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Mr. Mat Weaver, Deputy Director and Roger Chase, Chairman of the IWRB
Idaho Department of Water Resources
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Submitted electronically to: Mathew.Weaver@idwr.idaho.gov and rwchase33@gmail.com

RE: Consideration and Review of South Fork Clearwater River Special Supplement Conditions

Dear Chairman Chase and Deputy Director Weaver:

Thank you for the opportunity to provide comments on the Idaho Department of Water Resource's review of "South Fork Clearwater River Special Supplement: Application for consideration to operate a power sluice and/or a small suction dredge on the South Fork Clearwater River."

As Idaho's leading voice for conservation, we represent over 25,000 supporters from across the state who have a deep interest in the protection of clean water. Since 1973, the Idaho Conservation League has worked to protect the air you breathe, the water you drink and the land you love. To learn more about the Idaho Conservation League, log onto: www.idahoconservation.org.

The Idaho Conservation League has been involved with issues surrounding suction dredge mining and the state permitting for decades. At the local level, we were involved in the development of the South Fork Clearwater River (SFCR) Comprehensive State Water Plan and the SFCR Subbasin Assessment and Total Maximum Daily Load. In addition, we have been active in reviewing, providing feedback and engaging in planning issues relative to the Environmental Protection Agency's General National Pollution Discharge Elimination System (NPDES) permit, the FS/BLM Small-Scale Suction Dredging in SFCR Environmental Assessment and associated Decision Notice. Finally, the Idaho Conservation League has actively monitored suction dredge mining in the SFCR in 2016 and 2017 to ensure consistency with state and federal laws associated with in-stream mining.

While the Idaho Conservation League continues to have concerns with the approval of any suction dredge mining operations in designated habitat for Threatened, Endangered and Sensitive (T,E&S) species, we feel that the special conditions, first required in 2016, in the SFCR have resulted in reduced negative impacts associated with unregulated dredge mining. Put simply, after only two years of implementation, it is too early to make any significant changes to weaken the special conditions, and IDWR should maintain or strengthen the existing conditions.

In 2015, before the terms and requirements of the SFCR - State Comprehensive Water Plan were actively required, numerous dredges operated in the river without adequate permits, and with virtually no monitoring or enforcement. As a result, dredged holes were left unfilled, stream banks were undermined, and damage to designated critical habitat occurred. The number of dredges, along with their impacts exceeded the requirements of the SFCR – State Comprehensive Water Plan. In response, ICL advocated that IDWR review the commitments of the State Water Plan to ensure compliance, and requested a review, which ultimately led to the implementation of the special conditions for suction dredge mining in the SFCR, which are under reconsideration today.

Even if IDWR were to consider making changes to the special conditions, miners must ensure compliance with the FS/BLM Small-Scale Suction Dredging in SFCR Environmental Assessment (2015) and Decision Notice (2016), along with the associated Endangered Species Act consultation, which underpins the EPA's issuance of General NPDES permit coverage for suction dredge mining in the SFCR. Failure to coordinate and align conditions will create confusion amongst miners, and would increase the potential liability faced by miners. In addition, before any changes are considered, IDWR should proactively consult with other regulatory agencies who have permitting authority or oversight responsibilities, including the U.S. Forest Service, Bureau of Land Management, Idaho Department of Fish and Game, U.S. Fish and Wildlife Service, NOAA-Fisheries, the Nez Perce Tribe, the Environmental Protection Agency and others.

The SFCR is critically important to the survival and recovery of numerous species (including steelhead, bull trout, chinook salmon, pacific lamprey and others), is still recovering from historic mining impacts and deserves to be protected from the harm caused by recreational suction dredge mining. What's more, the State of Idaho, working with the Bonneville Power Administration, Army Corps of Engineers and numerous partners have spent billions of dollars to restore and recover salmon and steelhead habitat across its range, including in the SFCR sub-basin. It doesn't make sense to continue to simultaneously allow, and potentially expand, suction dredge mining, which is known to negatively impact fish and their habitat in this area.

With regards to the Waste Load Allocation (WLA), and the establishment of a 15-dredge limit on the SFCR, we feel that the current limit helps to minimize sediment discharges intended to meet state water quality standards, and strives to achieve meeting beneficial uses in the SFCR.

It is important to recognize, however, that the SFCR TMDL is not a goal, but rather is an upper limit of the potential discharges that would result in water quality exceedances and impairment of beneficial uses. As a result, the WLA of 316 tons/day should not be viewed as aspirational. That is, IDWR, via the establishment of a dredge limit, should not seek to meet or attempt to approach that level of discharge. Instead, 40 C.F.R. 122.44(d)(1)(vii)(B) requires that effluent *limits* in permits be *consistent* with 'the assumptions and requirements of any available *wasteload allocation*' in an approved TMDL. While the current limitation of 15 dredges in the SFCR is consistent with the assumptions of the WLA in the approved TMDL and no information has been provided that would indicate otherwise, it is not clear that the WLA adequately ensures compliance with the Clean Water Act. Further, given the fact that only 13 dredge permits were applied for last year, and it appears that not all of those permittees dredged, there does not appear to be sufficient rationale to increase the authorized number of dredges. Finally, because 2017 was only the 2nd year that a limitation on permits was imposed, IDWR should not rush to expand this limit until more analysis by DEQ, IDWR, FS, BLM, EPA, NOAA-Fisheries and the US Fish and Wildlife Service can determine whether the limitation is appropriate and meeting the intent.

While IDWR gave considerable attention to the numeric value of the WLA, we would encourage the agency to step back and review how WLAs are calculated for a Subbasin. A brief primer on this point was made at the bottom of page 3 of IDWR's November 16, 2017 (Tim Luke) memo, however more detail is warranted. The calculation of WLAs is dependent on the assimilative capacity or "load capacity" (LC) of a river, meaning how much additional pollution a river is capable of handling. Once a numeric value for load capacity is identified, that number is divided amongst all the discharges within a Subbasin to derive individual WLA, such as in equation (1).

$$WLA = \frac{\text{Load Capacity of a River}}{\text{Number of Dischargers}} \quad (1)$$

At present, the SFCR is impaired by – amongst other pollutants – sedimentation and siltation [http://mapcase.deq.idaho.gov/wq2014/scripts/adb2014.aspx?WBIDSEID=ID17060305CL022_05]. Stated another way, the SFCR has no room for additional sediment pollution, corresponding to a load capacity of zero (0). Plugging this value in to equation (1), it becomes clear that any WLA above any applicable water quality criteria for sediment is further impairing the SFCR and not aiding in the improvement of the water body, counter to the stated goals of the TMDL. Idaho's water quality standard on floating, suspended or submerged matter (IDAPA 58.01.02.200.05) provides a narrative criteria that must be adhered to. Given that the SFCR is still listed as impaired by sediment, it does not appear that even the 316 tons/year WLA is sufficient in achieving the goals of the TMDL. All efforts related to this WLA should be focused on reducing and minimizing the amount of sediment pollution entering the SFCR from all sources, including dredges.

Given the SFCR's impaired status for sediment, we believe the DEQ's proposed 500 ft. mixing zone for dredge operations is inappropriate and inconsistent with Idaho's rules governing

mixing zones. The intent of mixing zones is to facilitate mixing between discharges from point sources and receiving water in order to achieve compliance with all applicable water quality standards at the boundary of the mixing zone. Pursuant to IDAPA 58.01.02.060(a), mixing zones shall not be authorized for a given pollutant when the receiving water does not meet water quality criteria for that pollutant; provided, however, the Department may authorize a mixing zone when the permitted discharge is consistent with an approved TMDL allocation. As outlined in the paragraphs above, it is clear that the current TMDL is outdated and if continued to be relied upon will not succeed at improving water quality within the SFCR. As such, this TMDL should not be relied upon as justification for a mixing zone. Further, any mixing zone allotted to a dredge operation will be insufficient at diluting sediment discharges from the dredge given that the water at the boundary of the mixing zone would already be impaired by sediment. A mixing zone is not a legitimate solution to diluting sediment on the SFCR. Rather, IDWR should identify a numeric value that is consistent with Idaho's water quality standards on floating, suspended or submerged matter (IDAPA 58.01.02.200.05), and then assign end-of-pipe limits to any permitted discharger on the SFCR.

As we noted in comments submitted in advance of the 2017 dredge mining season, ICL remains concerned about potential changes to weaken rules that prevent illegal discharge of mercury, prevent the introduction of invasive species, note the requirement for other federal or state permits, or reducing the specificity regarding areas excluded from dredging (i.e. salmonid spawning and rearing habitat, backwaters, alcoves and side channels). In particular, we feel that IDWR should establish a mercury-monitoring program, as we have heard anecdotally that miners are failing to self-report mercury occurrence and discharge, in violation of state water quality standards and the 401 certification for the General NPDES Permit.

The only changes that should be considered in the SFCR conditions and application process would be to eliminate mixing zones, require end-of-pipe limits, and increase the fee to ensure that all IDWR costs associated with administering the SFCR dredge mining program are covered by permittees.

In conclusion, ICL requests that IDWR maintain all existing protections and instead consider strengthening protections for water quality and fisheries habitat in the South Fork Clearwater River.

Sincerely,



Jonathan Oppenheimer
Government Relations Director

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