

**BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT OF WATER
RESOURCES AND THE IDAHO WATER RESOURCE BOARD**

IDAHO CONSERVATION LEAGUE,)	
)	
Petitioner,)	PETITION FOR A FORMAL
)	HEARING
V.)	
)	
IDAHO DEPARTMENT OF WATER)	
RESOURCES,)	
)	
Respondent.)	
_____)	

Pursuant to The Idaho Department of Water Resources Board Rules of Administrative Procedure, IDAPA 37.03.07 (Rule 70) and Idaho Code, Title 42, Chapter 17, Section 42-107A(3), IDAHO CONSERVATION LEAGUE (hereinafter “ICL”), hereby petitions to the Idaho Department of Water Resources (heerinafter “IDWR”) to conduct a formal hearing on the matter of Amended Joint Application for Permit No. S82-200069, Leggett Creek (David Hembree).

The Petitioner’s address is:

P.O. Box 844
710 N. 6th St.
Boise, ID 83701

This Petition is timely under Rule 70, which allows requests for hearings to be filed within fifteen (15) days of the action of the Department. IDWR’s proposed decision on Mr. David Hembree’s Stream Channel Alteration Permit (No. S82-200069) was issued on June 19, 2019.

ICL has a direct and substantial interest in this proceeding, has been involved in this permit application, submitted comments on this application and and thus this petition should be heard.

ICL, its staff and members, will suffer distinct, individualized and palpable injuries if IDWR's proposed decision is upheld. ICL is an Idaho non-profit membership conservation organization. ICL and its approximately 30,000 supporters are dedicated to protecting and conserving Idaho's clean water, wilderness and quality of life. In addition to their generalized interests in protecting and conserving Idaho's natural resources, ICL, its members and staff have longstanding specific and individual interests in protecting water quality in waters of the State of Idaho, including those which have been and will continue to be impacted by the issuance of Permit No. S82-200069.

Among other activities, ICL, its staff and members reside along, recreate within and rely upon waters that will be impacted by the issuance of this stream channel alteration permit and have concrete and material interests in the protection of water quality consistent with state Water Quality Standards. ICL has been, and continues to be, the leading Idaho conservation group advocating for enforcement of Clean Water Act (CWA) requirements applicable to Idaho waters.

ICL has a long history of involvement with regards to developing and enforcing Idaho Water Quality Standards and ensuring compliance with the Clean Water Act. ICL initially brought federal court litigation over the inadequacy of Idaho's Water Quality Standards in 1989. *Idaho Conservation League v. Russell*, 946 F.2d 717, 720 (9th Cir. 1991), resulted in a settlement brokered by then-Governor Andrus requiring improvements in Idaho's anti-degradation policies. In 1993, ICL joined in litigation challenging the inadequacy of Idaho's list of water quality limited segments under Section 303(d) of the Clean Water Act. This case, *Idaho Sportsmen's*

Coalition v. Browner, C93-943-WD (W.D. Wash.), resulted in a settlement requiring the State to list numerous water on Idaho's 303(d) list and a timetable for establishing Total Maximum Daily Loads (hereinafter "TMDLs"). In 2000, ICL filed another case which resulted in a settlement requiring Idaho to timely submit TMDLs for water quality limited segments in Idaho waterbodies. *Idaho Conservation League v. Iani*, Civ. No. C00-972 Z (W.D. Wash.) In 2009, ICL filed litigation challenging EPA's long-term failure to develop an antidegradation implementation plan pursuant to requirements of the CWA. This litigation resulted in DEQ's development of an antidegradation implementation plan, that was approved by EPA in 2012.

In addition to the above-mentioned legal proceedings, ICL has been involved in the development of conditions and requirements associated with the Comprehensive State Water Plan - South Fork Clearwater River Basin Plan (2005). ICL has submitted comments on numerous plans and proposals associated with recreational dredge mining in the South Fork Clearwater River Basin, has testified at public hearings, and has monitored dredge mining in the South Fork Clearwater River to encourage compliance with the Clean Water Act. Further, ICL has regularly communicated with personnel at IDWR to discuss and voice their concerns regarding the permitting, management and enforcement associated with dredge mining in water their attendant effects on Idaho's waterbodies.

FACTUAL AND LEGAL ALLEGATIONS

While it is unclear whether argument and allegations are appropriately considered by and through this petition, first, the Idaho Conservation League hereby asserts that this application was not provided for public comment and review, consistent with other applications received and considered by IDWR. Second, IDWR failed to adequately consider impacts to fisheries habitat and has not incorporated reasonable and prudent mitigation measures to avoid take of

endangered species and their habitat. Finally, the approval of the Comprehensive State Water Plan - South Fork Clearwater Basin Plan relies upon federal permitting considerations and protections, however the issuance of the permit only suggests that additional permits may be required. For each of these foregoing reasons, the proposed decision of IDWR to approve Permit No. S82-20069 is arbitrary, capricious and contrary to applicable law.

As we pointed out, when provided the opportunity comment on similar applications (*See ICL comments on Richardson and Stickley, May 24, 2019*) and : “The relationship and association between the IDWR, Forest Service and EPA permitting processes is noteworthy and recognized by statements from the South Fork Clearwater River Basin Plan where it states, “Currently, numerous laws regulate or restrict dredge mining...including the Clean Water Act, the Stream Channel Protection Act, the Endangered Species Act and others. It is unlikely, that a new recreational dredging operation could be conducted in the South Fork Clearwater River without adequate review and environmental safe guards.” This statement provides clear insight into the expectation that the IDWR permitting process relies upon the safeguards and protections associated with the Forest Service, EPA, NOAA, USFWS and other federal agencies. By recognizing the safeguards at the time of approval, the Idaho Water Resource Board and Idaho Legislature recognized the important protections that would ostensibly be provided by the other processes, and relies on such processes to validate the findings, conclusions and expectations of the plan. As a result, it is wholly inappropriate for the IDWR to ignore or invalidate those safeguards, since the South Fork Clearwater River Basin Plan effectively requires their adoption in order to comply with the intent of the plan. That is, the IDWR cannot rely upon “adequate review and environmental safe guards” to minimize effects, while simultaneously ignoring those

safe guards through the issuance of this permit despite the applicants failure to adhere or even recognize those other responsibilities.”

RELIEF REQUESTED

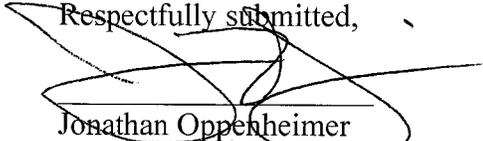
ICL requests the following specific relief:

Schedule a hearing before the Idaho Water Resource Board to consider this objection to Permit No. S82-20069;

Withdraw and reconsider the proposed decision associated with Amended Joint Application for Permits No. S82-20069, Leggett Creek.

ICL respectfully requests that the foregoing Petition to Schedule a Fomal Hearing be granted.

Dated: July 2, 2019

Respectfully submitted,

Jonathan Oppenheimer
Idaho Conservation League