



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 25, 2017

Gay Richardson
PO Box 314
Elk City, ID 83525

Re: Your Correspondence Dated August 10, 2017

Dear Mr. Richardson,

I have reviewed your correspondence dated August 10, 2017 that was addressed directly to me. A copy of your letter is attached for reference. Your letter was received by the Idaho Department of Water Resources ("Department") on August 15, 2017. The Department sent an email notice to you on August 15, 2017 acknowledging receipt of your letter and request for hearing regarding the Department's denial of Stream Channel Alteration permit application S82-20066. A hard copy of the Department's August 15, 2017 email correspondence is enclosed.

Your August 10th letter states that I have not answered a prior question of yours regarding whether or not Department dredge mining regulations and the Department's South Fork Clearwater Special Supplement "has been tested for legality in relation to Federal mining law". Attached for your reference is a copy of email correspondence I sent to you on July 12, 2017 that responded to your question. I have no additional response to this same question beyond the one I already provided you on July 12th. You may contact me directly if you have further questions concerning my response. Please understand that the Department does not provide legal advice. If you feel my response is not satisfactory or if you have additional legal questions, then you may wish to consider seeking private legal counsel.

Respectfully,

Tim Luke
Water Compliance Bureau Chief

Enclosure: Email correspondence to Gay Richardson from Tim Luke, IDWR, July 12, 2017
Gay Richardson correspondence to Tim Luke, IDWR, August 10, 2017
Email notification to Gay Richardson from Aaron Golart, IDWR, August 15, 2017

SCANNED
AUG 25 2017

Luke, Tim

From: Luke, Tim
Sent: Wednesday, July 12, 2017 10:50 AM
To: 'gayricharddson@idaho.net'
Cc: Golart, Aaron
Subject: RE: Red River permit/meeting @Motel 8

Gay,

Your email asked several questions so I attempted to answer them.

As to your question about whether IDWR's permitting process has been tested for legality in relation to Federal Mining Law: I guess my "simple" answer is no. I'm not aware that there has been any litigation specifically about Idaho's permitting process with respect to Federal mining law. However, I believe there is case law in other states or at the Federal level that confirm States have the authority to regulate mining on federal lands. See *California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572 (1987), see also *Butte City Water Co. v. Baker*, 196 U.S. 119 (1905).

Certainly IDWR is authorized and required by State law to develop a permit process and issue permits for suction dredge activities, which includes permit conditions.

Tim

From: gayricharddson@idaho.net [mailto:gayricharddson@idaho.net]
Sent: Wednesday, July 12, 2017 10:21 AM
To: Luke, Tim <Tim.Luke@idwr.idaho.gov>
Subject: FW: Red River permit/meeting @Motel 8

Tim.

In relation to this email you sent I didn't ask for all this beating around the bush routine; I asked Aaron Golart if any of these regulations IDWR "adopted" from the Forest Service and your regulations had been tested for legality in relation to Federal Mining law and Forest Service regs. they have to go by in relation to mining law

I want an answer yes or no, it's that simple. If yes when was it done and what was it.

Gay Richardson

Sent from Mail for Windows 10

From: Luke, Tim
Sent: Tuesday, July 11, 2017 5:17 PM
To: gayrichardson@idaho.net
Cc: Golart, Aaron; Weaver, Mathew; Chase, Roger (IWRB Member)
Subject: FW: Red River permit/meeting @Motel 8

Mr. Richardson,

Aaron forwarded your email to me for response since he was out in the field today.

Regarding your questions on the Red River stream channel alteration applications for suction dredging on the Red River:

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- a. Since receiving your application, IDWR has requested comments on the two applications from potentially interested parties, including State, Federal, Tribal and local agencies, and other interested entities. The Department has not received any formal written comments to date. I found that the email correspondence that went out soliciting comments stated that the applications proposed dredging on the South Fork Clearwater River (SFCR) even though your applications attached to the correspondence clearly indicates that the dredging is on the Red River. Given potential confusion caused by our correspondence, we will send a reminder to the parties asking that comments be submitted shortly.
- b. Your applications were received by IDWR on May 12, 2017. You propose a dredge season from June 15 to October 30, 2017 (Mr. Stickley proposed July 15 to August 15 or September 30, 2017). As you know, the dredge season on the South Fork Clearwater is limited from July 15 to August 15. Given this nearby established season and based on comments I recall receiving on a prior application you submitted for the Red River, I believe it may be difficult for IDWR to consider a season extending beyond August 15.
- c. As you know, our Stream Channel coordinator has been inundated this spring by dredge miners making public records requests and other demands of his time regarding the SFCR Special Supplement Permit and process. These requests and resulting exchanges have consumed numerous staff hours that could have been dedicated to considering and/or processing other stream channel permit applications. In addition, staff has had to conduct site visits and meet with miners who submitted application on the SFCR. Some of the SFCR applications were submitted before your application. IDWR places a higher priority on the SFCR Special Supplement applications over individual dredge permit applications on streams in the SFCR Basin that are closed to dredging per IDWR's instructions and the SFCR Comprehensive River Plan. I note that Mr. Stickley submitted a SFCR Special Supplement application for which he will receive approval that includes a season from July 15 to August 15, 2017. The SFCR Comprehensive Plan authorizes a specific process and season on the main SFCR for authorized dredge mining. Applications on the Red River or other SFCR tributaries are subject to a more deliberate and time consuming process.
- d. As you may also be aware, many streams and rivers in the state have experienced significant flooding this spring which has resulted in numerous emergency stream channel alteration permit applications that required immediate attention and considerable field time. Emergency permits and other flood related inquiries and post-flooding channel alteration applications are a high priority for the limited IDWR staff resources. As a result of these pressures, staff has dedicated little time to your application; we have very little time and resources to dedicate towards your application this summer.
- e. I see from your application and Mr. Stickley's application that you each propose discharging 30 cubic yards of dredged material. I think it would be helpful if you could explain how you determined this amount of discharge.
- f. It is likely that The Department will receive protests, challenges or petitions for reconsideration for any individual permits approved on the Red River. The Department just recently received over 500 comment letters in opposition to its consideration of changes to the SFCR Special Supplement conditions.
- g. I do not recommend approval of your and Mr. Stickley's Red River applications for any 2017 dredge season given the facts and pressures identified above, the fact that it is now July 11, and given that the dredge season on the Red River is likely limited to sometime between July 15 and August 15. I do recommend that we continue to consider your application for an appropriate dredge season in 2018 subject to any additional comments that we may receive and in light of the discussions that are planned this fall for the SFCR dredging issues.

Regarding your comments about the SFCR Special Supplement Conditions:

- a. I believe Department representatives gave some prior indication as to the specific conditions it was considering. I don't believe Mr. Weaver created high expectations at the Grangeville meeting that conditions would be substantially changed for the 2017 dredge season.
- b. I believe Mr. Weaver and other staff seriously considered some changes and your own personal comments offered at the Grangeville meeting. I believe the change IDWR made to condition number 8 (now condition no. 7 on the 2017 SFCR Supplement) considered some practical suggestions you offered at the meeting and is a more realistic and more enforceable condition than the prior condition.
- c. IDWR respects your comments and opinions despite your dissatisfaction with our actions and resulting outcome.

Thank you,

Tim Luke

From: <gayricharddson@idaho.net>

Date: July 11, 2017 at 9:57:42 AM MDT

To: "aaron.golart@idwr.idaho.gov" <aaron.golart@idwr.idaho.gov>

Subject: Red River permit/meeting @Motel 8

Aaron.

John Stickley and I have heard nothing about the Red River permits. Are these to be stalled out to fit the standard permit timing frame, way down the line, not at all, or what?

Got the "new regs." sent by Tim Luke and see there has been virtually no meaningful change from the preexisting regs. meaning nobody paid any attention to anything any of us had to say. Can you tell me who decided not to change any of the regs. in a significant way? All I see is wordsmithing passing for reg. changes. Have any of these regs. been tested for legality? Also in the email sent by Tim Luke he says we get to discuss things again in the fall and it is to be more "scientific".

What does he or they mean specifically by "scientific" and whose science are we talking about? Am sending this email because I have been unable to get you buy phone.

Gay Richardson

208-258-9568

Luke, Tim

From: Golart, Aaron
Sent: Tuesday, August 15, 2017 5:28 PM
To: Gay Richardson
Cc: Luke, Tim; Patton, Brian; Weaver, Mathew
Subject: Request for Hearing

Mr. Richardson,

We received your letter to Tim Luke dated August 10, 2017, in which you request a hearing. Your letter was in response to a letter dated August 2, 2017, from IDWR, denying your most recent application for a Stream Channel Alteration permit (S82-20066) to dredge mine the Red River. Because you filed your request for hearing within 15 days of receipt of the denial, we consider your letter a timely request for hearing under § 42-3805 – DECISION OF DIRECTOR – HEARING – REVIEW BY DISTRICT COURT.

Because the Stream Channel Alteration program is overseen by the Idaho Water Resource Board (Board), they will need to consider this matter and appoint a hearing officer at their next Board Meeting. We have coordinated with Brian Patton the Executive Director of the Board and he has agreed to put this matter on the Board's September 15, 2017, agenda. To address your concerns of impartiality we will recommend that the Board assign a hearing officer who has not previously been involved in the South Fork of the Clearwater River basin dredging matters. Once the Board has appointed a hearing officer, he/she will follow up with you to schedule and coordinate the hearing.

Please expect further correspondence on this matter following the September 15 Board Meeting.

Thank you,

Aaron Golart
State Coordinator, Stream Protection Program
Idaho Department of Water Resources
322 E. Front St.
P.O. Box 83720
Boise, Idaho 83720-0098
(208) 287-4941
aaron.golart@idwr.idaho.gov

Dept. of Water Resources
322 E. Front St.
P.O. Box 83720
Boise, ID 83720-0098
Att: Tim Luke

8-10-17

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WATER RESOURCES

Tim,

I object to your Notice of Denial, however I don't see where a hearing with your people will accomplish anything in my favor. I mean take a look at this Tim; the same agency that just denied my permit is going to conduct the hearing and those people already have their minds made up, thus nothing impartial here. How far if we have a hearing which I will go for it will have to be here in Elk City as myself & mining partner are all ready broke from all this multi-agency bullshit and trying to finish a 4 inch dredge to hopefully make some money to pay the bills as was explained to you before.

You say IWRB plans to discuss dredging on SFCR trustaries this fall. This seems to be just another con job as usual to placate the dredgers into believing something meaningful would happen.

By the way Tim you still haven't answered my question: did you and IDWR determined that your regulations and the Forest Service regs. you adopted as Special Supplements are legal in reference to federal mining law and Forest Service reg. the F.S. is suppose to follow?

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AUG 25 2017

I need an answer Tim. I want my permit
now.

Gay Richardson

1-208-258-9568

gayrichardson@idaho.net

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