



# TENMILE MINING DISTRICT

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It is the continuing opinion of the Tenmile Mining District that the existing South Fork of the Clearwater River Special Supplement for Recreational Dredging, implemented in 2016, *(created to comply with the requirements of the South Fork of the Clearwater River Basin Water Plan of 2005)*, are not applicable to mining claim owners on organized mining districts as described in the state water plan, state constitution and federal statutes.

In the spirit of cooperation with the IDWR permitting schemes and to create a uniform standard for operations and a reduction of actual impacts to the human and natural environment we would like to help establish a reasonable dredging season with conditions conducive with profitable operations on valid mining claims while creating the best benefit for the environment in the process.

Below is the 2016 Special Supplement as written *(shown in numerical order in black type)* and in red our ideas on conditions we feel would improve the operational viability of each of these current rules. Written in Blue and grey are narrations to provide some background information on the data in each numerically listed rule.

## South Fork Clearwater River Special Supplement

- 1. This permit does not serve in lieu of other permits that are required by federal or other state government agencies or in any way constitute an exemption of other permit requirements.**

For the purposes of permits exercised on our district we would prefer this condition to read: ***This permit is exclusive in its coverage for the described operations on valid federal mining claims within the boundaries of the Tenmile Mining District.***

*(this allows for the exemptions to the State Water Plans restrictions for federal claim owners on our district)*

- 2. Suction dredging shall occur only within the wetted perimeter below the Ordinary High Water Mark between July 15 and August 15. Activities which would expand the wetted perimeter (such as stream bank alteration) are not authorized.**



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This rule creates too much ambiguity in interpreting the definition of “wetted perimeter” and should in fact be two separate rules:

- a) ***Suction dredging may only occur below the Ordinary High Water Mark and may not be conducted in such a way as to create undue erosion of the stream bank or to alter the direction of the stream channel in a way that causes undue erosion of stream banks above the mean high water mark.***
- b) ***On the Tenmile Mining District, in the mainstem of the South Fork of the Clearwater River dredging below the ordinary High Water Mark will only be authorized for the period of the established dredging season of June 15 to October 31. In all tributary streams of the SFCR an operational season of July 15 to October 15 will apply..***

***We are establishing an operational season from June 15 to Oct 31 for the mainstem of the South Fork of the Clearwater River and a shorter season that begins later in all tributary waters as that is more consistent with the actual data available behind the rationale provided, that seasons are established to protect spawning cycles and alevins rearing.***

*(point-of- fact, there is a late winter steelhead run that could be traveling in the river as late as mid April and a spring salmon run in May that is passing through the river corridor up until mid to late June as well.*

*To appease any fisheries impact concerns that may be voiced, and to limit conflict between dredgers and sport fishermen participating in the harvest season for both runs of steelhead and spring Chinook salmon on the SFCR, **June 15 to Oct 31** is an acceptable compromise on seasons for the SFCR even though there is no evidence dredging activities have any deleterious significant impact on fisheries and it certainly has a far lesser impact than the open take fishing season which runs congruent with the spawning run of the steelhead and the Chinook salmon each spring.*

*These fishing seasons which are participated in annually by hundreds of anglers along the SFCR, run the entire year in one form or another, excepting the months of May and June when there is no type of season for salmonid species, these fishing seasons require no terms of mitigation other than the number of fish to be kept, methods for removing them from the water and single barbless hooks for catching them. These continuous*



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*annual activities certainly create a far greater significant impact on ESA listed species than dredging ever could.)*

3. Prior to dredging, IDWR, and a state and/or federal fisheries biologist will inspect the proposed dredge site to identify acceptable dredge locations to avoid reducing the quality of migratory, spawning and holding habitat for salmonids. No dredging, movement or modification of stream substrate shall occur in areas of suitable salmonoid spawning or early rearing habitat, including low velocity backwaters, alcoves and side channels. Generally such areas specific locations rather than extensive stream reaches.)

- a) We want this rule completely removed.

Our issue here is not with a consultation as we feel that is in everyone's best interest.

Our problem with this rule is two fold:

1. Your rule implies that any act of dredging will somehow have a deleterious effect on the streambed or its future suitability for salmonid to use it. Do to the ambiguous nature of potential interpretations of the definitions described in this rule it could easily be used to restrict almost any, or all, of the streambed from dredging activities if a broad interpretation of the description(s) are used. This interpretation is left to various agencies to apply and has not, heretofore, included consultation with the mining claim owners and has been used in attempts to restrict access to mineral deposits on federal mining claims.

- a) no scientific data is present to prove that dredging has anything but a positive effect on the stream channels gravel deposits. If the salmon are not in the water when we are dredging we can't possibly be harming them. If we follow the MATP guidelines for dredging and avoid any concentrated sediment deposits in suitable spawning areas the overall effect of dredging will improve the chances of salmonids spawning in the river gravels.

2. Miners, operating on their mining claims, have a vested right to operate that is granted by statute that guarantee's them first consideration for water usage in the state of Idaho. That is state law. Mineral Grants aka mining claims have other rights guaranteed them by statute both federal and state. These mineral grants are real property in every sense of the definition and are no longer part of the public



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domain. Regulatory attempts by various agencies are codified with specific phrases that are often omitted when discussing their relationship with environmental considerations by the agency in attempt to regulate activities they have no authority to regulate..

*Following the statutory versions of regulations from any federal source regarding mining that have statutory significance you will see these phrases:*

**“Were practicable”** then it will describe that certain mitigations are acceptable as long as they don’t interfere with a well planned mining operation.

**You will also see this codified disclaimer:**

**“ the rules and regulations may not be applied so as to prevent lawful mineral activities or to cause undue hardship on bona fide prospectors and miners.”**

**Or this:**

**...Uses by the United States, its permittees or licensees, shall be such as to not hinder, delay, or materially interfere with mineral related operations...**

[These were added to those codified regulations because it was never the intent of congress to allow them to be used to restrict or discourage mining activities. Mining is not only in the best interests of the citizens of the United States it has primary consideration in National Defense and is referred to under many statutes. For IDWR to write rules that state a miner can’t operate on the reaches of his claim because some fish may someday swim across that spot and somebody once suggested that if a dredge had ever operated there the fish couldn’t use that spot, is beyond the scope of ridiculousness and is not following state or federal statutes. It is catering to what has become a far too prevalent ideology that has existed in some federal agencies and special interest organizations. ]

- 4. Suction dredges, shall have a nozzle diameter of 5 inches or less and a horsepower rating of 15 horsepower or less. Pump intakes (but not dredge nozzles) must be covered with 3/32-inch mesh screen or other appropriate size.**

This rule is only applicable under statute created for recreational sized equipment and operations covered under IDAPA 37.03.07 (Rule 64) in Idaho waters regulated





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under the 3804-A Letter Permit. *(this is not the only statutes for dredging regulations),* the 3804-B permit process is suppose to cover operations that do not meet the Rule 64 guidelines but are still not regulated by IDAPA 20.03.01 . Applications being submitted for the SFCR on the 3804-B are not being processed by IDWR in 2017. They (IDWR) have stated we do not have the right to use that application or to receive a 3804-B permit on the SFCR. *(This unexpected response, leads us to believe we may have exhausted all hopes for any administrative remedies. If necessary, we are prepared to test that ruling in a court of law and hear a judge's opinion on the statutory authorizations allowed to applicants from our mining district.)*

**The Tenmile Mining District would like to see a general permit coverage for all dredge sizes smaller than 8" and activities disturbing less than one half acre cumulatively in its duration as defined in Idaho Code 47-1313 and as exempted from IDAPA 20.03.01 on the SFCR inside the boundaries of the Tenmile District.**

- a) ***In the mainstem of the South Fork of the Clearwater River this permit authorizes, a single dredge with an 8" or smaller intake nozzle, or any number of dredges with smaller than 5" intake nozzles may be used in any one operation under this permit, as long as operations are in compliance with statutory water quality standards and all other conditions of this permit.***
- b) ***To protect the resource, no dredges with intake nozzles greater than 5" will be allowed to operate in any tributary waters of the SFCR in any operations below the normal high-water mark under this permit.***
- c) ***3/32-inch is too small of mesh on intake screens for the South Fork. During the warm summer months there is a consistent build up of algae's on the screen that eventually restricts the flow and over taxes the pumps and requires constant cleaning by the operator.***

**5. IDWR SFCR suction dredge ID card shall be attached to the dredge in a visible location at all times the dredge is located on the SFCR.**

- a) We see no reason to have an I.D. card to indentify our operations when we already have a requirement to have our permits with us when operating our equipment.



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**6. In-stream mining activities shall only take place during daylight hours.**

- a) This is an acceptable condition.

**7. Dredge sites shall consist of a maximum of two separate locations of 150 linear feet.**

- a) This is an unreasonable term of mitigation and needs to be removed and could be replaced with a rule stating that:
- b) ***A dredging location plan shall consist of no more than 3- 500' locations encompassing an area not greater than 1500 lineal feet on the main stem of the South Fork of the Clearwater River under any one permit. (as per original special supplement conditions)***

**8. Any stream substrate moved from its initial location in the channel (in order to reach bedrock) shall be repositioned into approximate original configuration prior to the end of the dredging season. Permittee shall not move cobble or small boulders to the extent that substantial alterations of the deepest and fastest portion of the stream channel (ie., the thalweg) persist beyond the end of the dredging season. Dredged or excavated holes shall be back filled before any new holes are excavated.**

- a) This rule, which is actually 3 rules, reflects a complete lack of understanding of how dredging operations explore the river channel for mineral deposits.
- b) Removing boulders without the assistance of powered winches or other mechanical means requires an enormous expenditure of time and physical effort that exposes operators to the risk of physical harm in the process. To add to this already burdensome task the requirement to reposition it back to as near as possible to its original configuration is unreasonable and creates no added benefit to the stream channel.
- c) ***Any large boulders that cannot be moved without mechanical aid will not be completely removed from the stream channel unless they are creating***



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*a safety hazard to operators or the general public and where practicable will be returned.*

There is already a rule in place regarding altering the stream channel so there is no need for the part here that discusses cobbles and the Thalweg.

- d) *Natural pools or pools created by dredging activities will not be backfilled or reduced in depth by the dredging operations. These pools provide critical thermal refuge and protection from predation for aquatic species. Natural current flows will adjust the morphology of the stream channel and bedding composition seasonally.*

9. Permittee shall not constrict or dam the stream channel or cause a structural barrier to upstream or downstream fish movement.

This rule is OK but needs to worded differently Perhaps this would be less restrictive:

- a) *Operator shall not constrict or dam the stream channel to the extent to cause a structural barrier to upstream and downstream movement of salmonids or other aquatic species. Any dikes, jetties or other, operator created diversions, altering the flow of water in any reach of the stream to facilitate dredging operations shall be removed or reduced to a natural state by the end of the dredging season or at the conclusions of operations in that stream reach whichever comes first.*

10. Dredging shall be excluded in areas within 100 feet upstream and 300 feet downstream of perennial tributaries and shall not hinder fish access to fish bearing tributary mouths through disturbance, turbidity or modifications of channel depth or substrate arrangement. If an operator proposes to dredge to dredge within 100 feet upstream and 300 feet downstream of a perennial tributary it must be acceptable by the IDWR and fisheries biologists during site inspection.

This rule is an unreasonable term of mitigation. Studies on dredging activities have shown that they have no effects on migratory salmonids travel patterns in stream channels.

- a) *Operator shall not constrict or dam the stream channel to the extent to cause a structural barrier to upstream and downstream movement of*



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*salmonids or other aquatic species. Any dikes, jetties or other, operator created diversions, altering the flow of water in any reach of the stream to facilitate dredging operations shall be removed or reduced to a natural state by the end of the dredging season or at the conclusions of operations in that stream reach whichever comes first.*

**11. Dredges shall not operate on gravel bars at the tail of pools. Dredges or other types of mining shall not occur in a manner that fine sediment (sand or silt) covers portions of gravel bars to a depth of more than 0.5 inch**

**This rule, which is actually 2 rules, contains wording that excludes areas of operation on stream reaches for reasons that seem to assume the act of dredging would somehow be damaging aquatic habitat in these locations or in some other way limiting or restricting the usability of those areas to the aquatic life there.**

(There is no science to support these restriction, we are of the opinion that the seasonal restriction is designed to mitigate direct impact to species that may be spawning at specific times when dredges might otherwise be present in those locations. Stream morphology is such that these deeper pools tend to collect deposits of finer materials and sand during the late spring and summer months as the stream flow decreases seasonally. Dredging at the end of a pool, just before the beginning of a riffle will remove any sediment deposited there and create a fresh bed of aerated gravel for any future spawning activities that may occur. (sediment from the dredge tailings would be dispersed over a wide area by the currents natural riffle that occurs just past the end of pools) We feel he first sentence here should be omitted. The rule would be more appropriate if it simply stated:

**Incidental fall back and/or other discharges from dredges and/or any other types of concentrators or sluices, shall not be concentrated in a stream channel in such a manner as to create new deposits of fine silty sediment in excess of 0.5 inches in any stream reaches below the ordinary high water mark.**

**12. Dredging or other mining activities shall not occur within two (2) feet of stream banks. Woody debris or boulders that extend from the bank into the channel shall not be disturbed.**



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a) This rule, which also is actually 2 rules, is poorly worded and could easily be misinterpreted to be imposing a restriction that allows operation only in the wetted perimeter and 2 feet from the water line. Even though this was not the intent of this condition it was the intent of the USFS to interpret it as such. *(They mentioned it more than once during their inspections in 2016)* We see this portion of this rule as an unnecessary and duplicative qualifier to an already written rule about modifying stream channels and creating erosion. *(see suggested revision of Rule 2.)*

**We see no scientific reason for any consideration of a restriction that would limit operations to being inside the visibly wetted perimeter. That is a description of an area that changes depending on water levels seasonally and is not a constant in any stream channel. Traditionally, and as described in codified regulations, dredging activities are permitted below the ordinary high water mark. No other types of excavations are authorized below that line. We, as miners and claim holders, are not willing to give up access to, what is most often, the highest mineralized gravel deposits in the stream channel because of the careless wording of a special condition rule. We would like to see the first part of this rule omitted entirely. The second part of this rule might be better suited if worded in this fashion:**

***To the extent practicable, where such does not create a safety hazard to operators, woody debris or boulders extending from the bank and situated in a manner as to originate above the ordinary high water mark shall not be removed or dislodged from their location in order to prevent undue erosion of stream banks.***

**13. Discharge from dredges and sluices shall not be directed into the bank in a way that causes disturbance to the bank and associated habitat, deposits sediment against the bank, causes erosion or destruction of the natural form of the channel, undercuts the bank or widens the stream channel.**

a) This rule is also duplicative of already described conditions in both rules and in codified conditions found in IDAPA 37.03.07 and should be omitted. *(see suggested revision of Rule 2)*

**14. Permittee shall not remove, relocate, break apart or lessen the stability of substantial in-channel woody debris or in stream boulders (greater than 12 inches**



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**median diameter) unless it was determined acceptable by the IDWR and fisheries biologists during site inspections.**

- a) This rule is also duplicative of previous rules and the qualifiers in it create specific restrictions that are impracticable as written. We would like it removed entirely
- b) The act of dredging requires the moving of rocks too large to pass through the dredge hose by hand. Operators will move dozens of these in a typical days operation and many of them are not visible until gravels have been dredged from around there location and could not pre-approved as suggested. This rule has no practical basis is science and is not practicable in any field operation.

**15. Permittee shall visually monitor the stream for 150 feet downstream of the dredging or sluicing operation. If noticeable turbidly is observed downstream, the operation must cease immediately or decrease in intensity until no increase in turbidity is observed downstream.**

- a) This rule is an example of unreasonable requests of an operator. There are statutory guidelines established for turbidity levels below dredging operations and specific requirements for distances and levels inside the mixing zone. There is no legal or scientific basis for applying a more restrictive rule, to apply only to dredgers, on the South Fork of the Clearwater or to even include the rule as a term of special conditions.

*Just as a side bar point: When an operator is underwater continually when actually dredging how is he suppose to monitor the stream channel for turbidity? You have to have consideration as to how a dredge operates if you are going create rules to be followed by its operator.*

**16. No mechanized equipment shall be operated below the mean high water mark except for the suction dredge, sluice or pump itself and any life support system necessary to operate a suction dredge.**

- a) This rule is duplicative of codified conditions listed in IDAPA 37.03.07 and is unnecessary.





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**17. Operators must maintain a minimum spacing of 800 linear feet of stream channel.**

**This rule goes against the Stream Protection Coordinators statement that he used the Basin Plan and state law for creating these new rules in the South Fork Clearwater River Special Supplement. IDAPA 37.03.07 (Rule 64) states operations need to be 100 feet apart.**

We have all read the numerous opinion letters and reports available by the various agencies and I have pretty good idea where this spacing concept came from but, regardless of the source, it is an **absolutely unacceptable** condition to claim holders and miners. We would like to see the state guideline of 100 feet spacing between operations put back into the rule or simply omit this rule entirely as it is covered under state statute already. A rewording like this would be acceptable:

- a) ***Operators will maintain a minimum spacing of 100 feet between each permitted operation.***

**18. All fuel, oil and other hazardous materials shall be stored outside of the stream channel. Permittee shall not operate any equipment that leaks fuel, hydraulic fluid or other pollutants. Permittee shall use a funnel when pouring fuel and place absorbent material, sufficient to absorb a spill, under and around the fuel tank. A petroleum absorbent spill kit shall be onsite in case of accidental spills and no petroleum shall enter the stream when servicing equipment.**

**Portions of this rule are almost ridiculous in nature. The intent is good, but the practicable application doesn't work. First, although having an absorbent pad (or material around the fuel tank sounds reasonable until you factor in that a dredge is floating in water and there is nothing under the motor and fuel tank except water. There is no place to put this material so as to avoid soaking it to capacity with stream water. The use of a funnel is also a good idea but is old school and difficult to practice. (Let me explain this. An operator will typically have one hand on the dredges frame or pontoon to stabilize it while fueling. The gas can is in his other hand, so there is no way to stabilize a funnel while attempting to pour into it. Additionally most modern gas cans have spill proof spouts that are designed to decrease the chances of any leakage when filling the fuel tank. My personal cans have a spout that has an exterior ridge about 2" up from the nozzle. Once inserted into the**





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throat of a fuel tank this ridge rests on the edge of the mouth of the tank. Fuel will not travel down the spout until I push down on the can hard enough for this ridge to depress a spring loaded valve built into the spout. That is the only way to release fuel into the spout and on into the tank. It is spill proof. Even if I accidentally dropped the can or turned it upside down no fuel would come out.)

This rule creates conditions that most operators can not comply with and wouldn't even if they could as they are not practical or beneficial.

A better version that is more comprehensive and more practicable under "in the field conditions" would read:

- b) *All fuel, oil and other hazardous materials shall be stored in ANSI, UL approved fuel containers.*
- c) *Operators will provide spill kits of suitable size to handle fuel volumes in all storage containers kept within 100' of any open waterway. Spill kits will be kept available on site for each operation.*
- d) *Operator shall not operate any equipment that leaks fuel, hydraulic fluid or other pollutants.*

**19. Permittee shall not entrain, mobilize or disperse any mercury discovered during mining operations. Permittee shall not use mercury, cyanide or any other hazardous or refined substances to recover or concentrate gold.**

**This rule covers good subject matter but is poorly worded. Perhaps something like this would be more appropriate:**

- a) *Any hazardous materials recovered during operations shall be disposed of only in compliance with state, local and federal laws for the disposal of such materials.*
- b) *Operators shall not use any chemical agent, mineral or refined substance to aide in concentrating or separating minerals below the high water mark in any stream on the Tenmile Mining District.*



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**20. To prevent the threat of aquatic invasive species, suction dredges, tools used while dredging and associated equipment shall be thoroughly cleaned and dried least 5 days prior to use in the SFCR.**

*This is also important subject matter but has not been worded or developed very well from a practicable sense. We would prefer to see something like this:*

- a) *To prevent the threat of aquatic invasive species, suction dredges, tools incidental to their operations and all other associated equipment shall be inspected and certified at an IDEQ approved or other certified inspection site. In lieu of that inspection, dredges and equipment must be thoroughly cleaned and sanitized prior to use. Operations using equipment not inspected and certified at an inspection station must sign an affidavit certifying their equipment was properly cleaned and sanitized prior to using it on the Tenmile Mining District.*

**21. Dredge shall not be operated within 500 feet of a developed campground.**

- a) This rule is statutory and although overly inhibitive to any claim owner that has a claim in the area of a campground there is no way to adjust that distance in these rules so it is acceptable at this time.

*This regulation is very likely a preemption of Federal Statutes for mining claim owners because it unreasonably restricts access to federal lands open to mineral entry. This problem could be eliminated by a rule that contains the following:*

- b) *Operations conducted within 500 feet of any campground shall be done in compliance with state, county or local noise ordinances and shall not be done in a manner to create a significant disturbance to occupants of the camp ground. (Significant being defined as consistent with state laws for civil obedience and federal multiple use policies for public lands.) Operations within 500 feet of campgrounds will only be conducted between the hours of 10:00am and 5:00pm.*



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**22. Dredge shall be secured without stringing ropes, wires, chain, etc. across the stream channel that could be a hazard to boaters or other recreationalists.**

This regulation covers good subject matter but implies a required deference to recreational activities and this is against statutes that the mining community is not willing to concede away by poorly worded rules. Perhaps altering the wording to read something like this would be more acceptable:

- a) *Where practicable, dredge platforms or in-stream concentrators or free standing sluices shall be secured without stringing wire, cable, chain or ropes across the stream channel in such a way as to create a hazard for other users on the stream.*

**23. This permit does not constitute,**

- a. An easement or right-of-way to trespass or work upon property or mining claims belonging to others.
- b. Responsibility of the IDWR for damage to any properties due to operations of permittee.

This rule is pretty well written but we would like to see this added into it:

- a) *This permit does not authorize trespass and does not guarantee or imply rights to access. Access is the responsibility of the operator to negotiate and obtain any permissions needed.*

**24. This permit may be canceled at any time to minimize adverse impact on the stream channel.**

This rule could be better written. We would like to see these qualifiers added to it to describe expected standards of operation. Violations of which could result in cancelation of permits.



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- a) *Operators will follow BMPs (Best Mining Practices) using MATP (Most Appropriate Technologies and Practices) as determined by the Tenmile Mining District and recommended by the Minerals and Mining Advisory Council when operating under this permit.*
- b) *Operations will be in compliance with the applicable portions of the state water quality standards found at IDAPA 58.01.02.*

25. This permit shall expire August 15, 2017

We would like to see different details included here as qualifiers too seasons and activities:

- a) This permit only authorizes discharge of dredged material below the high water mark of any stream or waterway during the predetermined season(s). This permit is valid from June 15 of 2017 through June 14 2018. Actual dredging operations in the visibly wetted perimeter of the stream channel only allowed during authorized seasons. This permit does not authorize any discharge of dredged material below the high water mark that originated from any source above the mean high water mark.