

Weaver, Mathew

From: Jonathan Oppenheimer <joppenheimer@idahoconservation.org>
Sent: Wednesday, September 22, 2021 3:49 PM
To: Weaver, Mathew
Subject: Re: Idaho Conservation League comments on

yes, please consider as comment on the Sept. 1 proposal rule, sorry I meant to include the Rule citation in the subject line...

thanks,
jdo

On Wed, Sep 22, 2021 at 3:38 PM Weaver, Mathew <Mathew.Weaver@idwr.idaho.gov> wrote:

Jonathan,

Would you like me to consider this a written comment in response to the September 1 Proposed Rule publication?

Also, I assume you were aware that we responded to similar comments raised by ICL and NOAA during the negotiated rulemaking phase. The comment and response summary document is located [here](#).

Thanks,

Mathew Weaver, PE | deputy director

Idaho Department of Water Resources

www.idwr.idaho.gov | 208.287.4800

From: Jonathan Oppenheimer <joppenheimer@idahoconservation.org>
Sent: Wednesday, September 22, 2021 3:22 PM
To: Weaver, Mathew <Mathew.Weaver@idwr.idaho.gov>; Spackman, Gary <Gary.Spackman@idwr.idaho.gov>
Cc: Thorneycroft, Kensie <Kensie.Thorneycroft@idwr.idaho.gov>; Golart, Aaron <Aaron.Golart@idwr.idaho.gov>
Subject: Idaho Conservation League comments on

Dear Director Spackman-

Thank you again for the opportunity to engage with IDWR and other stakeholders in the discussion re: Rule 61 on behalf of the Idaho Conservation League.

ICL remains concerned that there is not sufficient rationale, basis or justification for the proposed changes. The IDWR failed to demonstrate how the agency can better meet its statutory duties by loosening existing rules and restrictions related to suction dredge mining and moving large rocks in stream channels. As ICL previously noted, 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 has failed to provide justification for this proposed rule change and why or how it will be more effective in protecting sensitive riparian areas from the damage associated with suction dredge mining and other stream alteration. Further, IDWR has failed to provide any meaningful analysis as to how the proposed changes better protect the aforementioned values: fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality. Based on the extensive information associated with in-stream mining, increased intensity, increased movement of stream substrate and increased disturbance will only exacerbate the negative effects.

Again, as ICL previously noted, IDWR has not provided any monitoring data to demonstrate what existing impacts from winching, and/or how increased winching may increase those impacts.

Finally, no analysis or input was provided by the Idaho Department of Lands related to the Public Trust responsibilities to protect navigation, fishing and other protected public trust uses. No analysis or disclosure was provided that existing regulations or protections are protecting public trust values, which includes fish and their habitat. Similarly, no rationale was provided as to the effectiveness of avoiding take of endangered species, to the contrary, NOAA Fisheries stated, "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."

As a result, the Idaho Conservation League opposes the proposed rule change, and feels that it would be inconsistent with IDWR's statutory and regulatory obligations, fails to uphold the IDL's public trust responsibilities and increases the liability that the State of Idaho could face as a result of Endangered Species Act violations.

Please don't hesitate to contact me if you have any questions or need any clarification.

Sincerely,

Jonathan

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Jonathan Oppenheimer
External Relations Director

he/him ([what's this?](#))

Idaho Conservation League
PO Box 844, Boise, ID 83701

Shoshone and Bannock tribal lands

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Jonathan Oppenheimer
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