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NO. _____ FILED _____
A.M. _____ P.M. _____

OCT 12 2012

CHRISTOPHER D. RICH, Clerk
By ELYSHIA HOLMES
DEPUTY

Attorney for Petitioner Idaho
Conservation League

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

CV OC 1218520

IDAHO CONSERVATION LEAGUE,)
an Idaho non-profit organization,)
)
Petitioner,)
)
vs.)
)
STATE BOARD OF LAND)
COMMISSIONERS, and)
IDAHO DEPARTMENT OF LANDS,)
)
Respondents.)
_____)

Case No. _____

**PETITION FOR
JUDICIAL REVIEW**

INTRODUCTION

1. Petitioner IDAHO CONSERVATION LEAGUE hereby seeks judicial review, pursuant to the Idaho Administrative Procedure Act, I.C. § 67-5270 *et seq.* ("Idaho APA"), and Idaho Rule of Civil Procedure 84, of the September 18, 2012 decision by Respondents State Board of Land Commissioners and Idaho Department of Lands to approve riverbed mineral lease E500010 to Mike Conklin to operate a suction dredge on a half-mile segment of the bed of the Salmon River located approximately 13 miles downstream of Riggins, Idaho.

PARTIES

2. Petitioner IDAHO CONSERVATION LEAGUE ("ICL") is a non-profit conservation organization incorporated under the laws of Idaho with its principal place of business in Boise, Idaho. ICL's mission is to protect Idaho's environment.

3. ICL and its approximately 20,000 members and supporters are dedicated to protecting and conserving Idaho's natural resources, including its water resources. ICL, as an organization and on behalf of its staff and members and supporters, is greatly concerned with protecting and improving the quality of the waters of the State of Idaho. ICL and its members and supporters are active in public education, administration, and legislation of conservation issues in Idaho, including water quality and mining issues.

4. ICL members live, work, and frequently use and enjoy the public lands and waters of the Salmon River area in and around the vicinity of the Conklin lease site for many purposes, including fishing, boating, and other recreation. The substantial interests of ICL and its members are adversely affected and prejudiced by the decision challenged herein.

5. Respondent STATE BOARD OF LAND COMMISSIONERS ("Land Board") is an agency of the State of Idaho and was established by the Idaho Constitution, Article IX, to direct, control, and dispose of the public lands of the state, including mineral deposits on state lands.

6. Respondent, the IDAHO DEPARTMENT OF LANDS ("Department"), is an agency of the State of Idaho, created and existing under the authority of Idaho Code § 58-101 *et seq.*, which has responsibility of managing, under the Land Board's direction, the public lands of Idaho, including riverbeds to which the State of Idaho holds title.

JURISDICTION AND VENUE

7. This Court has jurisdiction of the parties and subject matter of this action pursuant to the Idaho APA, Idaho Code Sections 67-5270 *et seq.*

8. Proper venue lies in Ada County, Idaho, because the Respondents are located in Ada County, and the actions and refusals to act complained of herein occurred in this county.

FACTUAL ALLEGATIONS

9. Under the Equal Footing Doctrine, the State of Idaho received title to submerged lands underlying navigable water bodies below the ordinary high water mark (“OHWM”) upon statehood. These submerged lands are held in trust by the State for the benefit of the public. The Land Board is statutorily designated as the trustee of these submerged lands, which it administers through the Department. I.C. § 58-104(9).

10. As a public trust resource, Idaho’s submerged lands are held and managed by the State, through the Land Board and Department, for the use and benefit of the public. *Kootenai Envtl. Alliance v. Panhandle Yacht Club*, 105 Idaho 622, 625 (1983).

11. On September 28, 2011, Conklin submitted a riverbed mineral lease application to the Department seeking a five year lease to conduct suction dredge mining on the submerged lands of the Salmon River. The Conklin lease site is below the OHWM of the Salmon River on Idaho state land. Conklin applied to operate a suction dredge at the site.

12. A suction dredge uses a high pressure gasoline powered water pump to suck up riverbed material and water. The riverbed material and water are then run through a sluice box to separate out valuable minerals, and the remaining riverbed material and water are discharged back to the river.

13. Conklin applied to suction dredge 10 cubic yards of material from the bed of the Salmon River every day of the 128-day annual operating season over the five-year term of the lease. Conklin's application materials demonstrate that his proposed suction dredge mining operations would affect more than a half-acre of the submerged lands of the Salmon River.

14. On December 29, 2011, Conklin submitted a Joint Application for Permits for the lease operations to the Department as well as the Idaho Department of Water Resources ("IDWR") and the United States Department of the Army Corps of Engineers. Conklin submitted a revised application on February 2, 2012.

15. On March 23, 2012, ICL submitted timely written comments to the Department opposing the lease on various grounds, including the adverse impacts of suction dredge mining on water quality and aquatic life.

16. On May 22, 2012, the Department conducted a public hearing regarding the Conklin lease, at which ICL and ICL members submitted written comments and testified.

17. On July 14, 2012, the Department's Hearing Coordinator issued a Recommendation and Final Order recommending that the Land Board approve the Conklin lease.

18. At the regular Land Board meeting of August 21, 2012, ICL testified in opposition to the recommended lease, arguing that issuance of the lease would not comply with various aspects of Idaho statutes and regulations, which among other things require a reclamation plan and corresponding bond, and that Conklin must obtain a water right to operate the suction dredge equipment. In light of ICL's testimony, the Land Board postponed making a decision on the Conklin lease in order to further consider the matter until the next regular Land Board meeting on September 18, 2012.

19. Prior to the September 18th Land Board meeting, Department staff circulated a memo to the Land Board addressing issues raised by ICL at the August 21st Land Board meeting. ICL submitted a response to the memo and testified at the September 18th Land Board meeting, again arguing that Conklin is required by state law to submit a reclamation plan and obtain a water right prior to obtaining the lease, among other arguments.

20. At the September 18, 2012 meeting, the Land Board rejected ICL's objections and voted to approve the Conklin lease as recommended by the Department staff memorandum, allowing Conklin to conduct suction dredge mining in the Salmon River for five years without requiring Conklin to submit a reclamation plan or obtain a water right, and without adhering to all applicable requirements of Idaho statutes and regulations.

21. The Land Board's September 18, 2012 decision to award Conklin the requested lease constitutes a final agency action, for which ICL now seeks judicial review by this Court pursuant to the Idaho APA and Idaho Rule of Civil Procedure 84.

22. ICL, as an organization and on behalf of its members and supporters, is substantially prejudiced and harmed by Respondents' approval of the Conklin lease without requiring Conklin to comply with applicable provisions of law, thereby allowing Conklin to conduct suction dredge mining operations on the Salmon River over the next five years and causing adverse impacts to water quality, fisheries habitat, and the use and enjoyment by ICL members and supporters of the many resources associated with the Salmon River in the area affected by the Conklin suction dredging.

23. ICL hereby petitions for judicial review of the foregoing September 18, 2012 decision approving the Conklin lease under the provisions of the Idaho APA, I.C. § 67-5270 *et seq.*,

and I.R.C.P. 84; and ICL respectfully prays for reversal and remand of Respondents' decisions, pursuant to I.C. § 67-5279, as being in violation of the constitutional or statutory authority of the agency, in excess of the statutory authority of the agency, not supported by substantial evidence in the record, or arbitrary, capricious, or an abuse of discretion.

REQUEST FOR TRANSCRIPTS

24. ICL requests a transcript of the May 22, 2012 public hearing before the Department regarding the Conklin lease, as well as transcripts of the relevant portions of the Land Board meeting of August 21, 2012, and the Land Board meeting of September 18, 2012. ICL is informed and believes that these hearings were recorded by audio recording and/or stenograph methods by staff or personnel of the Department.

STATEMENT OF THE ISSUES

25. Whether Respondents erred in determining that the Conklin suction dredge operation is not subject to the Dredge and Placer Mining Protection Act, Idaho Code § 47-1312 *et seq.*, including the application, permit, bond, and reclamation requirements of Idaho Code §§ 47-1314 and 47-1317, thus requiring reversal and remand under the Idaho APA.

26. Whether Respondents erred in determining that the Conklin suction dredge operation is not subject to the Idaho Surface Mining Act, Idaho Code § 47-1501 *et seq.*, including the reclamation plan and operating plan requirements of Idaho Code §§ 47-1506(b) and 47-1506(d), thus requiring reversal and remand under the Idaho APA.

27. Whether Respondents erred in failing to apply all applicable provisions of Idaho Code § 47-701 *et seq.* ("Mineral Rights in State Lands Act") to the Conklin suction dredge operation, including the reclamation plan requirement of Idaho Code § 47-703A, thus requiring

reversal and remand under the Idaho APA.

28. Whether Respondents erred in determining that no water right is required under Idaho law for the Conklin suction dredge operation, requiring reversal and remand under the Idaho APA.

PRAYER FOR RELIEF

WHEREFORE, ICL respectfully prays the Court to reverse and remand the Respondents' September 18, 2012 decision pursuant to the Idaho APA, as being in violation of the constitutional or statutory authority of the agency, in excess of the statutory authority of the agency, not supported by substantial evidence in the record, and/or arbitrary, capricious, or an abuse of discretion.

ICL also requests attorney's fees pursuant to Idaho Code § 12-117 and any other applicable fee provisions.

DATED: October 12, 2012

Respectfully Submitted,



Bryan Hurlbutt
Attorney for Petitioner Idaho Conservation League

I.R.C.P. 84(d) CERTIFICATION

I hereby certify that on this October 12, 2012, I caused to be served true and correct copies of the foregoing PETITION FOR JUDICIAL REVIEW in this matter by first-class U.S. Mail upon the following persons:

Steven J. Schuster, Esq.,
Deputy Attorney General
Office of the Attorney General
P.O. Box 83720
Boise, ID 83720-0010
(Attorney for Land Board and Department)

Mike Conklin
408 Cunningham
Grangeville, ID 83530
(Applicant)

I further hereby certify that on this same date, I caused payment to be made to Respondents, via service upon Deputy Attorney General Steven J. Schuster, a check in the amount of \$250 representing the estimated fee for the preparation of the requested transcripts and record.



Bryan Hurlbutt