

Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

July 26, 2017

Sent via email to: tim.luke@idwr.idaho.gov

Mr. Tim Luke, Water Compliance Bureau Chief
Idaho Department of Water Resources
322 E. Front St.
P.O. Box 83720
Boise, ID 83720

Re: *Nez Perce Tribe's Comments on the Stickley and Richardson Applications for Proposed Suction Dredge Mining on the Red River, Near Elk City, Idaho*

Dear Chief Luke:

Thank you for the opportunity to provide comments on the Stickley and Richardson applications to suction dredge mine on the Red River, near Elk City, Idaho. These comments reflect the policy views and technical concerns of the Nez Perce Tribe ("Tribe").

Since time immemorial, the Tribe has occupied and used over 13-million acres of land now comprising north-central Idaho, southeast Washington, northeast Oregon, and parts of Montana. Tribal members engaged in fishing, hunting, gathering, and pasturing across their vast aboriginal territory, and these activities still play a major role in the subsistence, culture, religion, and economy of the Tribe.

As the Idaho Department of Water Resources ("IDWR") is aware, the Stickley and Richardson applications propose suction dredge mining entirely within the Tribe's aboriginal territory and are subject to the rights the Tribe reserved, and the United States secured, in the Treaty of 1855.¹ The proposed suction dredge mining is also located within the Tribe's area of exclusive use and occupancy, as adjudicated by the Indian Claims Commission,² and encompasses areas of cultural and spiritual significance to the Tribe.

¹ Treaty with the Nez Percés, June 11, 1855, 12 Stat. 957 (1859).

² *Nez Perce Tribe v. United States*, Docket #175, 18 Ind. Cl. Comm. 1.

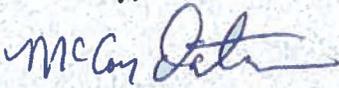
SCANNED
SCANNED
JUL 28 2017
JUL 28 2017

Mr. Tim Luke
July 26, 2017
Page 2

The Tribe recommends that the IDWR deny the Richardson and Stickley applications pursuant to the South Fork Clearwater River Basin Comprehensive State Water Plan.

Attached are the Tribe's comments on the Richardson and Stickley applications. Thank you again for the opportunity to comment. You are welcome to contact Ken Clark, Nez Perce Tribe Water Resources Director, at (208) 843-7368 (kenc@nezperce.org), or Amanda Rogerson, Nez Perce Tribe Staff Attorney, at (208) 843-7355 (amandar@nezperce.org), with any questions or concerns.

Sincerely,



Mary Jane Miles
Chairman

Enclosure

cc (w/enc): Tracy Peak, EPA
Cheryl Probert, USFS
Richard White, BLM
Duane E. Mitchell, ACOE
Ken Troyer, NOAA Fisheries
Ray Hennekey, IDFG
Katy Fitzgerald, USFWS

SCANNED

JUL 28 2017

NEZ PERCE TRIBE'S COMMENTS ON APPLICATIONS TO SUCTION DREDGE IN RED RIVER
JULY 26, 2017

I. GENERAL COMMENTS

a. The Nez Perce Tribe's Interest in Red River and the South Fork Clearwater River

Tributaries to the South Fork Clearwater River ("SFCR"), including the Red River, are extremely important to the Nez Perce Tribe ("Tribe"). For this reason, the Tribe has partnered with the Nez Perce-Clearwater National Forests for the past 18 years on a wide variety of watershed/aquatic ecosystem restoration projects within the SFCR watershed, spending about \$2.6 million annually and about \$20 million in total. Specifically, the Tribe's Department of Fisheries Resources Management ("DFRM") has been active in ensuring that fish are in the SFCR and its tributaries using their habitat. DFRM has also outplanted adult coho salmon and operates acclimation facilities for releasing fall Chinook and spring Chinook juveniles in the SFCR and its tributaries. In addition, DFRM has worked with Idaho Department of Fish and Game to release spring Chinook, summer Chinook, and steelhead in the SFCR.

b. Concerns about the Effects of Suction Dredging in Red River

The SFCR watershed remains heavily affected by past mining activities and past and present logging, roading, grazing, and agricultural activities. The Red River is designated a State Recreational River, pursuant to the South Fork Clearwater River Basin Comprehensive State Water Plan ("Comprehensive Plan"). Importantly, the Comprehensive Plan prohibits dredge or placer mining in the Red River to "protect the public interest, current resource use, and the multiple-use character of the basin [...] except where allowed through application for permit (Form 3804-B)" (IWRB, 2004). The comprehensive plan was adopted by the Idaho Water Resources Board ("IWRB") in 2004 and affirmed by the Idaho Legislature in 2005.

IDWR should honor IWRB's and the Idaho legislature's intent to protect the Red River's important fish and wildlife habitat by denying Mr. Richardson's and Mr. Stickley's permit applications. The Red River should not be opened to mining.

Mr. Richardson is proposing to dredge 30 cubic yards in 150 linear feet of the Red River (SW ¼ of Section 6 in T28N, R9E). Mr. Stickley is proposing to dredge 30 cubic feet in 150 linear feet of the Red River (NE ¼, NE ¼ of Section 2 in T28N, R8E). Both of these applicants have failed to illustrate any compelling interest that would override the protections implemented in Comprehensive Plan to protect public interests and existing water users in the Red River.

Small-scale suction dredging, as a general activity, has been found to adversely affect Endangered Species Act ("ESA")-listed salmon and steelhead and their habitat and can harm Snake River fall Chinook, as well as spring Chinook, summer Chinook, coho, cutthroat trout, and Pacific lamprey, all of which can be found in the Red River. Suction dredge mining can alter the physical, chemical, and biological characteristics of streams and can also affect the geomorphic structure of streams (Kondolf, Cada, Sale, & Felando, 1991), depending on the volume of material displaced. In short,

removal and redistribution of in-stream gravels can increase water velocity, increase downstream erosion, disturb the equilibrium of streams, affect upstream and downstream riparian habitats, and impact water quality. Unstable substrate and turbidity is a threat to successful salmonid spawning habitat and rearing areas.

Therefore, IDWR needs to consider the cumulative effects of suction dredging and the long-term effect the applications would have on the SFCR watershed. This is especially important given that the proposed dredge areas lie within a reach of the Red River designated as critical habitat for ESA-listed steelhead and bull trout and because the areas are upstream of the SFCR, which is listed on the 1998 §303(d) Total Maximum Daily Load list for temperature and sediment. This portion of the Red River is also not currently supporting its designated beneficial uses of Cold Water Aquatic Life and Salmonid Spawning (Idaho Department of Environmental Quality, 2017).

c. Federal Permitting and ESA Consultation Requirements

If IDWR decides to approve the Richardson and Stickley applications, the Tribe urges IDWR to clearly communicate the federal permitting requirements to the applicants and to communicate that it is unreasonable for the applicants to expect that they could comply with the federal requirements before the end of the state dredging season on August 15, 2017. Both applicants would have to apply for an individual National Pollution Discharge Elimination System discharge permit from the Environmental Protection Agency (“EPA”). This is because the Red River was excluded from their General Permit for Small Suction Dredge Placer Miners in Idaho due to its designation as a State Recreational River by the IWRB (EPA, 2013). The applicants would also need to submit their plans of operations to the Nez Perce-Clearwater National Forests for approval. The Nez Perce-Clearwater National Forests’ deadline for submitting plans of operations for this dredge season was April 15, 2017. Once submitted, the Nez Perce-Clearwater National Forests would need to initiate a National Environmental Policy Act review that would include consultation with the Fish and Wildlife Service and NOAA Fisheries in accordance with the ESA. Lastly, the Army Corps of Engineers would need to consider the applications with regard to Section 404 of the Clean Water Act.

II. CONCLUSION

The Tribe recommends that IDWR deny these two permit applications. The Red River is not an appropriate place for suction dredge mining operations, and the Tribe would like to see it closed to suction dredging. The benefits associated with clean water and fisheries far outweigh the risks to this important river from suction dredging.

III. REFERENCES

Environmental Protection Agency. (2013). *Authorization to Discharge Under the National Pollutant Discharge Elimination System for Small Suction Dredge Placer Miners in Idaho*. Seattle, WA: EPA.

Idaho Department of Environmental Quality. (2017). *Final Assessment Unit Status Report 2014*. Retrieved from Final 2014 Section 305(b) Integrated Report: http://mapcase.deq.idaho.gov/wq2014/scripts/adb2014.aspx?WBIDSEGID=ID17060305CL038_04

Idaho Water Resource Board. (2004). *Comprehensive State Water Plan, South Fork Clearwater River Basin*. Boise, ID: IWRB.

Kondolf, G., Cada, G., Sale, M., & Felando, T. (1991). Distribution and stability of potential salmonid spawning gravels in steep boulder-bed streams of the eastern Sierra Nevada. *Trans. American Fisheries Society*, 120:177-186.

NOAA. (2016). *Endangered Species Act Section 7(a)(2) Biological Opinion, and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the South Fork Clearwater River Suction Dredging Program, Idaho County, Idaho*.