written" and would "need to apply for an IPDES individual permit."	No response.
105					IDEQ commented that it plans to reissue the current IPDES General Permit IDG370000 before it expires in 2023 and that there will be a public comment and review period before it is issued.	IDWR will plan to participate in the review and reissuance process for IPDES General Permit IDG37000 and hopes that it can work to IDEQ to address the "power sluice" permitting issue and more generally align IDEQ and IDWR permitting processes.