



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

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C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

SENT BY ELECTRONIC MAIL ONLY

June 6, 2017

Tenmile Mining District  
Attention: David P. Hembree  
16170 Hollow Road, Suite 102  
Caldwell, ID 83607

**RE: Response to letters from the Tenmile Mining District regarding suction dredge mining on the South Fork Clearwater River**

Mr. Hembree,

Thank you for your on-going interest and correspondence regarding small scale suction dredge mining on the South Fork Clearwater River (SFCR). This letter is in response to correspondence received by the Idaho Water Resource Board (Board) and Idaho Department of Water Resources (Department) from you and the Tenmile Mining District (TMD) dated April 12, 2017 (letter to Aaron Golart), April 24, 2017 (letter to Roger Chase), May 22, 2017 (letter to Mat Weaver) and June 5, 2017 (letter to Roger Chase). With this letter I am responding to issues raised by you and the TMD and informing you of the process and timeline to receive Special Supplement permits to mine the SFCR in the summer of 2017.

In reviewing your correspondence I have identified the following issues that you raised regarding suction dredge mining on the SFCR:

1. Desire by the TMD for the Department to accept requests to suction dredge mine on the SFCR submitted on the *Joint Application for Permit Form 3804-B* (3804-B application) instead of the *SFCR Special Supplement* (Special Supplement application)
2. Disagreement by the TMD of the Department's use of an updated Special Supplement application to permit suction dredge mining on the SFCR
3. Disagreement by the TMD with many of the 25 conditions currently placed on the Special Supplement application by the Department and with the Department's authority to place conditions on suction dredge mining on the SFCR not expressly stated in the *Comprehensive State Water Plan South Fork Clearwater River Basin* (SFCR Basin Plan)
4. Desire by the TMD to permit mining activity within its boundaries

**Department Rejection of 3804-B Applications to Suction Dredge Mine on the SFCR**

In January of 2017, the Department received four separate 3804-B applications from individuals wishing to suction dredge mine the mainstem SFCR. After careful consideration of the applications, review of the SFCR Basin Plan, and discussions with members of the Department's executive management and legal counsel, the Department sent letters to the four applicants informing them that the Department would not process the 3804-B applications.

Instead, the Department stated, “To obtain [approval to suction dredge mine on the mainstem SFCR] you must complete and submit to Department the enclosed Special Supplement (including the required diagram and maps).” In its letter the Department articulated its reasoning for requiring use of the Special Supplement application including references to the SFCR Basin Plan and the legal basis supporting the Department’s interpretation.

In response, you sent a letter on behalf of the TMD to Aaron Golart dated April 12, 2017. In your letter you questioned the Department’s interpretation of the SCRC Basin Plan and disagreed with the Department’s decision to require the use of the Special Supplement application stating, “[The TMD does] not believe you have such authority.” In the April 12 letter you go on to state that if the Department continues to require use of the Special Supplement application, “[the TMD] will have to reject your determination in its entirety and seek remedy through other actions.”

The Department continues to believe the best and most legally defensible interpretation of the SFCR Basin Plan requires use of the Special Supplement application and approval process to permit suction dredge mining on the SFCR mainstem. If the applicants disagree with this position they can submit a written petition to the Board asking for a hearing pursuant to Rule 230 of the Board’s rules of procedure (IDAPA 37.03.01).<sup>1</sup> In general, the Board then holds a hearing and issues an order. That order is appealable to District Court and then the Idaho Supreme Court for final judicial review.

#### **Use of the Updated Special Supplement Form Including the 25 Conditions**

The SFCR Basin Plan specifies the SFCR may be dredged “if request is made on the Special Supplement.” From 2004 to 2009 the Department permitted suction dredge mining on the mainstem SFCR under the Special Supplement application. As a result of the economic downturn and the resulting reduction in Stream Channel program staff, the Department discontinued use of the Special Supplement in 2010 relying instead on the standard letter permit. The letter permit process was used from 2010 to 2015. In 2016, in response to concerns raised by the public that suction dredge mining on the SFCR was not being permitted consistent with the SFCR Basin Plan, the Department reinitiated the Special Supplement application. In 2016 the Department updated the Special Supplement application and issued fifteen (15) permits. The permits were issued with 25 standard conditions that restricted mining activity to conform to the SFCR Basin Plan goals and objectives.

In your past letters you have taken issue with the Department’s use of the Special Supplement application and many of the 25 conditions. In your April 24 letter you stated, “[The Department’s] insistence that the new special supplement created in 2016 is a mandatory prerequisite for a small scale dredging permit and is not subject to negotiations with our district are completely unacceptable conditions... .” Attached to the April 24 letter was a document containing discussion of the conditions with proposed revised conditional language acceptable to the TMD. In your May 22 and June 5 letters you again request consideration and discussion on your proposed revised special supplement conditions.

Pursuant to the SFCR Basin Plan, the Department may update the Special Supplement application. Moreover, the Special Supplement as drafted in 2004 included a condition allowing the Department to impose additional conditions or operational restrictions on any future approval. However, we appreciate your offer to discuss revised conditions and appreciate you taking the time to submit suggested conditions. As Roger Chase and I relayed to you in our meeting on May 17 in Lewiston, the Department and the Board are committed to reviewing your proposed conditions. We have already met internally to review each of the proposed conditions in your April 24 letter attachment. Some of your requests run contrary to explicit language in the SFCR Basin Plan and we cannot consider

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<sup>1</sup> While the rules are officially titled *Rules of Procedure of the Idaho Department of Water Resources*, the rules also govern administrative hearings before the Board. IDAPA 37.01.01.003.

these changes you have suggested. However, a number of your proposals can be considered, but because changes to permit conditions affect a stakeholder group larger than the TMD we feel it is necessary to schedule a public meeting to allow for comment on this matter. The Board has scheduled a meeting in Grangeville for the evening of June 21, 2017. Notice of this public meeting will be posted to the Department's webpage tomorrow. Following the public meeting the Department will move quickly to issue Special Supplements with revised conditions for the 2017 suction dredge season.

<http://www.idwr.idaho.gov/Board/meetings/>

#### **Authority of the TMD to Authorize Dredge Mining Contrary to Idaho's SFCR Basin Plan**

In your letters dated April 24 and June 5 you have proposed using suction dredging regulations and forms prepared by the TMD to permit suction dredging activity in your district. TMD seemingly suggests it can authorize suction dredge mining in contravention to Idaho's SFCR Basin Plan. States have the authority to regulate mining on federal lands. *See California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572 (1987), *see also Butte City Water Co. v. Baker*, 196 U.S. 119 (1905). The SFCR Basin plan imposes conditions to protect Idaho's waters and wildlife. The conditions are necessary to protect the State's interest in its resources and as such, are reasonable exercises of Idaho's power over its resources in which the TMD cannot interfere.

#### **Moving Forward**

Let me reiterate that both the Department and the Board are committed to considering your proposed changes to the Special Supplement. We have already initiated review internally and have scheduled a public meeting in Grangeville to take public comment on the matter. We believe there is still time to receive and process Special Supplement applications, to conduct site inspections, to conduct the June 21 public meeting, and issue Special Supplement permits with revised conditions in time for the July 15 to August 15 suction dredge season. To that end we encourage all prospective dredgers to submit Special Supplement applications to the Department as soon as possible. Although the *2017 Department South Fork Clearwater River Special Supplement Instruction (Instructions)* previously identified May 12, 2017 as the last day for applicants to submit the Special Supplement, we have extended the submittal date to June 26, 2017. Applicants may schedule and attend mining site identifications and inspections at the dates and times identified in the Instructions (i.e. July 13, 14, and 21). Following the public meeting the Department will issue Special Supplement permits with revised conditions. The extent of condition revisions will not be known by the Department and the Board until after the Public Meeting.

Respectfully,



Mathew Weaver, PE  
Deputy Director

CC: Don Smith  
Ron Miller, Tenmile Mining District Board of Director's Chairman  
Marc Gibbs, State Rep. Idaho District 32 Chairman of the House Resources and Conservation  
Priscilla Giddings, State Rep. Idaho District 7  
Paul Shepherd, State Rep. Idaho District 7  
Skip Brandt, Idaho County Commissioners Chairman  
Roger Chase, Idaho Water Resource Board Chairman