

Weaver, Mathew

From: Jann Higdem <jhigdem57@gmail.com>
Sent: Tuesday, April 13, 2021 4:18 PM
To: Weaver, Mathew
Cc: Thorneycroft, Kensie; dhembree@nwprospector.org; Luke, Tim; Golart, Aaron; Bob Lowe; Mark Cook; Wayne McCarroll; Larry Domingo; Jeff Miller; Maria & Todd Erickson; Steve Wright; Don Smith; David Miller; Eric Corta; Patrick Reidt; Jay Huber; Phil Hart; Priscilla Giddings; Dorothy Moon; Spackman, Gary
Subject: Re: FW: Notice of Intent to Promulgate Rules
Attachments: 1-15-20 Committee Minutes re Docket 37-000-1900.pdf; 2-5-20 House Resource Committee Minutes.pdf

Good afternoon, Mr. Weaver.

Thank you for your responses to my comments, I appreciate them.

Please forgive my error in citing the incorrect Idaho Code. I meant it is IC [Title 42 Chapter 38](#) that IDAPAs 37.03.07.61.01 & .03 were not congruent with. Several committee members met with IDWR & IDEQ representatives on 2/3/20, and at this special informational meeting, it was Vice Chair Rep. Gestrin who suggested the current rulemaking. There were multiple IDWR representatives at these 2 full committee meetings who know what I am referring to. I did not hear any discussion with the committee regarding the need for this negotiated rulemaking would be based off of a 5-yr review per an E.O., and such a discussion is not in the attached minutes.

It is my hope that any strawman rules for public consideration would, in transparency, reflect the congruency issue to enable adequate commenting as desired by the committee.

Sincerely,
Jann Higdem

On Tue, Apr 13, 2021 at 1:03 PM Weaver, Mathew <Mathew.Weaver@idwr.idaho.gov> wrote:

Jan,

Thank you for your correspondence. As IDWR's *Rules Regulation Officer*, I would like to reply to some of your comments on behalf of IDWR. Now and in the future, I recommend you and other interested parties regularly check IDWR's *Stream Channel Alteration Rules, Rule 61 – Minimum Standards for Suction Dredges and Non-Powered Sluice Equipment* [webpage](#) throughout the rulemaking process to review relevant dates, documents, and other related rulemaking details. For example, although we don't currently have a strawman rule, we hope to develop one and publish it on the webpage for parties to review before the April 27 negotiated rulemaking meeting. Our strawman rule will be a simple draft proposal intended to generate discussion and possibly provoke a new and better proposal from stakeholders during the public rulemaking meeting(s).

Please know we have added you to the list of stakeholders associated with this rulemaking process—any oversight by IDWR that resulted in us missing stakeholders in our initial notice was mine. I can assure you our notice process to date

has been extensive and in conformance with pertinent laws and rules. People not already identified as stakeholders to this rulemaking process can get added to our list by emailing IDWR at rulesinfo@idwr.idaho.gov with their request and clearly identifying their rulemaking of interest (e.g., IDAPA 37.03.07 Stream Channel Alteration Rules).

In response to one of your questions below, viewers are not supposed to do anything with the Prospective Analysis form other than reading it if they are interested. Agencies are required to complete the Prospective Analysis document as a requirement of the Governor's [Executive Order 2020-01 Zero Based Regulation initiative](#). The form and its format are not the work product of IDWR, and folks will just have to make do. I'm happy to answer additional questions about the form and the Governor's Zero-Based Regulation rulemaking process at the upcoming meeting.

Regarding Idaho Code Title 47 Mines and Mining, IDWR has no authority over that code section. Any modifications to Title 47 are under the authority of the Idaho Department of Lands, and it would need to carry those efforts forward. IDWR has authority over, and committed to revisiting the minimum standard requirements surrounding suction dredge mining as specified in Rule 61, sub-rules 01 and 03. Refer to [IDAPA 37.03.07](#) pg. 13.

If you have additional comments or questions that cannot wait until the April 27 rulemaking meeting, I would ask you to call me at 208.287.4800 to discuss.

Thank you,

Mathew Weaver, PE | deputy director

Idaho Department of Water Resources

www.idwr.idaho.gov | 208.287.4800

From: Jann Higdem [mailto:jhigdem57@gmail.com]

Sent: Tuesday, April 13, 2021 11:57 AM

To: Thorneycroft, Kensie <Kensie.Thorneycroft@idwr.idaho.gov>

Cc: dhembree@nwprospector.org; Luke, Tim <Tim.Luke@idwr.idaho.gov>; Golart, Aaron <Aaron.Golart@idwr.idaho.gov>; Bob Lowe <bob@goldfeverminingsupply.com>; Mark Cook <mark2697301@gmail.com>; Wayne McCarroll <mccarroll2297@roadrunner.com>; Larry Domingo <bismarkmines@gmail.com>; Jeff Miller <golddigger@wildblue.net>; Maria & Todd Erickson <goldviper31@hotmail.com>; Steve Wright <steve@cdaminingdistrict.com>; Don Smith <prove356@frontiernet.net>; David Miller <david1.miller@frontier.com>; Eric Corta <eric.corta@gmail.com>; Patrick Reidt <preidt2@yahoo.com>; Jay Huber <jhuber@co.shoshone.id.us>; Phil Hart <northskiguy@yahoo.com>; Priscilla Giddings <pgiddings@house.idaho.gov>; Dorothy Moon <dmoon@house.idaho.gov>; Weaver, Mathew <Mathew.Weaver@idwr.idaho.gov>; Spackman, Gary <Gary.Spackman@idwr.idaho.gov>

Subject: Re: FW: Notice of Intent to Promulgate Rules

Ms Thorneycroft,

Thank you for adding Mr. Hembree & myself to your list of stakeholders & interested parties. I have cc'd others who also need to be added. All are small-scale suction dredge miners & organization heads and as such are stakeholders.

It would be most helpful for IDWR to include a link that goes directly to the Negotiated Rulemaking webpage, rather than having participants try to figure out where it is. The link is: <https://idwr.idaho.gov/legal-actions/rules/stream-channel-rules.html>

Additionally, it is unclear what the viewer is supposed to do regarding the Prospective Analysis document, which states to "Fill out entire form to the best of your ability, unless submitting a Notice to Negotiate only fill out 1,2 and 5". Could you please explain this somewhere? Item 5 Row 2 & Column 2 has a font that is too large and cannot be read in its entirety. Could this font please be amended to match the other 2 in the Potential Impact column; better yet can you please expand this entire section so that all fonts are readable without magnifying to 200%?

It is my understanding that this Negotiated Rulemaking is the result of Mr. Weaver's statement to the Idaho House Resources and Conservation Committee on 2/5/2020 that IDWR would make the current rulemaking IDWR's first priority in 2021 rulemaking efforts. During the 1/15/20 meeting with the same committee, Rep. Giddings brought up that these sections (.01 & .03) were not congruent with Idaho Code 47.13. Mr. Luke's Recommendation Memo "Purpose of Recommendation" fails to address the Idaho Code and IDAPA's need to be congruent with the I.C.. This then becomes misleading to the reader & participants in this rulemaking process. Can this omission please be addressed in a public format?

I doubt the legislature thought late April (14 months later) would be an acceptable time to commence this rulemaking. Starting the process this late ensures that the sections will remain unaltered for yet another year.

Thank you for your considerations,

Jann Higdem

On Tue, Apr 13, 2021 at 10:03 AM Thorneycroft, Kensie <Kensie.Thorneycroft@idwr.idaho.gov> wrote:

Good morning,

Please see the information in the forwarded email below regarding the original Notice of Intent to Promulgate Rules sent out yesterday, April 12, 2021.

Our apologies on missing you on the original email. We have now included you in the list of email recipients to ensure that you will be included on all further notices.

Please let us know if you have any questions or concerns,

Kensie Thorneycroft

Technical Records Specialist 2

Idaho Department of Water Resources

322 E. Front St.
P.O. Box 83720
Boise, Idaho 83720-0098

208-287-4800

From: Thorneycroft, Kensie

Sent: Monday, April 12, 2021 4:26 PM

Cc: Luke, Tim <Tim.Luke@idwr.idaho.gov>; Golart, Aaron <Aaron.Golart@idwr.idaho.gov>; Weaver, Mathew <Mathew.Weaver@idwr.idaho.gov>; Costello, Sean <Sean.Costello@idwr.idaho.gov>; Miller, Nick <Nick.Miller@idwr.idaho.gov>; Cefalo, James <James.Cefalo@idwr.idaho.gov>; Jones, Doug <Doug.Jones@idwr.idaho.gov>; Skinner, Corey <Corey.Skinner@idwr.idaho.gov>; Hogens, Todd <Todd.Hogens@idwr.idaho.gov>; Olson, Aaron <Aaron.Olson@idwr.idaho.gov>; Erickson, Nathan <Nathan.Erickson@idwr.idaho.gov>; Jones, Cass <Cass.Jones@idwr.idaho.gov>

Subject: Notice of Intent to Promulgate Rules

Dear Interested Stakeholders and Parties,

The Idaho Department of Water Resources (IDWR) wishes to notify you of a **Public Meeting** scheduled for **April 27, 2021** regarding negotiated rulemaking specific to Rule 61.01 and 61.03 of IDWR's Stream Channel

Alteration Rules, IDAPA 37.03.07. These specific rule subsections define minimum standards to permit small scale suction dredge mining operations on rivers and streams in Idaho. Suction dredge operations meeting these minimum rules standards may receive expedited permit approval and are not subject to more stringent permit requirements described by Idaho law.

Please refer to the attached Notice of Intent to Promulgate Rulemaking for further information about the public meeting, proposed rulemaking and assistance. Please note that you must contact IDWR by **April 21, 2021** to sign up for meeting attendance by telephone or videoconference.

In addition to the contact information given in the attached notice, you may also contact either Aaron Golart or Tim Luke, IDWR at 208-287-4800, or by email at agolart@idwr.idaho.gov or tluke@idwr.idaho.gov.

Respectfully,

Aaron Golart
State Coordinator, Stream Protection Program
Idaho Department of Water Resources
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Boise, Idaho 83720-0098
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