

August 17, 2016

Tim Murphy
State Director
Bureau of Land Management
1387 South Vinnell Way
Boise, ID 83709

**RE: Request for State Director Review of the EA and Decision Record for the DOI-
BLM-ID-C020-2016-0020-EA**

Pursuant to 43 CFR 3809.804 and 805, this is a request for the State Director to review the Decision Record (“DR”) for the Environmental Assessment Small-Scale Suction Dredging in Orogrande and French Creeks and South Fork of the Clearwater River and final Environmental Assessment (EA). This request is filed on behalf of Friends of the Clearwater and Alliance for the Wild Rockies. If convenient, we would also request a meeting with the State Director.

Friends of the Clearwater and Alliance for the Wild Rockies submitted joint comments on this project.

Sincerely submitted,

A handwritten signature in black ink, appearing to read "Gary Macfarlane". The signature is fluid and cursive, with the first name "Gary" and last name "Macfarlane" clearly distinguishable.

Gary Macfarlane
Friends of the Clearwater
PO Box 9241
Moscow, ID 83843
(208)882-9755
--and--

Board Member, Alliance for the Wild Rockies

NEPA AND OTHER LAWS

Our comments noted:

Cumulative impacts cannot be ignored. None of the three streams--Orogrande Creek, French Creek and the South Fork Clearwater--meet the respective forest plan objectives or standards for water quality or fish habitat. Furthermore, the impacts of timber sales in these drainages, past, ongoing and in the future, must be evaluated as should grazing (mainly an issue in the South Fork). An article in Fisheries (Harvey and Lisle 1998, Vol. 23 No. 8, page 15) notes, "Dredging should be of special concern where it is frequent, persistent and adds to similar effects caused by other human activities."

As such, if all the proposals are analyzed together, an EIS is needed. Separate EISs may be more appropriate to look at site-specific impacts from each POO. Any additional proposals for dredge mining must also go the NEPA process, specifically an EIS. A blanket approval of an unspecified number of mining operations, in unspecified locations (the maps, which cover many, many miles of river and stream, do not correspond with the narrative in the scoping letter, which suggests much less), for a unspecified length of time using this one EA, or EIS, the life of which is not disclosed, is counter to laws and regulations governing activities on the National Forests.

Therefore the agency must meet the analysis requirements of the site-specific projects as well as the cumulative impacts from dredge mining. It may not be possible to do that in a single EIS.

The proposed action makes several assumptions that have yet to be validated--items the EIS(s) is supposed to evaluate including whether the claims are valid, and whether the proposals comply with the CWA, ESA, and NFMA. It is not a foregone conclusion these claims are valid or the projects can proceed.

Furthermore, the goal of NEPA, the law under which this NEPA document is being prepared and under which plans of operations are analyzed, is not agency efficiency but the protection and preservation of our natural heritage. To define the purpose of the EIS as efficiency in approving POOs would discourage the development and consideration of reasonable alternatives to the proposed action that may not be efficient but would be more likely to meet the requirements of law, regulation and the standards and guidelines of the forest plan.

The NEPA document must present a full range of alternatives to the proposed action and describe in detail all proposed mitigation measures. Reasonable alternatives to the proposed action include but are not limited to the following:

1- Develop and analyze an alternative that would recommend the withdrawal of, at the very least, all RHCAs.

2- Develop and analyze an alternative in which each POO is subject to public notice and individual, site specific NEPA documents.

3- Develop and analyze an alternative in which the approval and initiation of mining is contingent on the claimant being able to demonstrate a valid right to mine under the 1872 Mining Law.

There also must be effective monitoring and enforcement of the rules and regulations governing mining at each mine site and assurance that each of the claimants has the proper permits and licenses before initiation of the mining operation. Frankly, we question whether and how the agency can enforce any needed provisions given the fact ongoing illegal suction dredging is occurring.

As noted above, there is no adequate range of alternatives. The above comments clearly asked that an alternative that makes any approval contingent on claim validity be analyzed. That was not done.

The cumulative impacts analysis is merely a listing of projects in Appendix A. For example, it does not explain why populations of wild steelhead are not recovering in the Clearwater Basin. Indeed, studies from the Idaho Department of Fish and Game indicate wild steelhead “in the Clearwater populations continue to decline in 2014,” and that decline is a problem. Instead, the EA presents a rosy picture, not supported by evidence (or even the BA), that suction dredge mining won’t have much of an impact on steelhead.

Further, the EA does not disclose the exact amount of dredging that could take place under the proposal. Stream miles and the amount of riverbed that could be excavated are not disclosed.

In summary, the proposed action meets the definition of significance in the NEPA regulations. The BA reaches a likely to adversely affect determination for steelhead, which further supports a conclusion that an EIS is needed.

ENDANGERED SPECIES ACT

Our scoping comments stated:

This proposals occur in critical habitat for listed species under the Endangered Species Act (ESA) as well as species petitioned for listing or other sensitive aquatic species. These include steelhead (listed, South Fork), bull trout (listed, Orogrande and South Fork), Westslope cutthroat trout (petitioned for listing), the Pacific lamprey (petitioned for listing), and spring/summer Chinook salmon. Fall Chinook (listed) are found in the mainstem Clearwater around the confluence with the South Fork and may go up the South Fork. As such, under section 7 of

the ESA, consultation for listed species (salmon, steelhead, and bull trout) must occur.

It appears very unlikely, even impossible, for the proposed operation to comply with the ESA, the NFMA, and other aquatic life protective measures. As such, the agency has the obligation to notify the applicants of this fact.

Sediment from dredging does affect benthic invertebrates (especially mollusks which disperse slowly and mussels whose populations are currently unstable) and fish habitat (downed woody debris and spawning beds) (see Effects of Suction Dredging on Streams: a Review and an Evaluation Strategy, Harvey and Lisle 1998 in Fisheries, Vol. 23 No. 8). Little research has been done on any aspect of dredging. There is virtually no mention in the literature on extremely sensitive species like bull trout, which have narrower tolerances than salmon, steelhead, and even Westslope cutthroat.

The agency's duties under the ESA are not overridden by any "rights" the applicant may have under the 1872 mining law. The courts are clear in ruling that prohibitions under the ESA must be enforced, even to deny mining operation and: "of course, the Forest Service would have the authority to deny any unreasonable plan of operations or plan otherwise prohibited by law. E.g., 16 U.S.C. 1538 (endangered species located at the mine site). The Forest Service would return the plan to the claimant with reasons for disapproval and request submission of a new plan to meet the environmental concerns." (*Havasupai Tribe v. U.S.*, 752 F.Supp. 1471, 1492 (D. Az. 1990) affirmed 943 F2d 32 (9th Cir. 1991) cert. denied 503 U.S. 959 (1992); See also *Pacific Rivers Council v. Thomas*, 873 F.Supp. 365 (D. Idaho 1995); *Pacific Rivers Council v Thomas*, 30 F.3d 1050 (9th Cir 1994) cert. denied 115 S.Ct. 1793 (1995)). This point is particularly valid in this instance as the dredging proposals would have profound impacts on water quality and TES species.

We also noted in our comments, "The BA indicates that the dredging is "Likely to Adversely Affect" steelhead, causing a "take" of steelhead and resulting in adverse modification of steelhead critical habitat." There is clear reason to deny any plan of operation on the South Fork Clearwater.

In summary, there are negative impacts from mining on fish and the trend for wild steelhead in the Clearwater is not good. The EA assumes that consultation under the ESA will result in agreement with this project even before consultation has been completed.

MITIGATION MEASURES ARE INADEQUATE

The mitigation measures proposed in the EA fail to adequately protect fish habitat. For example, prohibiting activity from within 2 feet of streambanks but within the wetted perimeter could be inconsistent as steep stream banks would be within the wetted

perimeter. Having a requirement that is 10 feet from banks or the wetted perimeter would be more enforceable and better for fish (measures 2 and 10) as it would prevent inadvertent undermining of steep banks.

Replacing cobbles and the end of the day rather than the season would make it much easier to remember where the boulders and cobbles are located (measure 7). Having stream protection for crucial tributaries of the South Fork Clearwater the length of a sediment plume (~300 feet) above and upstream of the tributary (measure 8) in addition to the measures proposed would be better for fish as they congregate around where the tributaries enter the South Fork.

It is unclear as to the percentage of dredging that could occur in any given year for the South Fork. Also allowing motorized use on closed routes is unnecessary and damaging. Suction dredge miners should abide by the same regulations governing access as other citizens. Besides, the streams in question have roads that parallel them, so there should be no need to use closed routes for dredge miners.

Lastly, the map and description of the stretches on the South Fork that would be opened to suction dredging are not consistently disclosed. For example, it appears as if the entire South Fork, including land that is not public (national forest or public land administered by the BLM) is open under this decision.

MINING CLAIM VALIDITY

Our scoping comments addressed this issue in detail. As a summary of the issue, we stated:

Before rejecting the no-action alternative under NEPA, or approving the POOs, the agencies are obligated to ensure that the public's resources are not being jeopardized by actions pursuant to invalid mining claims. It is very doubtful that all the subject claims contain a "valuable mineral deposit" under the 1872 mining law.

The agencies have not conducted such a test for validity. Even if some or all claims are valid, the issue of the type of mining must be addressed. Specific mining methods can be regulated or prohibited, even on valid claims, to protect other resources, as there are usually other mining methods. Suction dredging is not the only type of placer mining.

MERCURY

The DR clearly notes the possibility of “elemental mercury” could be excavated by suction dredge mining. While mitigation measure 22 on page 3-44 of the EA addresses mercury, it is completely unenforceable and impractical. How would operators know if they encountered or mobilized mercury? We would also request that monitoring be done

by BLM to see if mercury is in the areas proposed for dredging and monitor the dredging operations themselves.