

To: Roger Chase, Chairman, Idaho Water Resource Board  
Mat Weaver, Deputy Director, Idaho Department of Water Resources

From: Jann Higdem, Research Analyst  
December 5, 2017

Thank you for the opportunity to comment on the subject of "Suction Dredge Mining in the South Fork Clearwater River". As I understand it, there are two main topics of consideration: 1) the number of permits to be allowed for dredge miners in the South Fork of the Clearwater River (SFCR) and the conditions in the Special Supplement for dredge miners of the SFCR. I would like to comment on both topics as well as Recreational Suction Dredge Mining is a Beneficial Use, Protected Waters, Water Resource Board Authority, and the Idaho Administrative Procedures Act. All of these are related.

#### Permit limits.

The SFCR has TMDLs are for temperature and sediment. IDWR maintains that "the annual limit of 15 dredges or power sluices on the SFCR is based largely on a water quality management plan known as a Total Maximum Daily Load ("TMDL") established for the SFCR sub-basin by the Idaho Department of Environmental Quality ("IDEQ") and the US Environmental Protection Agency ("EPA"). The TMDL relied on several assumptions for allocating an annual maximum amount of sediment discharge on the SFCR from small scale suction dredge operations, including volume of sediment discharge per dredge, daily hours of operation per dredge, and operation of no more than 15 dredges per year." (emphasis added)

It appears that the IDWR has placed more emphasis on assumptions in the factors in an equation, than on the actual TMDL product: 240 cubic yards or 314 tons/day from July 15-August 15. IDEQ was courteous enough to divulge how it arrived at its very gracious Daily TMDL. I only wish IDWR had been as courteous in displaying how its formula details in the Resource Evaluation in the SFCR State Water Plan that resulted in it being listed as a protected "recreational river". How were all those numbers arrived at? When Rep. Giddings and Don Smith traveled to Boise to find out, they went through many boxes and never found out. The Water Resource Board, the State legislators that voted to pass the SWP nor the public were ever privy to this data, and had to accept it on face value. Uninformed decision making.

Did IDWR read the IDEQ study "Water Quality Summary Report 34: A Recreational Suction Dredge Mining Water Quality Study on South Fork Clearwater River" done during 2001? If so, they would have read IDEQ's conclusion: "As an overall conclusion, results from this study indicate that the limited recreational suction dredge mining activities occurring during 2001 on South Fork Clearwater River **cause no measurable short term impairments on aquatic life beneficial uses.**" (emphasis added) There were 7 dredging operations that year. IDWR does not even mention this study in its 7-page memo. Why not? This was site-specific and ignored by all regulators: USFS, EPA & IDWR.

Once the area was studied and the sediment loading damage was assessed as immeasurable, IDEQ moved on with the 2003 IDEQ "South Fork Clearwater River Subbasin Assessment And Total Maximum Daily Loads". This document states approximately 9 times that either point sources or specifically suction dredge sources of sediment are very small when compared to non-point sources and high seasonal flows. (Pages: xxxvi, xxviii, 97, 100, 133, 218, 236, 237, 5-15.)

Page 219 states, with emphasis added, "Based on available data, for the purpose of this allocation it is assumed that 15 such operations could operate each year during the July 15 – August 15 window without resulting in increased bedload

movement or surface fine sediment levels downstream of active mining. Assuming these dredges move no more than 2 cubic yards of material per hour, and further assuming a normal 8 hour work day, an allowable daily mass sediment loading from dredgers is:

$$15 \text{ dredges} \times 2 \text{ yd}^3/\text{hour} \times 8 \text{ hr}/\text{day} = 240 \text{ yd}^3/\text{day} \text{ (or } 314 \text{ tons}/\text{day})$$

IDEQ maintained the effectiveness of this allocation in controlling bedload related problems is also contingent upon the following two key assumptions: 1) Each facility complies with all applicable permitting processes; and 2) in no case are individual dredges separated by less than 100 feet, consistent with IDAPA 37.03.07.064.

In the Recommended implementation procedures section, IDEQ noted,

"In order to most easily mesh with current IDWR permitting processes, in implementing this WLA it is recommended that USEPA adopt a similarly tiered NPDES permit process. Specifically, it is recommended that a general permit process be established for dredges of less than or equal to 5 inch nozzle size and less than or equal to 15 hp, and that each dredge be limited to discharge no more than 2 yd<sup>3</sup>/hour, as averaged over the period of operation for the entire day... Given the greater volume of material discharged, and greater chance of causing sediment related problems, it is recommended that *larger* dredges be required to apply for an individual NPDES permit... Given the *lack of consistent monitoring of the effects of this industry* in the SF CWR watershed, it is recommended that the USFS, IDEQ and USEPA establish a monitoring plan to further characterize and assess these impacts on an ongoing basis." (emphasis added) There is no mention of a 15 permit limit.

Table 58: "Sediment wasteload allocations for the SF CWR Subbasin" depicts achievement for the SFCR above Harpster Bridge & including tributaries that: 1) the season be July 15 through August 15; 2) the turbidity below the mixing zone not exceed background turbidity by more than 5 NTU when background turbidity is 50 NTU or less; 3) Turbidity below the mixing zone shall not exceed background turbidity by more than 10% when background turbidity is more than 50 NTU, and shall not exceed a maximum increase of 25 NTU; and 4) 314 tons/day total sediment discharge. There is no mention of a 15 permit limit.

The very last sentence in implementation recommendations says, "A detailed monitoring plan will be developed as part of the implementation plan in order to evaluate effectiveness of BMPs in reducing instream sediment levels. This plan will identify the specific entities responsible for collecting the data, which parameters will be sampled, and the locations and frequencies of sampling."

John Cardwell, IDEQ's Lewiston Regional Administrator and I spoke on the phone about how important the 15 dredge limit was compared to the overall daily 240 yd<sup>3</sup>/day (or 314 tons/day). He stated the number of dredges is inconsequential and that the daily waste load allowance was what mattered. I emailed him after the call to summarize our conversation. Overall it was correct. It is Appendix A. Important comments from the Chairman of the Water Advisory Group that participated in the creation of the TMDLs are found at Appendix B.

The 2003 TMDL document goes on to say in the Monitoring Strategy section,

"Monitoring of point source temperatures is needed so that the facilities can verify compliance with WLAs using current operations or determine if treatment revisions will be necessary. Monitoring requirements will be included in revised NPDES permits, but point sources are encouraged to begin collecting data immediately... The implementation plan will identify how monitoring data will be acquired, organized and maintained for each of the control locations... compliance with the numeric turbidity criteria and the narrative sediment standard. Monitoring required as part of the NPDES permitting process, will be an important tool to evaluate ongoing compliance with this allocation. Given the lack of consistent monitoring of the effects of this industry in the SF CWR watershed, it is also recommended that the NPNF, IDEQ and USEPA establish a monitoring plan to further characterize and assess these impacts on an ongoing basis... For suction

**dredging**, it is expected that achieving the wasteload allocation will ensure compliance with the numeric turbidity criteria and the narrative sediment standard. Monitoring required as part of the NPDES permitting process, will be an important tool to evaluate ongoing compliance with this allocation. Given the lack of consistent monitoring of the effects of this industry in the SF CWR watershed, it is also recommended that the NPNF, DEQ and USEPA establish a monitoring plan to further characterize and assess these impacts on an ongoing basis... A majority of the sources of temperature and sediment loading are nonpoint in origin, and realistically it may take many years if not decades to fully achieve the goals of the TMDL." (emphasis added)

It is clear that there is a very real need to continuously monitor the effects of the Best Management Practices and assess whether or not the temperature and sediment TMDLs are both being met, and perhaps a delisting could occur.

The "South Fork Clearwater River TMDL Implementation Plan" was published 3 years later, in 2006. Pertinent statements in this document include the following: (emphasis added)

\* "The Idaho Department of Environmental Quality believes ten years should be a reasonable amount time for achievement of water quality standards; however, it is likely to take decades for improvement throughout the watershed considering the time needed to for riparian vegetation to grow to maturity." Note: Suction dredge mining has nothing to do with the decades needed.

\* "Idaho Code 39-3611 requires a review of TMDL implementation plans periodically at intervals no greater than five years." Note: To date, IDEQ has violated this statute and failed to conduct any review of the implementation plan. It has scheduled its first "5-yr review" to occur between 2019-2021; at minimum only 8 years, or 2 reviews behind, the statute. Where is IDEQ's accountability, considering the effects its I.C. violation could afflict on those potentially affected?

\* Idaho Code 39-3621 requires designated agencies, in cooperation with the appropriate landmanagement agency to ensure best management practices are monitored for their effect on water quality. The monitoring results are to be presented to the Department of Environmental Quality on a schedule agreed to between the designated agency and the department.

\* The guidance contained in code relies on participation and assistance of watershed advisory groups and designated management agencies. The following designated management agencies will assist the South Fork Clearwater River Watershed Advisory Group and the Department of Environmental Quality in the analysis and identification pollution control strategies for point and non point sources in the watershed:

- Idaho Department of Lands (IDL) should assist with the identification and documentation of strategies and measures addressing forestry, minerals and mining.
- The Soil Conservation Commission (SCC), should assist with the identification and documentation of strategies and measures addressing grazing, and agriculture.
- Idaho Transportation Department (ITD) should assist with the identification and documentation of strategies and measures addressing public roads and right-of-ways.
- US Forest Service and Bureau of Land Management should assist with the identification and documentation of strategies and measures addressing management practices and activities occurring on lands within their jurisdiction.
- The US EPA should assist with the identification and documentation of strategies and measures addressing National Pollution Discharge Elimination System permits.
- The Nez Perce Tribe should be responsible for activities occurring on tribal lands within the South Fork Clearwater River watershed subject to tribal authorities.

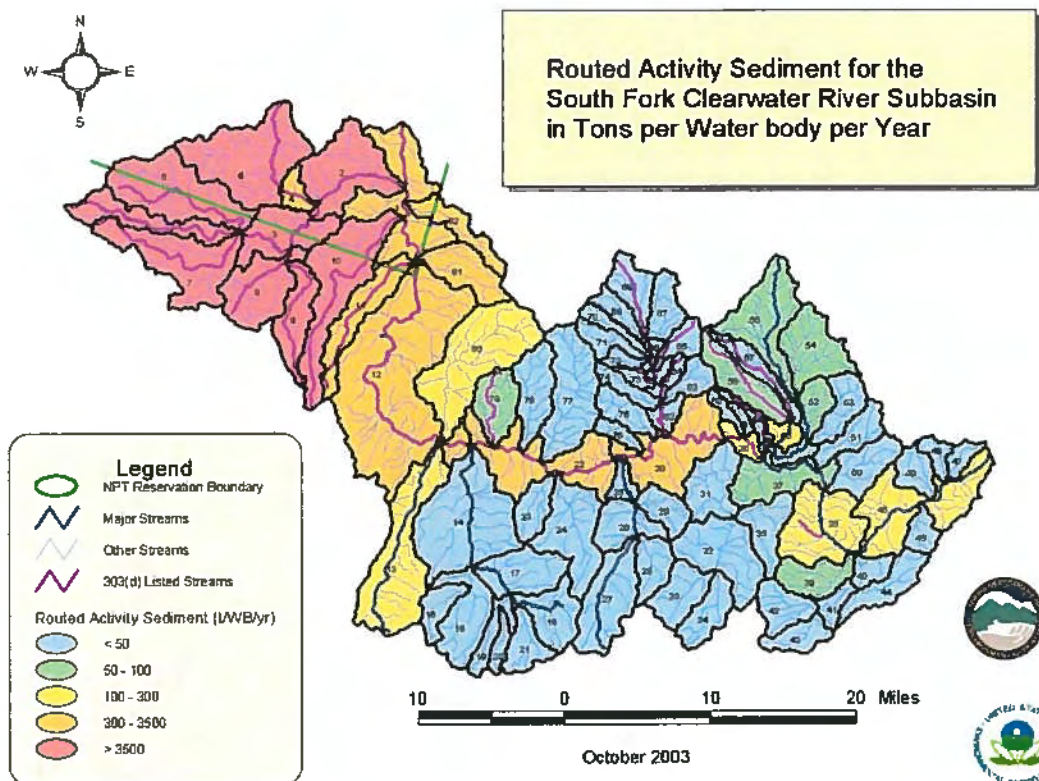
The Implementation then goes on to depict various projects intended to bring the Subbasin into TMDL compliance, to the tune of at least \$9 million. The 23-page "Appendix B: Sediment Monitoring Plan, US Forest Service", written by Nick Gerhardt, depicts how the USFS is to monitor the Implementation Plan. It describes Objectives of the mainstem sediment and Goals designed to meet the objectives. Included are to meet these objectives and goals are the parameters of: streamflow, suspended sediment concentration and transport, turbidity, bedload sediment transport, substrate

particle size distribution, cobble embeddedness, percent surface fines and residual pool depth. It discusses sampling protocols, substrate monitoring protocols, substrate and channel morphology protocols, laboratory analysis, data storage, analysis and reporting, quality assurance/quality control, implementation and funding, and plan development process.

Within the "Data Storage, Analysis and Reporting" section, Gerhardt states, "An annual report will be written summarizing the previous year's data collection and analysis efforts. The reports will be cumulative in that each successive year of sampling will be added to previous reports. The reports will be distributed to the parties of interest, including the participating agencies and others."

These reports are nowhere on the NP forest's website, and after inquiring about them, Ms Anne Connor (USFS) stated in a December 1<sup>st</sup> email to me, "On the South Fork of the Clearwater, we spend on the order of \$2 million annually on such projects as culvert replacements for aquatic passage, road improvement and decommissioning, channel and floodplain restoration, trail reroutes to avoid streams and other projects to improve water quality and fish habitat." She failed to respond to the specific reports cited as forthcoming by Nick Gerhardt's plan. Ms Cynthia Valle was copied in her response and she quickly responded "Sediment monitoring was completed from 2006-2010 as part of the SF Clearwater Implementation Plan. SF Clearwater sediment monitoring was not continued by Forest Service post 2010, excepting in sub tributary gauge sites and other project-related sites." I have since asked her for a copy of the 2006-2010 reports and inquired as to why the USFS terminated its monitoring program 7 years ago, against the directive for cumulative annual reports. Being a recent email, I am awaiting the reports and her responses to these questions. The email thread is Appendix C. Although the exact amount is unclear, if the USFS has spent \$2 million annually since 2006, the total amount spent to date would be approximately \$22 million. Surely a current, cumulative report would indicate that the project areas have greatly reduced sedimentation in the SFCR Subbasin.

To determine where the sediment impediments are and in what quantities, we go back to the TMDL document, Appendix L (pg L-24) has a map that depicts the varying sediment levels in the subbasin. As you can see, the highest levels of >3500 tons per water body per year (t/WB/yr) only occur with the NPT boundaries and immediately south. The levels decrease from there to an uncharacteristically broad range of 300-3500 t/WB/yr along most of the SFCR. Immediately north and south of the lower SFCR the levels are <50 t/WB/yr. It is unclear why the tributaries north of the lower SFCR are listed as 303d impaired.



The USFS has failed to meet its obligations to monitor the Implementation Plan's progress for 7 years and IDEQ has completely failed to statutorily review the Implementation Plan since its inception 11 years ago. About \$22 million has been spent on improvement projects since 2006. **It is completely impossible for IDWR to have any knowledge about the current state of sediment levels in the SFCR Subbasin.** IDWR is completely relying on greatly out-dated data, or data that is not specific to the area or even the state in some cases. The one exception is the 2016 USFS report on the impacts of dredge mining activities in 2016.

Mr. Kenney's report proved, as suspected and previously voiced, that the 314t/d TMDL was very generous. Although only 9 permits were issued to dredge the SFCR, their total annual sediment "loading" for the 32-day season was less than 1 day's allocation from IDEQ. Less than 1/32. Theoretically, 15 dredgers would have met less that 1/16 of the season's allocations. It took 13 years for anyone to test the TMDL's accuracy. It is incumbent upon the Water Resource Board to acknowledge the USFS findings as basically truly a Finding of No (Significant) Impact. The allocation is impossible to be exceeded by 15, or even all of the IMC claims within the SFCR.

The BLM issues placer/dredge mining permits in 20-acre allotments in a specified location. Each 20-acre claim is issued an IMC number and logged into their system. The charge to be legally mine is \$155 per year. The BLM accepts these fees, further indicating the claimant's federally-issued right to mine the claim. They are public record. Yet, the USFS, EPA and IDWR have ignored these federal rights to mine in the specified areas and, without legal authority, decided that only the first 15 of the legal claim holders to apply for permits may actually mine their claims. The remainder of the claimants with legal claims are denied the to mine their \$155 claims. I recall reading somewhere that there were over 30 BLM-paying claimants in the SFCR. This means that at least 15 claimants spent a total of \$2,325 to mine claims that IDWR denied them access to. I am fairly certain that the state could be held liable for these claimants immediate economic losses: claim fees and unrecovered gold at about \$1,000/ounce.

**Absent any scientific basis, it is recommended that the Water Resource Board remove the limit of dredging operations completely. Without this action, the IDWR is ripe for lawsuits from those who legally paid for their federal claims, yet were denied access and the ability to derive an income.**

### **The SFCR Special Supplement.**

Per the IDWR memo on the Special Supplement for this listening sessions, "The IWRB's South Fork Clearwater River Basin Comprehensive State Water Plan ("SFCR Plan") allows limited small scale suction dredge or placer mining on the main SFCR subject to IDWR permitting and upon requests by miners using the Special Supplement."

IDAPA 37.03.07.01 and .02 (Rule 64) says,

"01. Standards for Suction Dredges. The following standards shall apply only to uses of suction dredges with nozzle diameter of five (5) inches or less and rated at fifteen (15) HP or less and non-powered sluice equipment moving more than one-quarter (1/4) cubic yard per hour. (7-1-93)

02. Operating Permit. A permit for the operation of a suction dredge may authorize the use of the dredge within a drainage basin or a large portion of a drainage basin except as otherwise determined by the Director."

According to the 2005 SFCR Plan, which has been heralded as "law", page 93 clearly says, "Recreational dredging equipment must have an intake of 5 inches diameter or less and a rating of 15 horsepower or less. A stream channel alteration permit is required for larger dredges." If the SWP is law, then the law says that stream alteration permits are NOT required for dredging equipment with an intake of 5 inches diameter or less and a rating of 15 horsepower or less. Since it appears that such sized equipment does require a stream alteration permit, one must assume that the SWP is NOT Law and cannot be quoted as being such. If it IS law, then the requirement for a permit is violating the law. Clearly there is a conflict over state laws. **The Water Resource Board at this point must determine which conflicting data is state law and which is not and state why the one that is not law, is not law.**

The original 2002 Special Supplement (SS) stated,

"Due to concerns about adverse impacts to threatened or endangered species and or their habitat, you must comply with the requirements listed below in addition to all the conditions and requirements of the recreational dredging permit. If you wish to dredge in the waters identified below, you must sign this page and return it with the recreational dredging application."

It went on to state that the confluence of the Clearwater River to the confluence of the Red and American Rivers was open to suction dredging from July 15 to August 15. A copy of an IDWR PRR-supplied permit dated 2/25/2002 states that Do (sic) to concerns about adverse impacts to threatened and endangered species and/or their habitat, you must comply with the requirements listed below in addition to all the conditions and requirements of the recreational dredging permit..." It lists the requirements, or Special Conditions, for the permit as being 5-fold:

- 1) To dredge in these waters you must identify specific areas and total length of each site you propose to dredge this year. The site(s) must be accurately located on a U.S.G.S. topographic map or legible hand-drawn map sufficient in geographical detail to readily locate the dredging site(s).
- 2) The area specified under item 1 will require an onsite inspection by IDWR and various State and Federal agencies before approval of the dredging application.



- 3) Dredging will not be allowed in any area(s) not specifically identified in the supporting information and approved by the various State and Federal management agencies during the on-site inspection.
- 4) This permit is non-transferable. The permit holder (Applicant) is the only person authorized to dredge under this permit and must have a complete copy of the permit, including all attachments, on-site any timework (sic) is being conducted.
- 5) Approval of your dredging permit may include additional permit conditions and/or operations restrictions not identified in your original permit application. These may include, but are not limited to, special requirements identified in the Bureau of Land Management's surface management regulations found at 43 CFR 3809. Failure to diligently adhere to all specified conditions as set forth herein shall result in legal action under various State and/or Federal Laws.

In 2009, the Special Supplement was amended, seemingly without public input, to become more restrictive by saying,

- "1) To dredge in these waters you must identify specific areas and total length of each site you propose to dredge. Not more than three (3) sites may be requested and the combined length of all sites shall not exceed 1500-feet. The site(s) must be accurately located on a U.S.G.S. topographic map or a legible hand-drawn map sufficient in geographical detail to readily locate the dredging site(s). If the application information is incomplete, inaccurate, or submitted late, the processing of your application will be impacted and potentially not issued in time to allow you to dredge this year.
- 2) The areas specified under item No. 1 will require an on-site inspection by IDWR and various state and federal management agencies before approval of the dredging application.
- 3) Dredging is allowed in only the area(s) specifically approved by the various state and federal management agencies.
- 4) This permit is non-transferable. The permit holder (Applicant) is the only person authorized to dredge under this permit and must have a complete copy of the permit, including all attachments on-site anytime work is being conducted.
- 5) Approval of your dredging permit may include additional permit conditions and/or operation restrictions not identified in your original permit application. Failure to diligently adhere to all specified conditions as set forth herein shall result in legal action under various state and/or federal Laws and immediate termination of this permit and all other permits of the applicant to dredge in state waters.

The only real change was that a restriction was placed on the total feet that could be dredged. It is unclear if this meshes with BLM claims of 20-acre allotments or violates them. Both were to be completed in addition to the regular permit. It is obvious that without any public input at all, the new Special Supplement conditions have been grossly enhanced, and without any justification until IDWR's recent memo prepared for the public listening session. Since the changes in requirements equate to regulations or rules, it appears to the legislators that the IDWR is making its own rules without their authorization.

IDWR can say whatever it wishes as to *how* these new conditions were derived, but the truth is that they are almost verbatim to the conditions noted in the 2016 USFS Decision Notice and Finding of No Significant Impact (DN/FONSI): "Small-scale Suction Dredging in Orogrande and French Creeks and South Fork of the Clearwater River". It is no secret that the 2 agencies signed an 11-page MOU in the spring of 2013 (which expires on 4/1/2018) saying in part,

"This agreement is intended to provide a foundation for the IDWR and the U.S. Forest Service to work together in partnership on issues that pertain to stream channel alteration in conjunction with U.S. Forest Service sponsored or authorized projects, recreational dredging and placer mining that impact surface waters within National Forest System lands ("NFS lands"). This partnership will result in consensus management of mutually beneficial programs and activities consistent with each organization's mission and objectives."

After the 2016 DN/FONSI and its conditions being highly contested by local governments and dredge miners alike, the very same year, the IDWR puts out the same list with a few minor deletions/additions. IDWR came up all of the same "regulations", but failed to involve the public as the USFS had. In essence, this was a rule-making action and seems to have violated Idaho's Administrative Procedures Act by not involving the affected public and local governments.

I am not going to analyze each of the conditions as to whether they should be left as is, amended or deleted. I *am* going to say that nothing has ecologically changed since the original 2002 Special Supplement that would warrant the new overly restrictive conditions. Pure logic dictates that if a dredger has paid the BLM \$155 to dredge a specific 20-acre area of the SFCR, the dredger should sign the Letter Permit (with all of its restrictions noted in the Instructions) and a Special Supplement with the same conditions as the 2002 Special Supplement had. This permit and its Supplement would continue to protect the sediment and temperature TMDLs and would not harm the aquatic environment at all. The IDWR really has no business signing MOUs with federal agencies on matters that affect State Waters. Idaho has jurisdiction over the SFCR. Period. **I recommend that the Water Resource Board to re-implement the original 2002 Special Supplement, truly as a "supplement" to the Letter Permit.**

As an *extremely* important to note aside for the Water Resource Board to note, the USFS has failed to follow the Congressional Review Act regarding the above DN/FONSI. This document has not been sent to the Comptroller General and Congress. Due to this failure, all of the conditions within the DN are null and void. The DN/FONSI qualifies as a "rule" under the Administrative Procedures Act. The APA at 5 U.S. Code § 551(4) states, "rule" means "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency..." The Congressional Review Act at 5 USC 801(a) states,

"(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

- (i) a copy of the rule;
- (ii) a concise general statement relating to the rule, including whether it is a major rule; and
- (iii) the proposed effective date of the rule.

(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress—

- (i) a complete copy of the cost-benefit analysis of the rule, if any
- (ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;
- (iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and
- (iv) any other relevant information or requirements under any other Act and any relevant Executive orders."

I urge the water Resource Board to realize that USFS provided data to the IDWR that is currently null, void and hence: unenforceable. Lacking any current science of its own that shows small scale suction dredging negatively affects the SFCR itself, yet possessing (perhaps not reading) current science specific to the SFCR showing that this dredging is no where near violating the temperature & sediment TMDLs or harming the aquatic life environment, **I recommend the Water Resource Board to: 1) allow each dredge miner with a paid BLM claim to mine their claim; and 2) to return the Special Supplement for the SFCR back to its original 2002 language.**

### **Recreational Suction Dredge Mining is a Beneficial Use.**

According to IDEQ's SFCR Subbasin webpage, the area's beneficial uses include: Cold water aquatic life, salmonid spawning, primary and secondary contact recreation, agricultural water supply. As long as IDWR insists on listing a certain dredge size as "recreation-al", let us digress and review Idaho's Surface Water Use Designations found at IDAPA 58.01.01.100.02.



- a. Primary contact recreation(PCR): water quality appropriate for prolonged and intimate contact by humans or for recreational activities when the ingestion of small quantities of water is likely to occur. Such activities include, but are not restricted to, those used for swimming, water skiing, or skin diving.
- b. Secondary contact recreation (SCR): water quality appropriate for recreational uses on or about the water and which are not included in the primary contact category. These activities may include fishing, boating, wading, infrequent swimming, and other activities where ingestion of raw water is not likely to occur.

The 2003 TMDL states, "Recreation use includes big game hunting, fishing, horseback riding, hiking, cross-country skiing, swimming, whitewater kayaking, snorkeling and scuba diving, camping, photography, wildlife viewing, picnicking, arts and craft activities, outdoor learning, berry picking, wood cutting, off-road vehicle use, sight seeing, and recreational dredge-mining." (pp 36-37) Recreational suction dredging is therefore a Primary Contact Recreation, and therefore considered a Beneficial Use, with the exception of Threemile and Butcher Creeks. (pg 40)

The 2012 State Water Plan (SWP) says in part, "Idaho Code § 42-104 provides that an appropriation of water must be for "some useful or beneficial purpose" but does not define beneficial purpose. Except for the constitutionally protected beneficial uses which are domestic, agricultural, manufacturing, and mining, the concept of what constitutes a beneficial use of water has evolved over time based upon societal needs." (emphasis added)

Going back to the 1982 SWP under Policy 1 (Public Interest), the following is stated,

"Section 42-203, Idaho Code, should be amended to provide the following: 1) protection for all existing water rights. Nothing in this plan shall adversely affect water rights established and vested under the Constitution and laws of Idaho; (2) all new water uses both consumptive and non-consumptive such as irrigation, municipal, industrial, power, mining, fish and wildlife, recreation, aquatic life, and water quality will be judged to have equal desirability as beneficial uses subject to Article XV, Section 3, of the state Constitution; (3) if conflicts occur between meeting new water uses, the approval or denial of the application shall consider the public interest including an evaluation of the beneficial and adverse economic, environmental and social impacts as identified in the State Water Plan as adopted by the Idaho Water Resource Board." (emphasis added)

Since its publication, IC 42-203, per sé, is no longer, but has morphed into 203A, B, C & D; none of which seem include the above desired language. Mining (in general) was given water rights within the Constitution. The Water Resource Board at the time, desired to also give non-consumptive water rights specifically to mining (in general). The State Water Plan is considered to be "law" although it states it is a policy document. It is supposed to be fluid, yet in 2001, IDWR pushed through the Idaho legislators a proposed removal of the mandated 5-yr review process (DOCKET NO. 37-0201-0101) stating that the deletion will align the rules with Sections 42-1734A and 42-1734B, Idaho Code. IC 42-1734B(8) now says,

" The board shall review and reevaluate Part A of the comprehensive state water plan, or any one (1) or more of the component water plans comprising Part B of the comprehensive state water plan, upon the adoption of a concurrent resolution of the legislature directing the review or requesting a specific amendment to the plan. The board also may undertake the review in response to a petition for amendment filed pursuant to subsection (3) of this section, or upon the board's own initiative, as determined necessary by the board. Amendments to Part A or Part B of the comprehensive state water plan shall be adopted in the same manner as the original plan."

The review process went from a mandatory every 5 years, to whenever the legislature wants to review it, the Water Resource wants to review it, or when an agency petitions for a specific amendment. It was completely removed from any timelines and public-initiated desires for amendment. This is not what transparent governing is about and is

unconscionable. I recommend that the Idaho legislature request a review of the Part B SWPs all over Idaho, but in particular, the SFCR Subbasin SWP.

### **Protected Waters. Wild/Scenic vs Natural/Recreational**

**Wild and Scenic.** In 1968, President Johnson signed the Wild & Scenic Rivers Act. In 1979, President Carter issued a Memorandum to federal agencies stating in part, "Each federal agency shall, as part of its normal planning and environmental review process, take care to avoid or mitigate adverse effects on rivers identified in the Nationwide Inventory, prepared by the Heritage Conservation and Recreation Service in the Department of the Interior. Agencies shall, as part of their normal environmental process, consult with the Heritage Conservation and Recreation Service (now the the National Park Service's Rivers, Trails & Conservation Assistance Program) prior to taking actions which could effectively foreclose wild, scenic, or recreational river status on rivers in the Inventory.

"Each Federal agency with responsibility for administering public lands shall, as part of its ongoing land use planning and management activities and environmental review process, make an assessment of whether the rivers identified in the Nationwide Inventory and which are on their lands are suitable for inclusion in the Wild and Scenic Rivers System, the agency shall, to the extent of the agency's authority, promptly take such steps as are needed to protect and manage the river and the surrounding area in a fashion comparable to rivers already included in the Wild and Scenic Rivers System. In addition, the agency is encouraged, pursuant to the revised Guidelines, to work with the Agriculture and the Interior Departments to prepare legislation to designate the river as part of the Wild and Scenic Rivers System if appropriate. ***Please give these assignments your immediate attention.***"(emphasis added). In my opinion, this amounts to a federal taking of Idaho's waters.

It is unclear why the National Park Service (NPS) was selected to make the designations to the Nationwide River Inventory (NRI). By 1982, the NPS, through an arbitrary non-NEPA process, decided which waters in the nation should be listed as wild, scenic, & recreational, and waters that were "eligible" for these 3 categories, the NRI. They did not include the SFCR in this year, but added it and many others as eligible for Recreational River status in 1993, using the same process. In all, the NPS has decided that over 2,200 miles of rivers in Idaho are eligible for nationally declared Recreational Rivers. Over 12% of these miles are located in Idaho County. The USFS has obviously taken steps to protect & manage the SFCR in a manner that other designated Recreational Rivers in the W-S Rivers System is. In the USFS Final Environmental Assessment that accompanies the Decision Notice, Ms Probert mentions that the assessment by President Carter has not occurred yet, after a request was made 38 years ago to give them their immediate attention. If Memorandums are considered lawful, then the USFS has also chosen to break the law, without benefit of a reason. I could posture a couple of reasons however. First, it would be labor intensive to take on the review process; and second, a review could easily remove some lands from their current restrictions that allow law enforcement to generate citations on. There is no incentive for the USFS/BLM to act upon the mandate to review waters to either remain or be excluded from the system.

The Council on Environmental Quality (CEQ) gave the federal agencies guidance as to how they must take care to avoid or mitigate actions that could adversely affect NRI segments. It cites dredging & filling as a reason that would generally require a consultation with the NPS and lists Instream or surface mining as "likely to cause serious adverse effects if they are constructed adjacent to or in close proximity to an Inventory river." In addition, CEQ states in part, "If you have prepared a document which finds that there would be no adverse effects - such as a Finding of No Significant Impact under the CEQ NEPA regulations - you should send a courtesy copy to the NPS field office in your region."

The Water Resource Board back then, completely supported and accepted the designations that were arbitrarily handed out by the NPS. It may not have known that the USFS would never perform assessments on the rivers designated. It is not in the best interests of Idaho or its residents & particularly dredgers, to potentially give their control of the NRI designated rivers to federal agencies.

**I recommend that the Water Resource Board to re-evaluate the entire NRI in Idaho and insist that the USFS & BLM fulfill the duties as given them by the highest executive in the nation.**

#### Natural & Recreational Rivers.

IDWR's website says,

"As part of the Comprehensive State Water Plan process, the Idaho Water Resource Board can designate river segments with outstanding fish and wildlife, recreational, aesthetic, or geologic value as a State Protected River. If the Board decides that the values of preserving an outstanding waterway in its existing condition outweigh the values of continued development, it can, subject to legislative approval, designate that waterway either a Natural or Recreational River to protect existing resources and use. Over 2,745 miles of Idaho's rivers are protected by the State."

Most of the 2,745 miles protected are the 2,200 miles listed on the NRI. There is currently no distinction in prohibited activities between "natural" and "recreational" rivers. All recreational rivers are de facto natural rivers. A 2003 Water Resource Board power point presentation discussing the two type of protected rivers, says on page 7:

"Natural River: Some limitations on future activities. Recreational River: Fewer restrictions than Natural River on future activities". Page 10 says, "The Board shall determine which of the previously mentioned activities are prohibited and may specify terms and conditions under which activities that are prohibited may go forward." To date, the Board has failed to do anything other than impose all natural river prohibitions on natural rivers without any variance or term & conditions to allow prohibited activities to go forward. Page 11 says, "River designation does not infringe on state water rights or vested property rights." Prohibiting suction dredge mining does infringe on these rights, especially without any known analysis as to why these rights are being violated. Page 15 says, "Board considers the impact of river designation on the social, economic and environmental livelihood of the region." The SFCR SWP fails to address these issues.

As noted earlier, the manner in which these rivers received protected status was hidden from the Water Resource Board, the state legislature and the public. A personal search for the documentation of this process failed to provide any. Were any socio-economic considerations given in the determinations? I cannot find any in the Plan. **I recommend that the Water Resource Board re-examine exactly how the documentation for every recreational river was determined, what the socio-economic impacts on the prohibitions are and assess if they still warrant the designation with or without terms and conditions.**

#### Water Resource Board Authority.

Skipping down to Policy 3 of the 1982 SWP: "Consolidate State Water Quantity and Quality Planning and Administration", the Water Resource Board felt it would be best for IDWR and today's IDEQ to merge under IDWR to avoid conflicts of duties that create confusion. It was interesting to note the Water Resource Board said, "The responsibility to issue and control rights to use waters of the state rests with the Department of Water Resources. **However, only minimal authority rests with the Department of Water Resources to consider the water quality effects of the proposed use of those waters.**" (emphasis added)

The right to use water in mining has long been established by the Constitution, Idaho Statutes and the SWP. It is IDEQ that: 1) Studied the waters, 2) Presented the TMDL document, 3) Presented the TMDL Implementation Plan, 4) is responsible for Reviewing the Plan's progress every 5 years; and 5) will soon be issuing point source NPDES permits for suction dredging. What authority does the Water Resource Board have to consider the water quality effects of suction dredge mining on the SFCR? Did the Water Resource Board have the authority to address these effects in the SWP Part B: SFCR Subbasin? "Recreational River", or not? **I recommend that the Water Resource Board consider revising the State Water Plan B, the SFCR Subbasin because it may have over stepped its authority in certain parts. If the Board is unwilling to do so, I recommend that the Idaho legislature request a review as well as determine the water Resource Board's authority to mandate rules such as the SFCR Special Supplement.**

#### **Idaho Administrative Procedures Act.**

It is my opinion that the IDWR considers the conditions of the SFCR Special Supplement to be regulatory and violations are subject to penalties and fines, state and/or federal. That effectively makes the Special Supplement a "rule". The change in conditions were in 2016 were made without benefit of any "rule-making" process. The legislators did not present it as a bill and IDWR did not present it on a Negotiated Rule Making docket. It appears that IDWR has violated the Idaho Administrative Procedures Act. As I understand it, what is currently happening is a pseudo-negotiated rule-making that will last only until the subject comes up again, which could be the 2019 dredging season.

**I recommend that IDWR submit a petition to revise the SFCR Subbasin SWP because it is outdated and conflicts with IDAPA. Many millions of dollars have been spent since 2006 to restore the SFCR temperature and sediment TMDLs to within the acceptable standards. IDEQ must be pressured to follow Idaho Code 39-3611 and *immediately* perform its long overdue 5-year review to determine if the SFCR is still indeed a 303d impaired water. The IDWR, USFS & EPA are all relying on old data. I also recommend that negotiated rule-making commence to restore the SWP parts A & B to its original 5-year review period. Or rescind the verbiage from DOCKET NO. 37-0201-0101 which altered the process for amending the plans.**

Respectfully submitted,

Jann Higdem  
Research Analyst

## Appendix A

### Email thread between John Cardwell (IDEQ) and Jann Higdem regarding the TMDLs set in 2003 for suction dredge mining in the SF Clearwater River.

----- Original message -----

From: Jann Higdem <[jhigdem57@gmail.com](mailto:jhigdem57@gmail.com)>

Date: 6/17/17 5:32 PM (GMT-08:00)

To: John Cardwell <[John.Cardwell@deq.idaho.gov](mailto:John.Cardwell@deq.idaho.gov)>

Cc: Cynthia Barrett <[Cynthia.Barrett@deq.idaho.gov](mailto:Cynthia.Barrett@deq.idaho.gov)>

Subject: Discussion on June 16th

Hi Mr. Cardwell,

Again, it was such an honor to be able to speak with you and at such length on Friday afternoon. I greatly appreciated hearing your perspective on key TMDL issues regarding IDEQ's 2003 TMDL document for the SFCR sub-basin.

I would like to make sure that I understood you regarding the Waste Load Allocations for dredging in the SFCR. Please correct me if I'm wrong; it's important.

The WAG, with IDEQ's guidance & scientific documentation, created what it thought would best bring the areas into the acceptable water quality range on sedimentation & temperatures (& other criteria such as bacteria). There was a total amount that had to be fairly split between the various sources, in this case point sources such as Waste Treatment Plants, roads, grazing & dredging. In order to decide an appropriate dredging portion of the overall sedimentation TMDL, IDEQ contacted IDWR in 2002 to ascertain the number of permits (desired operations) each year for 2000-2002. IDEQ/WAG wished to allow the largest number of operations possible and needing a starting point, chose IDWR's 2000 data where 15 dredgers had applied & received permits in the SFCR area. The formula on page 219 of the 2003 TMDL document showed that an anticipated 15 operations @ 2 cubic yards per 8 hour day would yield a 314 tons/day TMDL that would adequately meet the water quality standards and encourage EPA to allow Idaho to run its own NPDES program. Currently, if the 314 t/d is altered then another source would also have to be altered so that the overall TMDL remains static.

The 314 tons/day is the maximum sedimentation TMDL contribution. If this number can be achieved with 30 operations working 4 hour days etc., it would be fine with IDEQ. The focus is NOT on the number of operations but on the daily TMDL that cannot be exceeded. With appropriate IDWR monitoring & evaluations that reflect reality vs modeling, a more accurate generic formula could possibly evolve and therefore still likely to receive EPA approval for Idaho to have its own NPDES program. An end goal is for Idaho to maintain control of its own waters. (The SFCR is non-navigable & therefore already a State-held water. WOTUS has been stayed nationwide by the 6th Circuit Court of Appeals & by the POTUS via E.O.)

IDEQ has been accruing data regarding any activities that are aimed at implementing the TMDLs and attaining the various criteria needing improvement. When IDEQ presents its 5-year review on the effectiveness of the Implementation Plan on improving its water quality standards, it could be that different recommendations will be made. This process is unfortunately in arrears for several reasons.

In summary, IDEQ, peripherally, does not necessarily hold that more importance should be placed on the allowed number of operations in the SFCR, but that the 314 t/d TMDL is not violated. Is this correct, sir?

Thank you again for our conversation, which definitely went astray at points. I have told my husband about the Rescue Mine's issues. He is cogitating on the suggested potential remedy.

Take care, sir. Your shoes will be hard to fill when you decide to retire!

Jann Higdem

Research Analyst

from: [John.Cardwell@deq.idaho.gov](mailto:John.Cardwell@deq.idaho.gov)

to: [jhigdem57@gmail.com](mailto:jhigdem57@gmail.com)

date: Sat, Jun 17, 2017 at 6:25 PM

subject: RE: Discussion on June 16th

**Your summation is correct with a few very minor caveats that really don't effect the dredgers.**

Sent from my Verizon 4G LTE smartphone

## APPENDIX B

### Comments in the 2003 TMDL Relative to the Creation of the TMDLs

Appendix R of the 2003 TMDL document shows that the notice for public comment was sent to 5 libraries and many agencies. Appendix S depicts comments and responses based on a key of which of only 8 contributors made. It must be noted that NO "public comment" was addressed; all were that of the WAG members (1, 6, 7 & 8), Grangeville City Council (3, & 4), federal land managers (2) and the Idaho Conservation League (5). No comment came from the WAG mining representative, making it unclear as to his involvement in the entire process, particularly suction dredging.

It is important to note all of the WAG comment letters; there was clearly a conflict between their opinions and how they influenced the final TMDL document. IDEQ notes, "They (comments) were copied for the *most part* on a whole paragraph by whole paragraph basis." I object to IDEQ's failure to include the entire comments in this document. Personally, I attach a heavy weight to the WAG Chairman's comments, which include:

- \* One of my main concerns is that if any question of detriment water quality exists, even if it is totally off the wall, the EPA and NPT say it must be fixed. There is data within the tables of this draft that is inaccurate. How much data that we are not familiar with is incorrect? We need more than one or two years of data to help set the TMDLs...Two sets of the TMDLs in this document are being written without clear evidence of impairment to beneficial uses.
- \* What is the advantage of doing the TMDLs under the MOU? The state should be capable of doing the TMDLs themselves. The state is better able to dialog with the local residents. Local residents would prefer to work with DEQ...Generally speaking, the South Fork Clearwater WAG does not support this TMDL. Generally speaking, this is a dismal failure in the bureaucratic process of using local input on a mandated project to address the water quality of Idaho.
- \* Although we as a group have made decisions on several important issues, the agency people have not acted upon those proposals. In fact, when the temperature was found unreasonable to attain, it was lowered another 5 degrees instead of being raised.
- \* Since November 2001, the WAG has heard presentations by the agencies, and the WAG has repeatedly informed the agencies of unrealistic water quality standards. The natural water temperature exceeds the WQS...The Water quality standards are unrealistic for the South Fork Clearwater drainage. The 'natural' temperature presently exceeds the WQS. The state's water temperature standards are almost too bizarre for words.
- \* The WAG has largely bought off, or been worn down, on the need for temperature TMDLs basin-wide even though the Draft TMDL data, both WBAG 1996 and WBAG 2000, show that all listed water bodies except Three Mile and Butcher Ck. are fully supporting their beneficial uses.
- \* Endangered species considerations have greatly influenced the actions of the government agencies involved with this TMDL, yet there evidently is no authority for them to be doing so under the Clean Water Act. Salmonid spawning is occurring throughout the upper basin above Harpster, by general consensus of the Fisheries Technical Advisory Group and reported in this TMDL. There should be no question of full-support status for all streams above Harpster given the fish populations that exist up there. The fact that they are not adequate for some tribal needs, or some vague plan by NMFS, should not be construed as evidence that water quality, as envisioned under the Clean Water Act, is not being attained.
- \*Three Mile Creek (Grangeville Wastewater Treatment Plant) is a terribly big issue.
- \* We loudly disagree with the draft on this issue. We as a group voted to take the salmonid spawning issue off the creek above the falls. An ironic situation is involved with this creek. If the WWTP puts their water on the land in the summer, the creek will be dry below the plant and there will be no water to test! Where is the thinking here? Do you want water or do you want NO water?
- \* **Suction dredge mining:** Current federal regulations from the Idaho Water Rights Board address suction dredge (recreational) mining. **There is not a significant impact on sediment with current operations, as being federally regulated.**



\* As a group, we voted to take sediment off the list of problems above the Mt. Idaho Bridge. The agencies came back and told us that that was done. ONLY now sediment is listed for all the tributaries into the main South Fork, so what did we actually accomplish? May 21, 2003: Motion, to clarify the November 20 motion: That the tributaries as well as the main stem of the South Fork of the Clearwater be removed from the sediment TMDL, above Harpster Bridge, with the exception of Beaver Creek.

\* With respect to the temperature TMDLs, from the forest industry perspective, we see no need for the caveat added by EPA to the CWE temperature model. The shade targets in this TMDL pretty clearly indicate that the CWE temperature model targets by themselves are more protective than the EPA-promulgated System Potential Vegetation (SPV) targets. The forest industry developed the CWE model based on local data, which EPA apparently turned down without much data at all. The SPV data used in this TMDL is much less specific than the CWE data, and results in lower, much less well-defined targets. It's simply another case of the feds riding rough-shod over locally developed and accepted methods.

\* The South Fork Clearwater WAG does not want to see the TMDL be utilized to apply added restrictions on any sector of the drainage...Each time a road is gated and a road is obliterated, recreationists are closer to being locked out of the area.....No matter what people say, TMDLs will result in some level of restriction to private and industrial use of the land, which is not warranted without clear evidence. Especially in an economically depressed area like Idaho County, governmental restrictions simply so bureaucrats can justify their jobs is out of order.

## APPENDIX C

### Email thread between USFS and Jann Higdem regarding Implementation Plan monitoring

from: Jann Higdem <jhigdem57@gmail.com>  
to: aconnor@fs.fed.us  
Senator Carl Crabtree <ccrabtree@senate.idaho.gov>,  
"Paul Shepherd (ID Rep)" <pshepherd@house.idaho.gov>,  
cc: Priscilla Giddings <pgiddings@house.idaho.gov>,  
Don Smith <don.smith@mmacusa.org>,  
Ron Miller [leggett1946@gmail.com](mailto:leggett1946@gmail.com)

date: Tue, Nov 28, 2017 at 2:33 PM  
subject: Aquatic and water quality restoration projects

Hi Ms Connor,  
Cynthia Barrett of IDEQ said I could contact you if I wanted to know what aquatic and water quality restoration/improvements projects have occurred in the NP-C NFs.

I am particularly interested in the projects in the SF Clearwater Basin since its TMDL [Implementation Plan](#) in 2006. Appendix B (pg 79) denotes what type of data/reports I am looking for. Is there a link on the forest's website where I may find these? If not could you please supply them to me, as well as those copied in this email?

Idaho Code 39-3611 requires IDEQ to review the effectiveness of the Plan every 5 years; however, they will not be reviewing it until 2020-2021. The Plan depicts about \$9 million in improvements, if fully funded. A lot should have happened in the Basin in the last 11 years to improve the water quality.

The USFS will help suffice, in lieu of IDEQ's 15-year lag in determining the status of the 303d impaired waters.

Thank you for your time, I appreciate it.

Sincerely,

Jann Higdem, Research Analyst for:

ID Legislators Giddings, Shepherd and Crabtree  
Minerals & Mining Advisory Council  
Tenmile Mining District

from: Connor, Anne -FS <aconnor@fs.fed.us>  
to: Jann Higdem <jhigdem57@gmail.com>  
"Windsor, Michele A -FS" <micheleawindsor@fs.fed.us>,  
cc: "Osborn Gaines, Joslyn - FS" <joslynosbornaines@fs.fed.us>,  
"Valle, Cynthia - FS" <cvalle@fs.fed.us>  
date: Fri, Dec 1, 2017 at 3:02 PM  
subject: RE: Aquatic and water quality restoration projects

Hi Ms. Higdem,

We do have a very active Aquatic Restoration Program on the Nez Perce- Clearwater National Forests. I am attaching end of year reports from the last couple years. Much of the program is run through partnerships (most notably with the Nez Perce Tribe) and also through stewardship and other Forest Service initiatives including the Selway-Middle Fork Collaborative Forest Landscape Project.

On the South Fork of the Clearwater, we spend on the order of \$2 million annually on such projects as culvert replacements for aquatic passage, road improvement and decommissioning, channel and floodplain restoration, trail reroutes to avoid streams and other projects to improve water quality and fish habitat. Recent and ongoing project information can be found on our website at <https://www.fs.usda.gov/projects/nezperceclearwater/landmanagement/projects>. In addition, I understand that you have a FOIA in with the Forest requesting specific information.

I hope this information helps.

Thanks

Annie Connor

**Anne Hall Connor**

**Watershed Restoration Program Lead**

**Forest Service**

**Nez Perce - Clearwater National Forests**

from: Jann Higdem <jhigdem57@gmail.com>  
to: "Connor, Anne -FS" <aconnor@fs.fed.us>  
"Windsor, Michele A -FS" <micheleawindsor@fs.fed.us>,  
"Osborn Gaines, Joslyn - FS" <joslynosborn@gaines@fs.fed.us>,  
"Valle, Cynthia - FS" <cvalle@fs.fed.us>,  
cc: "Paul Shepherd (ID Rep)" <pshepherd@house.idaho.gov>,  
Priscilla Giddings <pgiddings@house.idaho.gov>,  
Senator Carl Crabtree <crcrabtree@senate.idaho.gov>,  
Don Smith <don.smith@mmacusa.org>,  
clark.pearson@mmacusa.org  
date: Fri, Dec 1, 2017 at 3:57 PM  
subject: Re: Aquatic and water quality restoration projects

Ms Connor,

Thank you for responding so quickly after your return to work, I appreciate it.

It seems like a great deal of restoration has transpired in the NP-C NFs.

The information you provided does not however, include any of the types of monitoring and assessment data Nick Gerhardt depicted in the appendix. Sample sentences: "In order to meet these objectives and goals, the following parameters are recommended. These are streamflow, suspended sediment concentration and transport, turbidity, bedload sediment transport, substrate particle size distribution, cobble embeddedness, percent surface fines and residual pool depth." and "Equipment and training will be provided by a combination of federal and state agencies, with the NPNF having the overall lead. Sampling equipment is being provided by the DEQ, NPT and NPNF. The NPNF will have the overall coordination role, with additional technical support being provided by the DEQ, NPT, USGS and BLM. Other agencies may have a supplemental role as the project progresses." and finally, "An annual report will be written summarizing the previous year's data collection and analysis efforts. The reports will be cumulative in that each successive year of sampling will be added to previous reports. The reports will be distributed to the parties of interest, including the participating agencies and others."

It would seem that Mr. Gerhardt would be the lead on these monitoring reports, but it is my understanding that Mr. Gerhardt has left the Forest. If you are not the correct person to get the above annual "Sediment Monitoring Plan for the Mainstem South Fork Clearwater River" reports from, could you please direct me to who the correct person is? I would assume these reports would have begun

cumulatively progressing around 2007-2008 and are on-going. If they are indeed building on each other, then I would only need the most current year's report.

You are correct, I do have a FOIA already being processed on another set of issues. The reports I am seeking are well worth another one, if that is the means to the end. It's so important to know how all of the work over the years has affected the temperature and sediment TMDLs in this subbasin.

Thank you for your time and assistance. Please let me know if I, or those copied and perform research for, do not qualify as being in the "others" group.

Respectfully,  
Jann Higdem

from: Valle, Cynthia - FS <cvalle@fs.fed.us>  
to: Jann Higdem <jhigdem57@gmail.com>  
"Windsor, Michele A -FS" <micheleawindsor@fs.fed.us>,  
"Osborn Gaines, Joslyn - FS" <joslynosborngainess@fs.fed.us>,  
"Paul Shepherd (ID Rep)" <pshepherd@house.idaho.gov>,  
cc: Priscilla Giddings <pgiddings@house.idaho.gov>,  
Senator Carl Crabtree <ccrabtree@senate.idaho.gov>,  
Don Smith <don.smith@mmacusa.org>,  
"clark.pearson@mmacusa.org" <clark.pearson@mmacusa.org>  
date: Fri, Dec 1, 2017 at 4:47 PM  
subject: RE: Aquatic and water quality restoration projects

Good afternoon Ms. Higdem,

I can help you out with this request. Sediment monitoring was completed from 2006-2010 as part of the SF Clearwater Implementation Plan. SF Clearwater sediment monitoring was not continued by Forest Service post 2010, excepting in sub tributary gauge sites and other project-related sites. I am currently working with IDEQ and EPA on consolidating all data and preparing for the 5-year review, so your statement below that IDEQ will not be reviewing until 2020 has me confused. I would like to help you with this request and provide exactly what you need, but perhaps need some clarifications. I will have time next Wednesday if you would like to chat over the phone or we can try to schedule a time.

**Cynthia Valle, Forest Hydrologist**  
**Hydrology Program Manager**  
**Forest Service**

Nez Perce-Clearwater National Forest

from: Jann Higdem <jhigdem57@gmail.com>  
to: "Valle, Cynthia - FS" <cvalle@fs.fed.us>  
"Windsor, Michele A -FS" <micheleawindsor@fs.fed.us>,  
"Osborn Gaines, Joslyn - FS" <joslynosborngainess@fs.fed.us>,  
"Paul Shepherd (ID Rep)" <pshepherd@house.idaho.gov>,  
cc: Priscilla Giddings <pgiddings@house.idaho.gov>,  
Senator Carl Crabtree <ccrabtree@senate.idaho.gov>,  
Don Smith <don.smith@mmacusa.org>,  
"clark.pearson@mmacusa.org" <clark.pearson@mmacusa.org>  
date: Fri, Dec 1, 2017 at 7:11 PM  
subject: Re: Aquatic and water quality restoration projects



Hi Ms Valle,

I am glad that you may be able to help out. Thank you. Please allow me to ask you a couple of questions:

1) May I (we) obtain the data/reports collected from 2006-2010? Hopefully a FOIA is not required, considering the interested parties being copied.

2) Why did the USFS stop collecting this data in 2010, especially if the Forest is spending about \$2 million annually on TMDL improvement projects in the area? (That would imply \$22 million spent on an estimated \$9 million, per the Implementation Plan.) It seems to completely defeat IDEQ's, and the public's, need to know what benefits various projects have had in bringing the temperature & sediment TMDLs into compliance, if the USFS is no longer monitoring/assessing its successes, or failures, in its goals/objectives per the Plan. This absence of data becomes critical when considering the recent DN/FONSI on suction dredge mining in this area. Without the assessments beyond 2010, how could this 2016 DN possibly have had current data with which to make its determinations, and hence its rules/conditions for the SFCR suction dredgers? Did the DN even consider the 2006-2010 data? I cannot discern such.

Regarding my statement regarding "IDEQ will not be reviewing until 2020", the 5-yr review is now 6 years in arrears (or 2 reviews behind Idaho statutory mandate). I sent in a PRR to IDEQ on 4/2/2017. It is attached. The first part is relevant.

The response is also attached and towards the bottom, depicts the time frame for the HUC 17060305, South Fork Clearwater Subbasin: **2019-2021**, TMDL addendum, date to be determined. This contradicts the 2014 Integrated Report estimated date of 2018, that has not yet been approved by EPA (pg 36). <http://www.deq.idaho.gov/media/60179654/idaho-2014-integrated-report.pdf>

Any input on this situation will be greatly appreciated.

Respectfully,  
Jann Higdem