

Recommendation Memo

State of Idaho

Department of Water Resources

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Date: February 26, 2021

To: Idaho Water Resource Board

Thru: Gary Spackman, Director, and Mat Weaver, Deputy Director

From: Tim Luke, Water Compliance Bureau Chief *TJL*

Subject: Recommendation to Initiate Negotiated Rulemaking of Rules 61, Subsections .01 and .03 of IDWR's Stream Channel Alteration Rules, IDAPA 37.03.07 ("Rules").

Purpose of Recommendation

IDWR proposes to conduct negotiated rulemaking related to two subsections of the IDWR Stream Channel Alterations Rule, specifically Rule 61, subsection .01 and .03. Rule 61.01 and .03 define minimum standards to permit suction dredge mining activities on rivers and streams in Idaho. Suction dredge operations meeting these minimum standards are not subject to more stringent procedural permit requirements described by law. Suction dredge operations meeting the Rule 61.01 and .03 minimum standards receive expedited permit approval. Negotiated rulemaking would address whether Rule 61.01 and .03 should be maintained, replaced or removed. IDWR will seek public participation and comment on whether any non-regulatory measures can be implemented in lieu of these subsections.

Retrospective Analysis

1. What are the benefits of the current rule?

Rule 61.01 and .03 benefit the hundreds of Idaho residents and non-residents who engage in prospecting each year using suction dredge mining equipment that meets the minimum standards. This allows them to obtain authorization through an easy, expedited permit approval process.¹

Each year, about 400 gold mining enthusiasts and prospectors obtain this expedited permit, the Idaho Recreational Mining Authorization Letter Permit (the "Letter Permit"). The Letter Permit is analogous to an Idaho fishing license; it requires an applicant to give his or her name, address, the name or names of streams the applicant plans to dredge, and submission of a fee (\$10 for Idaho resident, \$30 for non-resident). The applicant's signature to the Letter Permit certifies the applicant agrees to conduct his or her operations in accordance with the Letter Permit conditions and instructions, and, therefore, the minimum standards set forth in Rule 61.01 and .03.

¹ Idaho Code § 42-3803(d) states "the [Idaho Water Resource] Board may, by regulation, dispense with procedural requirements for permit application and approval contained in this chapter for projects and activities which, in all respects, at least meet minimum standards adopted pursuant to this section."

2. Do the benefits of the rule justify the costs of the rule?

The benefits of the rule justify the costs of the rule for the following reasons:

- The Letter Permit process allows prospectors to reduce time spent on permitting. IDWR estimates applicants spend about 10 minutes to complete a Letter Permit. Whereas IDWR's regular stream channel alteration permit application may take applicants 30 to 60 minutes.
- The Letter Permit is immediately in hand, and available for immediate approval and use upon completion and submittal of the form to IDWR along with the appropriate fee.
- Applicants operating under the Letter Permit also reduce IDWR staff time in reviewing, processing and approving individual applications. The Letter Permit process therefore minimizes IDWR's costs for administering and permitting. If the Letter Permit process is removed, prospectors would have to submit a regular Joint Application for Permit—long form application—with additional information, procedural requirements, and fees. A conservative estimate of additional staff time necessary for review and processing for 400 Joint Applications for Permit per year is about 200 staff hours, or 25 FTE days. The additional time may delay individual permit approvals by 20 days or more.
- Idaho Code § 42-221M states the Letter Permit fee (i.e., recreation dredge permit) is \$10 for state residents and \$30 for non-residents. The fee for all other Joint Applications for Permit is \$20, regardless of residency. Again, if the Letter Permit were removed, prospectors using equipment formerly described by Rule 61.01 and .03 would have to file the Joint Application. A change in application process and fees will likely confuse and frustrate applicants. Moreover, residents would have to pay an additional \$10 fee, while non-residents would pay \$10 less.

3. Are there less restrictive alternatives to accomplish the benefits of the rule?

IDWR has not found less restrictive alternatives to existing Rule 60.01. and .03 that accomplish the same benefits. In the past, a small number of gold prospectors have advocated for removal or modification of Rule 61.03 so they can use mechanized winch equipment to remove large boulders in the stream substrate, largely as a safety precaution. Through negotiation, IDWR may consider modification of the rule to allow specific limited equipment to promote miner safety while also maintaining the integrity of the stream channel. Use of such equipment may be subject to additional permit conditions that require the permit holder to restore the channel to its original configuration.

4. Recommendation

IDWR staff recommends the two sub-rules be repealed and replaced through the negotiated rulemaking process. Pursuant to the negotiated rule process, IDWR staff will seek comment on whether any non-regulatory measures can be implemented in lieu of the two sub-rules.