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Troy Smith
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706

Submitted via email to: troy.smith@deq.idaho.gov and paula.wilson@deq.idaho.gov

April 23, 2020

RE: IPDES Program: Docket No. 58-0125-2001 Negotiated Rulemaking

Dear Mr. Smith:

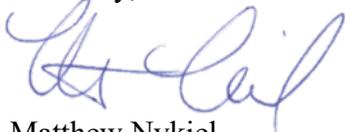
Since 1973, the Idaho Conservation League (“ICL”) has been Idaho’s leading voice for clean water, clean air, and wilderness – values that are the foundation for Idaho’s extraordinary quality of life. As a 501(c)(3) nonprofit organization, ICL works to protect these values through public education, outreach, advocacy, and policy development. ICL is Idaho's largest state-based conservation organization and represents over 35,000 supporters, many of whom have a deep personal interest in protecting Idaho’s human health and environment.

Attached, please find my comments on behalf of the Idaho Conservation League regarding Docket No. 58-0125-2001.

Please do not hesitate to contact me at (208) 265-9565 or mnykiel@idahoconservation.org if you have any questions regarding our comments or if we can provide you with any additional information on this matter.

Thank you for your time and consideration.

Sincerely,



Matthew Nykiel
Conservation Associate

The Idaho Conservation League (“ICL”) requests DEQ promulgate rules requiring appropriate IPDES fees for suction dredge permits to ensure Idaho taxpayers are not subsidizing the costs associated with permitting, inspecting, enforcing, and administering the general permit for suction dredge operations and authorizing coverage under that general permit. Setting an appropriate fee schedule now is important for several reasons that we discuss below.

IDWR Revenue Inadequate to Cover Costs of Suction Dredge Permitting

In a November 2018 memorandum issued to the Idaho Water Resource Board, the Compliance Bureau Chief for the Idaho Department of Water Resources (“IDWR”) explained that the cost for IDWR to permit suction dredge mining over the past four years had vastly outpaced the fee revenue IDWR received to administer this permit program.¹ For example, although the cost for IDWR to administer the suction dredge mining permit program between November 1, 2017 through October 31, 2018 was over \$46,000, IDWR only recouped a total of \$8,030 in suction dredge mining permit fees in fiscal year 2018.

Because DEQ has not yet begun to administer the general permit for suction dredge mining in Idaho the exact cost associated with administering this program is unknown. Accordingly, DEQ should use this rulemaking opportunity to ensure that the agency receives sufficient revenue to cover anticipated costs. It is far easier to reduce fees at a later stage, if DEQ determines that administrative costs are less than anticipated.

The Majority of Pacific Northwest States Assess Fees for Suction Dredge Permits

Most of Idaho’s neighboring state water quality agencies have found that to be fiscally responsible permit fees are necessary to cover the costs of permitting suction dredging. Table 1 below shows fee schedules for suction dredge permits.

¹ See Attachment 1.

Table 1.

	Application (resident)	Annual (resident)	Application (non-resident)	Annual (non-resident)
Oregon²	\$250	\$250	\$250	\$250
Montana³	\$50	\$25	\$200	\$100
Alaska⁴	-	\$25	-	\$25
Utah⁵	-	-	-	-
Nevada	-	-	-	-
Wyoming	-	-	-	-
IDWR⁶	\$20	\$10	\$20	\$30

Table 1 does not include Washington State because last month the Governor of Washington State signed Washington State House Bill 1261 into law, which prohibits suction dredging in any waters of the state designated critical habitat or in waters that would impact critical habitat for salmon, steelhead, or bull trout.⁷ The law also directs the Washington Department of Ecology to evaluate the state’s current permitting scheme for suction dredging, so the fee schedule for suction dredge permitting in Washington State is likely to change.

Suction Dredge Applications in Idaho are Increasing

DEQ should also set fees for suction dredge IPDES permits because suction dredge permits have been increasing in Idaho and suction dredging restrictions are expanding in the states surrounding Idaho.

As indicated in the IDWR memorandum cited above, between fiscal year 2105 and fiscal year 2018 total suction dredge permits increased nearly 30%. Over that time, resident suction dredge permits increased by 21% and non-resident permits increased by 47%. We expect these trends to continue given increasing suction dredging restrictions in the western United States. For example, suction dredging is currently prohibited throughout California, and many suction dredge operators have identified Idaho as an alternative location.⁸ Similarly, since 2017 Oregon has prohibited suction dredging in any river or stream that contains essential salmonid habitat.⁹

² See State of Oregon Department of Environmental Quality OAR 430-045-0075 Tables available at <https://www.oregon.gov/deq/Rulemaking%20Docs/340-045-0075WQFeeTables.pdf>.

³ Montana also includes a fee for major modifications. See Montana Department of Environmental Quality Surface Water Discharges available at <https://deq.mt.gov/Water/permits/Discharges>.

⁴ See Alaska Department of Environmental Conservation Small Suction Dredge General Permit – AKG375000 Discharge Registration – Frequently Asked Questions available at <file:///Users/iclnorthidaho/Downloads/akg375000-registration-faq.pdf>.

⁵ The Utah Department of Environmental Quality currently has no fee schedule for suction dredging because it has issued no permits for suction dredging at this time.

⁶ We include IDWR’s fees for reference.

⁷ See Washington State House Bill 1261 available at <https://app.leg.wa.gov/billsummary?BillNumber=1261&Year=2019&Initiative=false>.

⁸ See California Department of Fish and Wildlife, Suction Dredge Permits at <https://wildlife.ca.gov/Licensing/Suction-Dredge-Permits>.

⁹ See Oregon Senate Bill 3, 2017 Session available at <https://gov.oregonlive.com/bill/2017/SB3/>.

And, just this year Washington State prohibited suction dredging in waters designated critical habitat or in waters that would impact critical habitat for salmon, steelhead, or bull trout, as indicated above. As a result, it is likely that suction dredge activity will continue to increase in Idaho, and DEQ must ensure it receives sufficient fee revenue to support the administration and oversight of its IPDES program for suction dredge permits.

Recommendations

ICL recommends DEQ propose an appropriate fee schedule that will ensure the costs associated with administering the general permit for suction dredging are covered both now, and in the event that suction dredge permits continue to increase. To assess an appropriate fee, DEQ should provide the stakeholders in this negotiated rulemaking a discussion paper that analyzes and evaluates the following items:

- Re-evaluate and provide DEQ's workload requirements for permitting, inspecting, enforcing, and administering the general permit for suction dredge mining according to the process and model established in Appendix C of DEQ's Program Description of the Idaho Pollutant Discharge Elimination System, as revised in July 2017.
- In addition, the analysis should include, but not be limited to, the following:
 - An accounting of the number of suction dredge operations that were authorized in Idaho over the past five years;
 - A forecast of the number of permits DEQ expects to process and issue over the next five years;
 - A discussion of whether and why the general permit for suction dredging is modeled as a complex or simple general permit;
 - The definition of "small scale suction dredges;" and
 - An update of current permitting costs associated with IDWR's suction dredge permitting program.

Memorandum



To: Idaho Water Resource Board
From: Tim Luke, IDWR Compliance Bureau Chief
Date: November 9, 2018
Re: Stream Channel Alteration and Dredge Mining Permit Updates

REQUIRED ACTION: No action is required at this time.

Background and Purpose

The Director recently asked IDWR Compliance Bureau staff to summarize costs and revenues for suction dredge mining and stream channel alteration permitting programs. This request was made following some questions and discussion at the last IWRB meeting in Salmon regarding IDWR staff time and costs associated with dredge mining permitting and monitoring over the past year for the South Fork Clearwater River (“SFCR”) basin. This memo summarizes permit levels and program costs and revenues over the past four to five years. This memo also gives an update on 2018 suction dredge permit approvals and activities in the SFCR basin, including time and costs to administer the suction dredge permit program in the SFCR over the past twelve months, from November 1, 2017 through October 31, 2018.

Suction Dredge Mining Permits and Revenues

Figures 1 and 2 below show respectively the total number of suction dredge mining permits issued and application fees received from Fiscal Year (“FY”) 2015 through FY2018. Review is limited to the last four fiscal years since IDWR did not have a dredge mining permit tracking database until half way through FY2014.

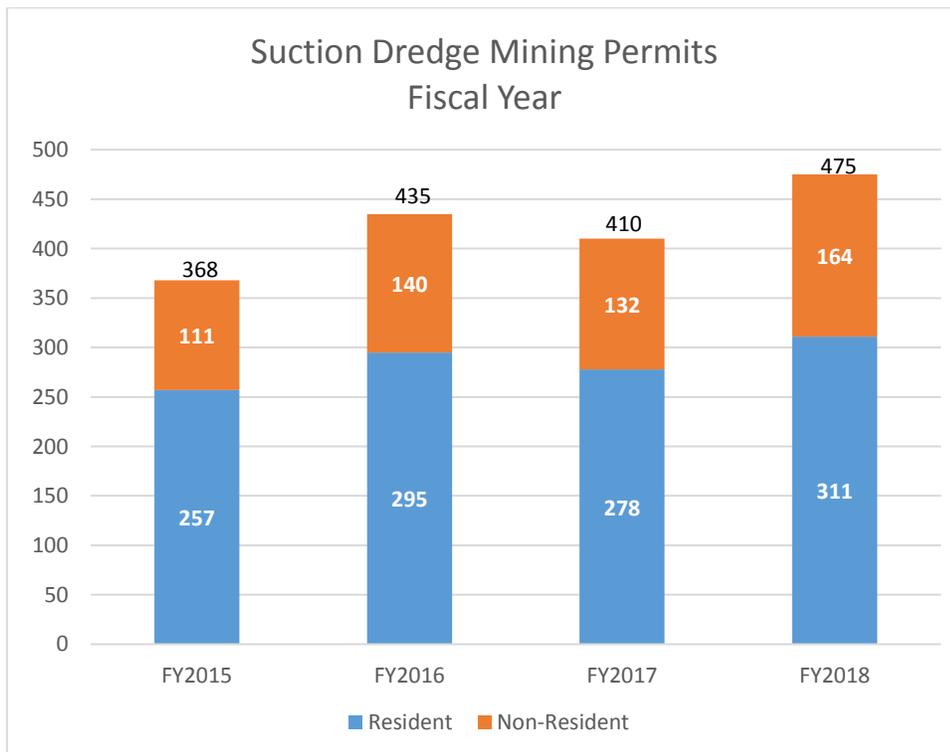


Figure 1.

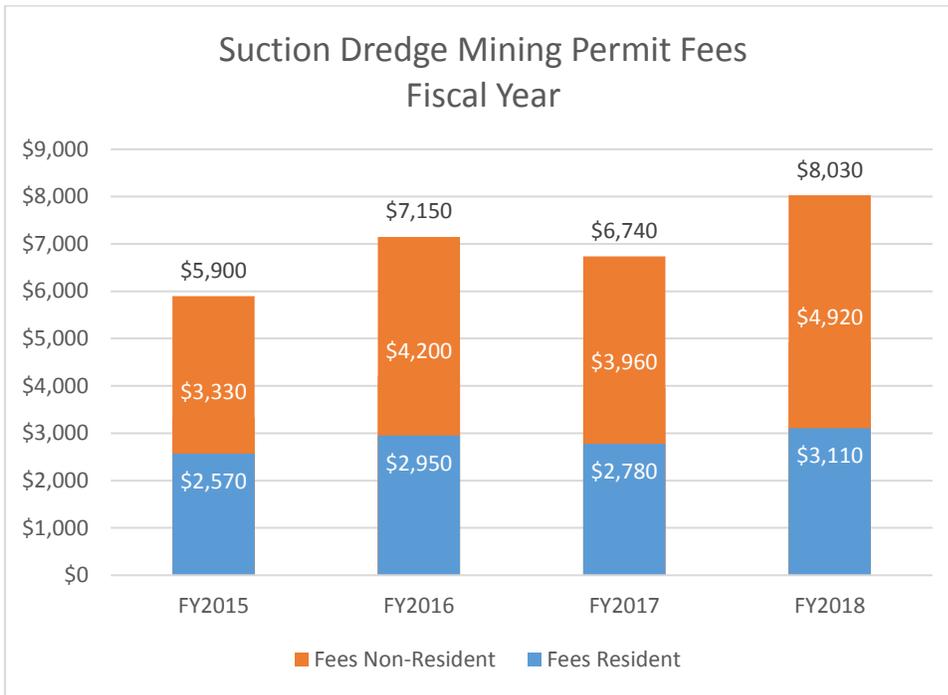


Figure 2.

Figure 1 shows both total permits per fiscal year as well as the number of resident and non-resident permits per year. The number of resident permits is roughly double the number of non-resident permits each year. The resident and non-resident permit fees are \$10 and \$30 respectively. *Idaho Code § 42-221M*. As seen in Figure 2, non-resident fees exceed resident fees by 23 to 37 percent depending on the year.

Stream Channel Alteration Joint Application Permits and Fees

Figures 1 and 2 below show respectively the total number of stream channel alteration Joint Application permits issued and permit application fees received from FY2014 through FY2018.

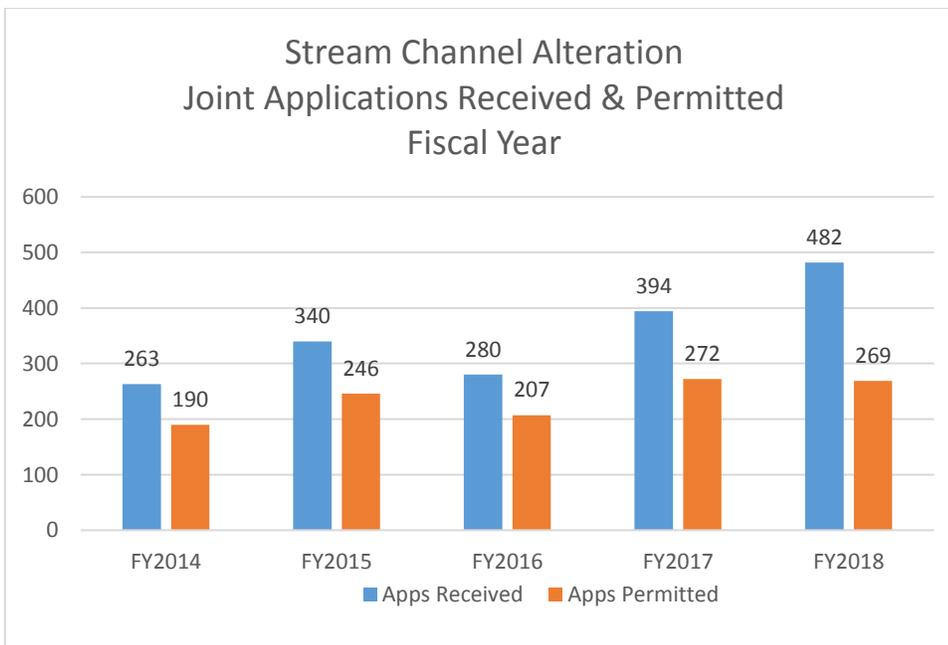


Figure 3.

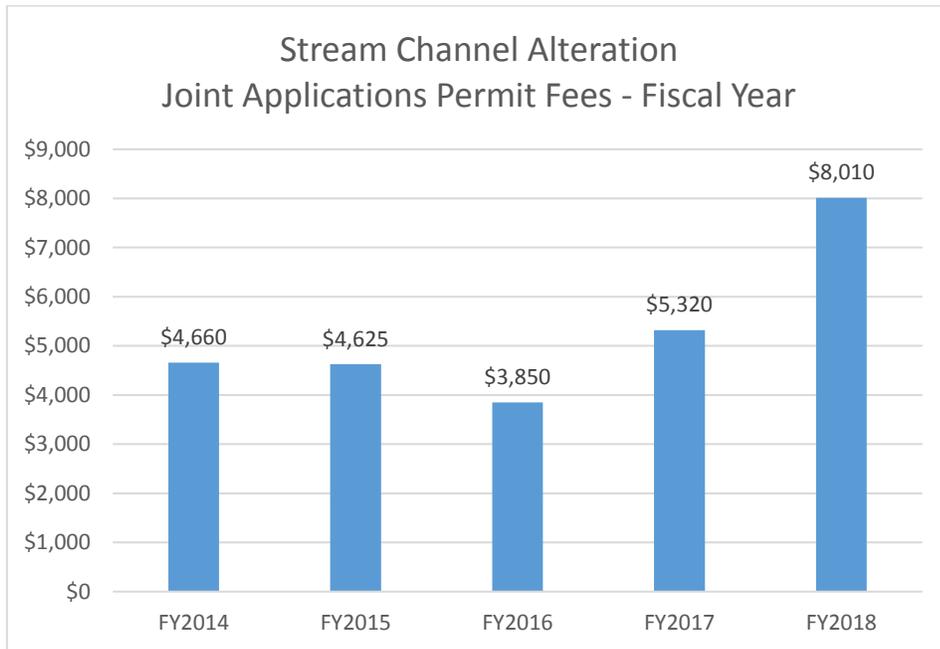


Figure 4.

The fee for filing a stream channel alteration Joint Application is \$20 per application. *Idaho Code § 42-221M*. Total revenue for both dredge mining and stream channel alteration permit programs from FY2015 through FY2018 ranged between \$10,525 and \$16,040. The average annual revenue from both permit programs for the same period is about \$12,400.

Dredge Mining Permit Program Costs: 2017-2018

Staff estimates that IDWR costs for administering the suction dredge mining permit program over the past year (November 1, 2017 through October 31, 2018) was over \$46,000. About \$40,000 is attributed to the SFCR basin. Staff estimates costs for administering the permit program for the rest of the state over the past year was about \$6,000, which is representative of program costs for the rest of the state in recent fiscal years.

The approximate \$40,000 cost for the SFCR over the past year includes about \$24,000 in IDWR personnel and related costs (travel and lodging), and about \$16,000 for a fishery biologist contract to complete pre-season delineated site inspections required by the IWRB’s SFCR Basin Comprehensive Water Plan. The current contract expenditure also includes some post-season monitoring field work.

Stream Channel Alteration Joint Permit Program Costs

IDWR currently employs 3.5 full-time employees (“FTEs”) in the stream channel alteration program statewide, including two FTEs at the State office, one FTE at the Northern Region office, and one-half FTE at the Eastern Region office. The program is supported by the Compliance Bureau Chief and the Compliance Bureau Technical Records Specialist, as well as clerical staff at the Northern and Eastern Regions. Stream channel alteration program staff and support personnel also administer both the stream channel alteration permit and the suction dredge mining permit programs.

A detailed review of Stream Channel Alteration program costs for recent fiscal years was not made for purposes of this memo. However, total FY2019 personnel costs for 3.5 FTEs alone is projected to be over \$170,000 (salary costs only, fringe benefits not included).

Potential Fee Changes and Requirements

Staff has no specific recommendations at this time regarding potential fee changes for either suction dredge mining permits or stream channel alteration Joint Application permits. Fees for both types of permits are set by Idaho Code § 42-221M. The dredge mining permit and stream channel alteration permit fees were first set by the Legislature in 1994 at \$10 for a dredge mining permit and \$20 for all other stream channel alteration permits. In 1997, the Legislature amended the dredge mining permit fee structure to \$10 for a resident and \$30 for a non-resident. There have been no fee changes since 1997.

Any change to the fee structure would require a statute amendment. Any amendment ideas proposed by IDWR or the IWRB must be submitted to the Governor's Office by about July 1 of each year to be considered in the following legislative session. Subsequently, the 2020 legislative session is the earliest any legislative change proposed by IDWR or the IWRB can be considered.

2018 South Fork Clearwater River Suction Dredge Permitting

Staff updated the IWRB on the status of IDWR's 2018 suction dredge mining regulations for the South Fork Clearwater River ("SFCR") Basin at the IWRB's May 2018 meeting in Boise. Specifically, staff summarized the outcome of the 2017 IDWR-IWRB listening sessions, technical memos and changes to the 2018 SFCR Special Supplement Permit instructions and conditions. Perhaps the most significant change in 2018 was the elimination of any permit approval limit. IDWR had limited the total number of Special Supplement approvals to 15 dredges on the SFCR in 2016 and 2017. The Federal government (US Forest Service, BLM and EPA) maintained a 15 dredge permit limit on the SFCR in 2018 under its permitting regulations. In 2018, IDWR received 28 SFCR Special Supplement permit requests and approved 26 permits. Additionally, IDWR received four requests for dredge locations on tributary streams using the Stream Channel Alteration Joint Permit application. Three of these four requests were approved.

In accordance with the IWRB's SFCR Basin Comprehensive State Water Plan, IDWR conducted pre-season site inspections with a fishery biologist at 30 permit request sites. Fourteen of the 29 IDWR permitted sites were inspected by IDWR staff with a US Forest Service or BLM fishery biologist because dredge miners submitted applications with the Federal government for those sites. Sixteen sites (15 permitted and one non-permitted) were inspected by IDWR staff and a private fishery biologist hired by IDWR under contract. In 2018, IDWR staff scheduled two pre-season trips to the SFCR to complete site inspections. Staff made at least 5 trips to the SFCR during the dredge season to monitor activities, and made one post-season monitoring site trip. Staff were normally on the river two days per trip. IDWR issued Notice of Violations ("NOVs") to two dredge miners on the SFCR due to lack of compliance with permit conditions. Both NOV's have been resolved. IDWR is reviewing information collected during its post-season monitoring trip and will consider whether any additional NOVs are warranted. Staff will complete a post-season summary report and memo by February 1, 2019.

IDWR may contract with a fishery biologist next year to conduct some pre-season inspections and both pre-season and post-season monitoring. Contract costs in 2019 will likely be similar to 2018 but may vary depending on the number of dredge mining applications received.