



Friends of the Clearwater

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July 25, 2017

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

RE: Comments on the Stickley (Permit No. S82-20067) and Richardson (Permit No. S82-20066)
Applications for Suction Dredging in Red River

Sent VIA Email to tim.luke@idwr.idaho.gov

Dear Mr. Luke:

The following comments are submitted on behalf of Friends of the Clearwater on the above noted permits. Friends of the Clearwater is a conservation organizations concerned about the public wildlands, watersheds, and wildlife in and immediately around the Clearwater Basin in north-central Idaho.

Introduction

Friends of the Clearwater has participated in the recent public involvement processes by the US Forest Service and the Bureau of Land Management (BLM) on suction dredge mining in the South Fork Clearwater as well as the joint state/federal public involvement process for NPDES permits in 2012. We are very concerned about the impacts of section dredge mining, which are documented in our objection comments to the US Forest Service (see attached documents sent to the Forest Service and BLM). Further, the decline of wild steelhead in the Clearwater Basin is of significant concern and the Biological Assessment for the suction dredging on the South Fork made a finding of likely to adversely affect steelhead.

It should be noted that these two applications are outside of the area approved for suction dredge mining in the joint Forest Service/BLM environmental assessment referenced above. As such, these cannot proceed until an environmental analysis is done and public comments solicited on these proposals. Further, the Templeton Case on the South Fork Clearwater River (Case Number CV02-320-C-EJL) decided by Judge Lodge in Idaho Federal District Court points to the necessity of compliance with the Clean Water Act and other permits.

Concerns

These two applications should be denied for the following reasons:

- The Red River is a state designated as a State Recreational River in the South Fork Clearwater River Basin Comprehensive State Water Plan. As such, commercial suction dredging is prohibited. These two proposals are for commercial use.
- There are rare and threatened species under the Endangered Species Act in Red River. These include steelhead, bull trout, Westslope cutthroat trout, Pacific lamprey, and Chinook salmon. An incidental take permit will be required if the federal agencies that oversee the Endangered Species Act would even consider allowing this to go forth absent an environmental analysis.
- Red River is not covered by any general NPDES permit. An individual permit will be required.
- As noted earlier, there is no Forest Service environmental analysis on these two proposals. A 2000 draft NEPA document exists for one of the proposals, but it is now very outdated.
- Significant restoration efforts in Red River have taken place to restore fish habitat from past mining and other development. These proposals will undo some of that work.

Summary

We urge you to deny these permits. The applicants do not show how their interests override those of the broad public in these matters.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gary Macfarlane", written in a cursive style.

Gary Macfarlane

April 14, 2016

Objection Reviewing Officer
USDA Forest Service
Northern Region
PO Box 7669
Missoula, MT 59807

RE: Draft Decision Notice Small-Scale Suction Dredging in Orogrande and French Creeks and South Fork of the Clearwater River Sent Via Email to: appeals-northern-regional-office@fs.fed.us and via US mail.

Pursuant to 36 CFR 218 regulations, this is an objection to the draft Decision Notice ("DN") Small-Scale Suction Dredging in Orogrande and French Creeks and South Fork of the Clearwater River and final Environmental Assessment (EA) on the Nez Perce-Clearwater National Forests. The Responsible Official is Cheryl Probert. This objection is filed on behalf of Friends of the Clearwater and Alliance for the Wild Rockies.

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

Friends of the Clearwater (FOC) is the lead objector.

Sincerely submitted,



Gary Macfarlane
Friends of the Clearwater
PO Box 9241
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(208)882-9755
--and--
Board Member, Alliance for the Wild Rockies

PUBLIC PARTICIPATION

We stated in our comments:

Your Public Notice states: "It is important that any comments provided be substantive and specific. ...Specific comment should be within the scope of the proposed actions." Under "Scope of the Analysis" the EA describes Connected Actions, Similar Actions and Cumulative Actions" yet it does little to disclose or describe such actions related to this proposal. For example the EA also states, "This EA considers any past, present, and reasonably foreseeable future activities, which include cattle grazing allotments, timber harvest, and road modifications and maintenance." Then it fails to do precisely that. The EA seems grossly incomplete, and at any rate contains so little analysis that it's difficult for our groups to effectively participate in the NEPA process at this juncture. We request that you conduct sufficient NEPA analyses and document them in an updated EA, and then repeat this EA comment process.

The Public Notice also states, "Issues raised in objections must be based on previously submitted written comment specific to this project unless the objection concerns an issue that arose after the opportunities for comment." We want to put the Forest Service on notice that the agency itself all but guarantees that issues will arise after this EA comment period is finished, because the EA's analyses are incomplete or entirely omitted.

We incorporate our May 19, 2015 scoping comments within these comments, because this EA doesn't even begin to address all the issues we previously raised.

Indeed, the public had no opportunity to comment on the existing condition or the environmental effects of the proposal as those section of the EA were not yet complete. These sections are the foundation of any analysis. Rather than this being an open comment process, the first time citizens have seen any substantive analysis from the Forest Service is during the objection process.

REMEDY:

Reissue the NEPA document (preferably an EIS or EISs) with the minimum of a 45-day comment period (see NEPA section below).

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.

We also asked to receive copies for each plan of operation (POO) that was submitted. Apparently, none have been submitted (or the agency ignored our request). If they have not been submitted, then it is incumbent on the Forest Service (and BLM) to explain to the public why it wasted tax dollars on a project where miners have not complied with basic requirements for project initiation (see also objection section on illegal activity). If POOs have been submitted, then they should go through the NEPA process for each proposal submitted. At the very least, an alternative that looked at individual applications and proposed site-specific NEPA on those applications should have been considered.

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 is not analyzed. The consultation is not yet complete, according to the DN. Thus compliance with the ESA is questionable. That is yet another reason to do a full EIS and reopen the public process.

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 seems to be of little concern to the Forest Service. Instead, the EA presents a rosy picture, not supported by evidence (or even the agency's own BA), that suction dredge mining won't have much of an impact on steelhead. (See Exhibit 1).

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.

Our scoping comment addressed wild and scenic rivers, in terms of compliance and we questions whether the proposed action "could proceed on the South Fork, given the status as a potential wild and scenic river. This is tied to the issue of claim validity." However, the EA concludes the outstanding values would still be maintained by suggesting mining won't take place on the entire stretch of the South Fork. Under this logic, only a small

stretch of river that would be unaffected, would maintain the values for which the river has been proposed as eligible for designation by the Forest Service.

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

REMEDY:

1. Withdraw the EA and issue an EIS (and preferably subsequent site-specific NEPA documents, see 3 below) analyzing the full impacts of this proposal on water quality, fish habitat, wild and scenic river values, and other resources.
2. Develop and analyze an alternative that would recommend the withdrawal of, at the very least, all RHCAs.
3. Develop and analyze an alternative in which each POO is subject to public notice and individual, site-specific NEPA documents.
4. 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. This would exclude the dredgers who have illegally operated in the past few years.
5. Develop an alternative that does not require the use of suction dredging. Even if claims are valid, suction dredging is not the only method that can be used. (See later points in this objection.)

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 (see Exhibit 2) and the trend for wild steelhead in the Clearwater is not good (see Exhibit 1). The EA assumes that consultation under the ESA will result in agreement with this project even before consultation has been completed. This is putting the cart before the horse. Besides, the mitigation measures in the EA and DN are not entirely consistent (see the following objection section), so the impacts cannot be properly evaluated anyway.

REMEDY:

1. Require that methods other than suction dredging be done on streams with listed fish species.
2. Put in place additional mitigation measures elsewhere (see objection section below).

MITIGATION MEASURES ARE INADEQUATE AND/OR INCONSISTENT

The mitigation measures proposed in the EA and DN fail to adequately protect fish habitat, and may be inconsistent. 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 streams in question (compare DN page 16 and EA pages 3-48 and 49, monitoring measure 9, which appears to be off by a factor of ten). 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.

The requirement that miners “demonstrate the actual or likely relevant permission/approval of the IDWR, US EPA, and IDEQ” is confusing. Rather, those appropriate permits should be obtained before receiving permission from the Forest Service.

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 off of the national forest, is open under this

REMEDY:

Add mitigation measure suggested above.

THE PROPOSAL VIOLATES EXISTING POLICY AND REGULATIONS

Our scoping comments stated, “The current EPA process has “closed” these areas, because of listed species and other important values, to recreational mining. As such, this is an exercise in violating the public trust.”

In our comments on the incomplete EA, we stated:

As the EA states, “An ‘upward trend’ requirement is a condition of the Nez Perce National Forest Plan.” The EA does not demonstrate that there is an upward trend on the South Fork of the Clearwater River.

Indeed, the EPA map shows areas with listed species, as closed to recreational mining. The purpose of the general EPA permit was to show areas where this kind of small-scale

dredge mining should be prohibited to protect values including listed species such as bull trout and steelhead. Fall Chinook are expanding upriver in the South Fork. Other species such as Pacific lamprey, spring and summer Chinook, and Westslope cutthroat are also affected.

Rather than suction dredge mining (instream motorized mining)—assuming valid claims exist—less destructive mining methods could be used. Exhibit 3 is a ruling in a federal case in Oregon that shows this to be the case. As noted in the NEPA section of this objection, an alternative that didn't use motorized instream dredging should have been considered.

Further, the EA does not show that suction dredge mining is the method of least harm. Rather than exploring other methods, the EA only seriously considered in stream suction dredging.

REMEDY:

1. Prohibit suction dredging in the South Fork Clearwater and Orogrande Creek, which are critical habitat or otherwise unsuited for suction dredge mining.
2. Collect monitoring data over the next several years to ensure that there is an upward trend on the South Fork Clearwater as required by the Forest Plan, and that Orogrande and French Creeks are meeting water quality and fish habitat standards before considering suction dredging.

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 (see above) 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.

REMEDY:

Prohibit suction dredging until mining claim validity has been determined.

ILLEGAL ACTIONS

It has been well established that suction dredge mining on the South Fork Clearwater and perhaps elsewhere have been conducted illegally, without the proper permits. It sends the wrong message when the agency selectively enforces the law against certain groups of citizens and not others. (See Exhibit 4).

REMEDY:

1. Prosecute those who have operated without proper permits.
2. Do not grant permits to any operator that has operated illegally.