

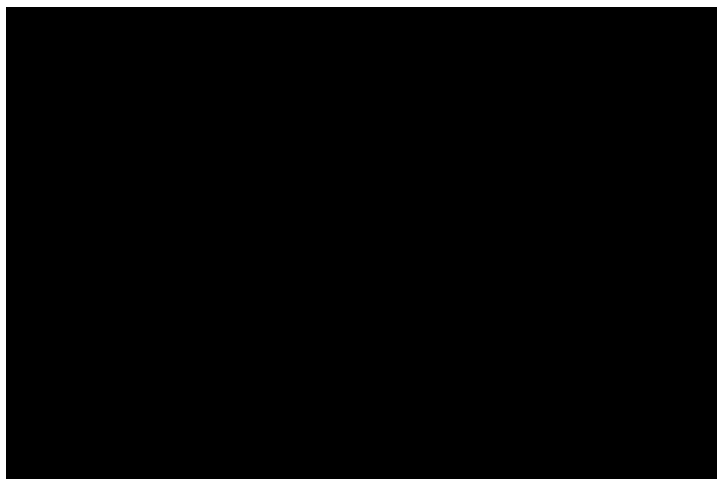
FOOTHILLS ANGLER COALITION

Comments on Suction Dredge Permitting
Program Draft Supplemental
Environmental Impact Report



Healthy Watershed, Healthy
Fishery, Healthy Fish

Foothills Angler Coalition
8860 Industrial Blvd.
Roseville California 95678
April 23, 2011



Mark Stopher
Environmental Program Manager
California Department of Fish and Game
601 Locust Street
Redding, CA 96001

Re: Comments on Draft SEIR (Suction Dredge Permitting Program)

Dear Mr. Stopher:

The comments set forth in this letter are filed on behalf of **Foothills Angler Coalition, a California Non-profit Corporation ("FAC")**. Attached (Attachment "A") is a list of FAC supporting organizations, businesses, and individuals. These comments are also filed on behalf of **myself**, as an individual and a long-time fly fishing guide and angler; on behalf of the **North Fork American River Alliance ("NFARA")** and on behalf of the **Upper American River Foundation, a California Non-profit Corporation**.

Our comments are divided into two broad groupings: (i) General or structural issues relating to the DSEIR; and (ii) Specific comments on discrete issues presented by specific sections of the DSEIR, as they relate to the North Fork of the American River and its drainage and tributaries, the Upper Middle Fork of the American River and its drainage and tributaries above Oxbow Dam, and the North Fork of the Yuba River. We will also be a signatory to comment letters that have been prepared by other organizations.

A. General and Structural Comments

1. **Analytical approach to impact analysis.** We believe that the novel analytical approach taken by DFG in assessing the severity of identified adverse impacts is legally unsupportable under CEQA and the applicable sections of the CEQA Guidelines.

a. The approach taken in the DSEIR is to assess the severity of the impact on a "statewide" basis, rather than on a stream-by-stream basis. We believe that this approach is legally unsound and renders the draft SEIR inadequate to inform decision-makers, and that there is no rational basis for such an approach. While it is true that the suction dredge permitting program is a statewide program, the same can be said of other programs that are managed by DFG such as F & G Code section 1602 Streambed Alteration Permits for logging operations, or other types of commercial operations that can adversely affect a particular stream. In the context of such other statewide programs, individual potentially adverse stream impacts are the subject of the CEQA analysis, which is entirely appropriate from both a legal and intellectual perspective. In effect, the "statewide" approach would sacrifice an individual creek, stream, or river by allowing it to be trashed by suction dredging, as long as on a statewide basis there is a "less than significant" adverse impact. That leaves local communities that rely upon the pristine nature of their local resources for recreation and other beneficial uses, at the mercy suction dredgers who often are not local residents.

b. Recommended Solution:

(i) Each stream that is listed as open to suction dredge mining should be studied individually for potential adverse impacts that would occur if suction dredging is allowed. Each creek, stream, and river is different in its drainage area, its geomorphology, and its individual beneficial uses. This approach would allow local land use agencies to decide whether, under their land use and zoning authority, the creeks, rivers, and streams within their jurisdiction should be open to dredging or not. Additionally, it would provide the necessary information to the Director of the Department of Fish & Game to make an informed decision on whether particular water bodies are appropriate for suction dredging or not. The statewide approach to impact assessment is inadequate to provide that type of baseline information; and

(ii) Ban suction dredge mining on each stream that is the subject of individual analysis until the studies are complete, the draft SEIR is amended to include the study results, the proposed regulations are revised accordingly, and the regulations are implemented following completion of the CEQA process.

2. The draft SEIR is legally and fatally inadequate in that it fails to take into account the reasonably foreseeable effects of planned reintroduction of anadromous salmonids to the American River above Folsom Lake.

a. It is widely believed, based on scientific studies that have been published, that certain of the rainbow trout populations in the North and Middle Forks of the American River are remnant Central Valley steelhead from the period before Folsom Dam was constructed. That species is an endangered species that (along with Chinook Salmon) is the subject of a Biological Opinion and Recovery Plan issued by the National Marine Fisheries Service. The Opinion and Plan specify that Central Valley Steelhead and Chinook Salmon are to be reintroduced to the American River above Folsom Lake in early 2012 (both the North and Middle Forks are listed as reintroduction streams). Also, the North Yuba River is listed as a reintroduction stream for Chinook Salmon and Central Valley Steelhead. Allowing suction dredging in streams that will be host to reintroduced endangered anadromous fish would be wasteful and in conflict with the policies underlying the reintroduction program.

The draft SEIR fails to take this existing program into consideration, rendering the document legally inadequate. Relevant excerpts from "Section V. Fish Passage Program" of the Biological Opinion and Recovery Plan are set forth below:

"Therefore, NMFS believes it is necessary for Reclamation, in cooperation with NMFS, other fisheries agencies, and DWR, to undertake a program to provide fish passage above currently impassable artificial barriers for Sacramento River winter-run, spring-run, and CV steelhead, and to reintroduce these fish to historical habitats above Shasta and Folsom Dams. Substantial areas of high quality habitat exist above these dams: there are approximately 60 main stem miles above Lake Shasta **and 50 main stem miles above Lake Folsom**. These high-elevation areas of suitable habitat will provide a refuge for cold water fish in the face of climate change. [Emphasis added]The NMFS Biological Opinion states in part: From January 2012 through 2015, Reclamation shall begin to implement the Pilot Reintroduction Program (see specific actions below). The Pilot Program will, in a phased approach, provide for pilot reintroduction of winter-run and spring-run to habitat above Shasta Dam in the Sacramento River, and CV steelhead above Folsom Dam in the American River. By March 2012, Reclamation shall implement upstream fish passage for adults via "trap and transport" facilities while it conducts studies to develop and assess long-term upstream and downstream volitional fish passage alternatives.²⁸Under Fish Passage Actions, the NMFS Biological Opinion states that NMFS plans to build an American River Fish Collection Facility, due to become operational no later than March 2012."

The following is a brief excerpt from the Biological Opinion, at pages 663-664 of the latest Operations, Criteria and Plan document for the Central Valley Project and the State Water Project:

"NF 3. Development of Fish Passage Pilot Plan

Action: From January 2010 through January, 2011, Reclamation, with assistance from the Steering Committee, shall complete a 3-year plan for the Fish Passage Pilot program. The plan shall include: **(1) a schedule for implementing a 3-year Pilot Passage program on the American River above Nimbus and Folsom dams**, and on the Sacramento River above Keswick and Shasta dams; and (2) a plan for funding the passage program. 28 NMFS Biological and Conference Opinion on the Long-Term Operations of the CVP and SWP, June 4, 2009; Section 11.2.2 V. "Fish Passage Program", p. 659. NMFS Biological and Conference Opinion on the Long-Term Operations of the CVP and SWP, June 4, 2009;Section 11.2.2 V. "Fish Passage Program", p. 665.This plan and its annual revisions shall be implemented upon concurrence by NMFS that it is in compliance with ESA requirements. [Emphasis added]

Rationale: The Fish Passage Pilot Plan is a critical link between measures in the Proposed Action and this RPA and the long-term fish passage program. The plan will provide a blueprint for obtaining critical information about the chances of successful reintroduction of fish to historical habitats and increasing the spatial distribution of the affected populations.

NF 4. Implementation of Pilot Reintroduction Program

Objective: To implement short-term fish passage actions that will inform the planning for long-term passage actions.

Actions: *From January 2012 through 2015*, Reclamation shall begin to implement the Pilot Reintroduction Program (see specific actions below). The Pilot Program will, in a phased approach, **provide for pilot reintroduction of** winter-run and spring-run to habitat above Shasta Dam in the Sacramento River, and **CV steelhead above Folsom Dam in the American River**. [Emphasis added] This interim program will be scalable depending on source population abundance, and will not impede the future installation of permanent facilities, which require less oversight and could be more beneficial to fish. This program is not intended to achieve passage of all anadromous fish that arrive at collection points, but rather to phase in passage as experience with the passage facilities and their benefits is gained.

Rationale: The extent to which habitats above Central Valley dams can be successfully utilized for the survival and production of anadromous fish is currently unknown. A pilot reintroduction program will allow fishery managers to incrementally evaluate adult reintroduction locations, techniques, survival, distribution, spawning, and production, and juvenile rearing, migration. The pilot program also will test juvenile collection facilities. This action requires facility improvements or replacements, as needed, and establishes dates to comple

a. In the past, claims and associated dredging permits have been transferred with impunity by individuals to mining clubs and similar entities. The result of this has been a geometrical increase in the impacts to specific areas within an individual stream. This has occurred on the North Fork of the Yuba in particular, and in other areas. In areas where only one or two dredges were located within a stream reach of a half mile, once the transfer occurred there were numerous dredges, often to the point where another user (angler or otherwise) was totally precluded from access to the stream. Obviously, the impacts to the stream reach where this occurs are magnified and multiplied; this has the effect of discrediting the analysis of the effects dealt with in Chapters 4.1, 4.2, and 4.3. In those chapters, assumptions are made (for example) as to the distance downstream that a sediment plume would travel; that analysis was based on a single dredge, and no consideration was given to the proliferation of dredges that is caused when permit/claim transfers occur.

b. Should DFG take the position that it has no authority to address this issue, we would disagree with that conclusion. DFG has included within its proposed regulations a requirement for an application that elicits personal information regarding the applicant. Presumably, solicitation of that information has a logical purpose, which would seem to be to allow DFG enforcement personnel to identify the permittee, and for related interests. Virtually all public agency permitting systems include transfer controls designed to preserve the integrity of the application and permit issuance process. Yet the proposed regulations stop short of such a procedure, for no apparent logical reason. If it is important to know the identity of, and personal information about the applicant at the outset, why is it unimportant to know who the successor to the permittee is?

c. Failure to address or even consider this problem and its associated adverse effects is a serious error, and results in a gross understatement of the magnitude of the associated impacts, rendering the document flawed and inadequate.

c. **Recommended Solution.** In order to cure this legal defect, DFG should:

(i) Implement a study to determine the appropriate methodology to regulate permit transfers, and to prohibit transfer of a permit from an individual to a group of individuals, an entity, or other organization where the potential number of dredges would increase within a claim area, and include the study and its results in a revised draft SEIR;

(ii) Implement a study to determine the potential adverse impacts that would be associated with transfers from an individual to a group of individuals, an entity, or other organization where the potential number of dredges would increase within a claim area, and include the study and its results in a revised draft SEIR, and appropriate mitigation measures designed to reduce those impacts to a less than significant level; and

(iii) Pending completion of that study and implementation of appropriate mitigation measures, and pending revision of the proposed regulations, institute a total ban on dredging to last until the CEQA process is complete and the proposed regulations become effective.

4. The draft SEIR fails to adequately address the potential adverse effects of allowing dredging in designated Wild and Scenic Rivers, including the North Fork of the American River.

a. California Fish & Game Code Section 5093.61, which is part of the California law regarding designated wild and scenic rivers, reads as follows: "All departments and agencies of the state shall exercise their powers granted under any other provision of law in a manner that protects the free-flowing state of each component of the system and the extraordinary values for which each component was included in the system. All local government agencies shall exercise their powers granted under any other provision of law in a manner consistent with the policy and provisions of this chapter."

Under the proposed regulations, DFG may grant mining permits on the private inholdings on designated wild and scenic rivers, such as the North Fork of the American River. But under section 5093.81, the process for approval must contain provisions for the protection of the river's extraordinary wild trout fishery, water quality and clarity, scenic, and recreation values (thus mandating a study of the specific river, instead of on a statewide basis). The proposed regulations clearly fail to meet this requirement, as they have no identifiable process for making those determinations, and no provisions for public participation in making such important and potentially damaging decisions.

There is also a federal wild and scenic rivers management plan for the North Fork, put into place in 1979, that prohibits issuance by DFG of permits for suction dredge mining on National Forest and BLM lands. While this provision

would not disallow permits associated with certain private inholdings, it is illogical for DFG to issue dredging permits for lands where federal law actually prohibits that action. Although the proposed regulations state that a DFG dredging permit does not relieve the a permittee from compliance with other federal, state, and local laws, that provision does not excuse issuance of a permit where dredging is banned by external law.

b. When taken together with the fundamental flaw outlined in comment 1 above (failure to address potential adverse impacts to particular streams), there appears to be no viable rationale that would support issuance of permits that would otherwise be prohibited by federal laws, rules, or regulations. Beyond that, issuance of a permit that would allow dredging on a designated wild and scenic river such as the North Fork without a proper analysis of the potential adverse effects of implementation of the permit on the extraordinary values that were the basis for the designation, renders the draft SEIR inadequate to support permit issuance.

c. In the context of a river, such as the North Fork, which has multiple special status designations, it is inconceivable that DFG would take the position that the impacts on this stream by virtue of suction dredging should be measured in terms of severity on a statewide basis. We contend, of course, that the "statewide" analytical approach is fundamentally flawed in any event; still, when that approach is applied to the North Fork, the river serves as a poster child illustrative of the illogic of such an approach.

d. On April 27, 2011 the Placer County Fish & Game Commission, by resolution, recommended to the Placer County Board of Supervisors that the Board direct a comment letter to DFG opposing the regulations, along with the following specific issues: **(i)** Dredging should be prohibited in the designated wild and scenic area upstream of Iowa Hill Bridge; **(ii)** Dredging should be prohibited in any stream that is designated as a wild trout stream; **(iii)** Eight inch suction dredge nozzles should be prohibited on the American River. On May 3, 2011, the Board of Supervisors, by resolution, adopted the recommendations of the commission. In effect, this resolution is now established land use policy in Placer County. This presents clear evidence that the people of the County of Placer desire to limit dredging within the county, as specified in the Board's resolution; DFG should respect that position in the proposed regulations.

e. **Recommended solution.** To remedy the legal inadequacies pointed out in this comment, DFG should:

(i) Implement a properly constructed study to analyze the potential adverse impacts to the extraordinary values that were the basis for the designation of the North Fork of the American River as a wild and scenic river under state and federal law, and develop appropriate mitigation measures designed to reduce identified adverse impacts to a less than significant level;

(ii) Pending completion of that study and implementation of appropriate mitigation measures, and pending revision of the proposed regulations, institute a total ban on dredging to last until the CEQA process is complete and the proposed regulations become effective.

(iii) DFG should revise the proposed regulations to reflect the land use policies expressed in the resolution enacted by the Board of Supervisors.

5. The draft SEIR is legally inadequate due to its failure to address California's adopted Anti-Degradation Policy as it applies to waters that would qualify as Outstanding National Resource Waters under applicable federal law.

a. California's Anti-degradation Policy (State Water Board Resolution 68-16) reads in part as follows:

" WHEREAS the California Legislature has declared that it is the policy of the State that the granting of permits and licenses for unappropriated water and the disposal of wastes into the waters of the State shall be so regulated as to achieve highest water quality consistent with maximum benefit to the people of the State and shall be controlled so as to promote the peace, health, safety and welfare of the people of the State; and

WHEREAS water quality control policies have been and are being adopted for waters of the State; and

WHEREAS the quality of some waters of the State is higher than that established by the adopted policies and it is the intent and purpose of this Board that such higher quality shall be maintained to the maximum extent possible consistent with the declaration of the Legislature;

NOW, THEREFORE, BE IT RESOLVED:

1. Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.
2. Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.
3. In implementing this policy, the Secretary of the Interior will be kept advised and will be provided with such information as he will need to discharge his responsibilities under the Federal Water Pollution Control Act."

This policy appears to apply to suction dredging in waters that would qualify as Outstanding National Resource Waters, as that term is defined in 40 CFR 35.1550(e)(2). It also appears, based on the proposed regulations, that DFG intends to defer to the State Water Board or the Regional Boards on all issues relating to water quality. Commenting on the interpretation of its policy, the State Water Board has specified in an official memorandum that: "Even if no formal designation [as an "Outstanding National Resource Water"] has been made, individual permit decisions should not allow any lowering of water quality for waters which, because of the exceptional recreational and ecological significance, should be given the special protection assigned to Outstanding National Resource Waters.... [C]andidates for designation as Outstanding National Resource Waters **include state and federally designated wild and scenic rivers**, and the waters of state and federal wilderness areas, parks, and wildlife refuges." California State Water Resources Board Memorandum to Regional Board Executive Officers, October 7, 1987, page 15. [Emphasis added].

b. The North Fork of the American River, as a designated federal and state wild and scenic river, is clearly covered by the Anti-degradation Policy as interpreted by the State Water Board. As such, "individual permit decisions" cannot be made without a finding that water quality will not be "lowered" as defined in the Policy. This issue was not addressed in the draft SEIR, and no such findings have been made by DFG.

c. Failure to address these issues renders the document legally inadequate under CEQA. In effect, DFG missed a major issue that has been posed under both federal and state laws, rules, and regulations.

d. **Recommended Solution.** In order to address this defect in the draft SEIR, DFG should:

(i) Implement a properly constructed study to analyze: the potential adverse impacts to the extraordinary values that were the basis for the designation of the North Fork of the American River as a wild and scenic river; the nature and extent that water quality may be degraded as a result of allowing suction dredge mining in that river; whether the findings required by the Anti-degradation Policy can in fact be made for the North Fork; and appropriate mitigation measures designed to reduce identified adverse impacts to a less than significant level;

(ii) Pending completion of that study as well as determinations as to whether the required findings can be made, and implementation of appropriate mitigation measures, and pending revision of the proposed regulations, institute a total ban on dredging to last until the CEQA process is complete and the proposed regulations become effective.

6. The draft SEIR is inadequate for its failure to address the beneficial results of the moratorium on the fisheries affected by suction dredging. As a guide on the North Yuba River for many years, and as a FAC board member, I have witnessed the decimation of the fishery by virtue of far too many dredges being allowed on this little stream. This has been especially true for the portion of the river between Ladies Canyon Creek and Sierra City, a wild trout stream, where the flows are significantly lower than they are below Downieville. During the dredging moratorium, we have noticed an increase in the number and size of rainbow trout in the upper part of the river. As one example, during the summer of 2010 I guided many clients on a portion of the Wild Trout section of the river near road mileage marker 27.9. Prior to the moratorium the number of dredges in this area had increased drastically due to transfer of permits/claims from individuals to mining clubs; this, in turn, resulted in a near collapse of the fishery in this once-

prolific area—only a few small fish remained. After two-plus years of dredge-free respite, the fishery in 2010 exploded with large numbers of very healthy, stout rainbows, some reaching sizes in excess of 12". My more skilled angler clients were catching and releasing 40+ fish during a day. While this information is anecdotal, it is important to decision-makers because it demonstrates, in a reverse manner, what the effects of dredging are on a fishery. Those of us who are on the water daily see this; biologists who visit a stream one or two times during a study don't have the same perspective. This type of information, which I provided to DFG during the time that the draft SEIR was being prepared (but which was apparently not included in the document) is vital to decision-makers and needs to be included in the draft SEIR. **Suggested Solution:** Include a discussion in the draft SEIR on the post-moratorium dredge free interval on trout and BMI populations.

7. The "Best Management Practices" pamphlet cannot be used as a mitigation measure upon which to base conclusions regarding the severity of any particular potential adverse impact. Throughout the draft SEIR, the "BMP" pamphlet is used as a means of assuring readers that dredgers will be given instructions as to how to avoid creating undue adverse impacts during the course of their operations on the river. It is important to understand that the BMPs are precatory, not mandatory—i.e., they are voluntary measures and not mandatory conditions of the permit. Nevertheless, DFG appears to be utilizing the BMP pamphlet as a means of demonstrating that certain potentially adverse impacts will be less than significant (aside from the main error of using a statewide approach on that issue, which error is compounded by having the BMPs voluntary)—in other words, as a surrogate "mitigation measure" which, of course, is not permissible under CEQA. The fact is that dredgers will simply ignore the document—because they can. In a regulatory environment, such an illusory document actually has a perverse effect in that it accomplishes the exact reverse of its purported intent: It provides incentive to do the opposite of what is recommended because it is not illegal to do so. This is a subtle, but important and very practical point that is totally missed by DFG. **Suggested Solution:** The solution to this problem is quite simple: Make the BMPs actual permit conditions that are mandatory. Otherwise, why have the document?

8. The "findings" set forth in the draft SEIR are defective, *inter alia*, by virtue of the failure to bridge the gap between the evidence that is specified in connection with each finding, and the finding itself (*Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506).

In the *Topanga* case, the California Supreme Court defined findings, explained their purposes, and showed when they are needed. The Court defined findings as legally relevant subconclusions which expose the agency's mode of analysis of facts, regulations, and policies, and which bridge the analytical gap between raw data and ultimate decision. (, at pp. 515 and 516.) In other words, findings are the legal footprints local administrators and officials leave to explain how they progressed from the facts through established policies to the decision.

The Court also outlined five purposes for making findings, two relevant mainly to the decision making process, two relevant to judicial functions, and the last relevant to public relations. Findings should:

- a. Provide a framework for making principled decisions, enhancing the integrity of the administrative process;
 - b. Help make analysis orderly and reduce the likelihood that the agency will randomly leap from evidence to conclusions;
 - c. Enable the parties to determine whether and on what basis they should seek judicial review and remedy;
 - d. Apprise a reviewing court of the basis for the agency's action; and,
 - e. Serve a public relations function by helping to persuade the parties that administrative decision making is careful, reasoned, and equitable.
- (at pp. 514, 516, fn. 14, and 517.)

The draft SEIR fails to meet the requirement that the findings bridge the gap between the raw evidence and the findings themselves. This point is made in all of the specific comments set forth below, and is applicable to each and every specific comment, whether actually articulated there or not.

9. The Regulations and the draft SEIR are fatally flawed for their failure to require applicants to obtain a NPDES permit under the Federal Clean Water Act, Section 402, as a condition of issuance of a suction dredge mining permit.

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. The basis of the CWA was enacted in 1948 and was called the Federal Water Pollution Control Act, but the Act was significantly reorganized and expanded in 1972. "Clean Water Act" became the Act's common name with amendments in 1977.

Under the 1972 revisions to the Clean Water Act there is direct federal regulation of the discharge of pollutants from point sources. _____, 291 F.3d 1123, 1126 (9th Cir. 2002). "[P]oint sources of pollution are those [where the pollutant flows] from a discrete conveyance, such as a pipe or tunnel. Nonpoint sources of pollution are non-discrete sources" and are the responsibility of the states, with certain federal oversight. _____ at 1125-27. An example of a nondiscrete source is runoff from a farmland or timber harvesting.

The CWA generally prohibits the "discharge of any pollutants" unless the discharge is permitted under one of the CWA's permitting schemes and complies with substantive requirements of the CWA. 33 U.S.C. § 1311(a). Section 402 of the CWA establishes the National Pollutant Discharge Elimination System (NPDES) permitting scheme for discharges of point source pollutants, and thus establishes the framework under which discharges of pollutants from suction dredge mining operations are regulated. 33 U.S.C. § 1342.

Any NPDES permit authorizing discharges of pollutants must insure that the applicable water quality standard will be met. 33 U.S.C. §§ 1342(b)(1), 1311(b)(1)(C). Federal regulations also make clear that each NPDES permit must insure compliance with the CWA. 40 C.F.R. § 122.4(d) prohibits the issuance of any permit when the "imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States." The regulations also prohibit the issuance of any permit to a new source or new discharger that will "cause or contribute to the violation of water quality standards." 40 C.F.R. § 122.4(i).

Small suction dredge mining is a point source discharge, and as such is regulated under the CWA Section 402 NPDES permitting program in the states of Oregon, Alaska, and Idaho. To comport with the CWA, small suction dredge mining in California must also be regulated under the 402 NPDES permitting program. Failure to regulate small suction dredge mining in California under the Section 402 NPDES permitting program will violate the CWA. No suction dredge mining permit should be issued by DFG without the applicant having previously applied for and received a Section 402 NPDES permit. The EPA's report on this subject is attached hereto as **Attachment "B"** and incorporated by this reference.

In addition, under the Ninth Circuit decision in _____ 504 F.3d 1007 (9th Cir. 2007), the Court determined that Federal Clean Water Act permits that would allow a discharge of pollutants into waters that are "impaired" without the completion of the process for establishing a TMDL for that particular pollutant, violated the provisions of the Act. Therefore, since the American River (including both the Middle and North Forks) has been determined to be impaired for mercury, neither a suction dredge permit nor a NPDES permit can be issued until the process for completion of the mercury TMDL has been completed. An analysis of this decision can be found at the following link:

http://www.elawreview.org/summaries/environmental_quality/clean_water_act/friends_of_pinto_creek_v_unite.html

The text of the court's opinion, in the form of a .pdf document, can be found at the following link:

<http://www.ca9.uscourts.gov/datastore/opinions/2007/10/03/0570785.pdf>

B. Comments on specific sections of the proposed regulations and the draft SEIR.

1. Chapter 2.

a. **Section 2.2.2. Definition of "Deleterious."** In this section, DFG adopts the following definition: *"Generally, CDFG concludes that an effect which is deleterious to Fish, for purposes of section 5653, is one which manifests at the community or population level and persists for longer than one reproductive or migration cycle. The approach is also consistent with the legislative history of section 5653. The history establishes that, in enacting section 5653, the Legislature was focused principally on protecting specific fish species from suction dredging during particularly vulnerable times of those species' spawning life cycle."*

The issue of what the meaning of “deleterious” is pivotal because Fish & Game Code Section 5653 provides that “If the department determines, pursuant to the regulations adopted pursuant to Section 5653.9, that the operation will not be deleterious to fish, it **shall** issue a permit to the applicant.” [Emphasis added].

DFG’s assertion regarding legislative history is incorrect and lacks any basis in logic or in the available history of the legislation that created the term. In fact, primary references and a summary of the documented legislative history of 5653 dating back to 1873 was provided to DFG in a March 10, 2010 letter by Friends of the North Fork. In that letter, Friends of the North Fork pointed out that:

- In 1961, "deleterious to fish" found its way into the first California statute regulating suction dredge mining, Fish and Game Code Section 5653, in Assembly Bill 1459 (Arnold). In his letter to the governor requesting a signature on the bill, Assemblyman Arnold used terms like "damage" and "disturb." He said dredging should be done so as not to cause anything other than "minimal damage" to fish, from which he specifically excluded disturbing eggs, disturbing fish food organisms and stirring up silt to cause an "aesthetic problem" and cover eggs.
- The intent was clear. Any “damage” from dredging activities must be “minimal.” Clearly, the author’s view was that disturbing eggs, disturbing fish food organisms and stirring up silt to cause an "aesthetic problem" and cover eggs is more than minimal, and thus is “deleterious to fish.”
- In an analysis of AB 1459 provided to members of the Legislature in 1961, the Legislative Analyst’s Office said that, under the bill, “the department must then determine whether the operation will be safe for fish life and if so it will issue a permit to the applicant.” So, in that view of the intent of “not deleterious to fish,” legislators were informed that it meant the activity is “safe for fish life.”
- In a letter to the Governor requesting his signature on AB 1459, the Department of Fish and Game said, “The department shall issue a permit if it is judged that no damage will occur to fish, aquatic life, and the aquatic environment.” So in information on which the Governor based his decision to sign AB 1459 into law, “not deleterious to fish” meant “no damage” to “fish, aquatic life and the aquatic environment.”
- In the handful of bills since 1961 affecting this section, no legislation has ever used a term other than "deleterious to fish" nor offered any other interpretation of its meaning. Thus, we are left with the actual history which assigns “minimal” or “no” damage to fish as the criteria for determinations as to whether there is a “deleterious” effect.

Viewed through the lens of the available actual legislative history, there is simply no rational basis for DFG’s interpretation of the meaning of “deleterious.”

Suggested Solution. DFG should correct its unsupported definition of “deleterious” so that it comports with the legislative history. Alternatively, Webster’s International Dictionary defines that term as “

” Although this definition can be viewed as somewhat vague, it carries virtually the same meaning as that provided by the actual legislative history.

b. Section 2.2.4 Draft Proposed Regulations.

1. **Section 228(b) Permit Requirement.** The term “person” in this section is not defined. It seems clear that the Fish & Game Code Section 67 definition of that term ("Person" means any natural person or any partnership, corporation, limited liability company, trust, or other type of association.) was not meant to apply to the proposed regulations because of the use of the words “his/her” in line 21 on page 2-8 of the DEIR. This is an important issue because, _____, of the issue specified in Comment 3 above relating to transfers. Indeed, it would be inappropriate to issue a dredging permit to anyone other than a natural person because of the nature of the regulatory provisions of the proposed regulations (e.g., the person holding the nozzle needs to have a permit). **Suggested Solution:** DFG should revise the proposed regulations to include a definition of “person” that is clearly tied to individual natural persons.

2. **Section 228(h) Permit Revocation or Suspension.** This section should be revised to include a provision for public notice of hearings; for special notice to those citizens who have requested notice and agenda documents; and for publication of the hearing agenda. It is often the case that private citizens have pertinent information (e.g., photographs) as to abuses and violations committed by individual miners; unless there is a provision

for public notice and special notice to those who have made such a request, the hearing officer could be denied access to such valuable information. **Suggested Solution:** DFG should revise the proposed regulations to include a provision for public and special notice of hearings on revocation and suspension, and a hearing process that allows for public testimony.

3. Section 228(j)(1) Equipment requirements (Nozzle restrictions). This section deals with the allowable intake nozzles, with a general rule that the inside diameter of the intake nozzle cannot exceed 4". There are provisions for allowance of larger nozzles, up to 8". The main problem with this section lies in the latter provisions, which specify certain rivers where 8" nozzles can be allowed, including the "American" River. Presumably this includes the North and Middle Forks, as well as their tributaries (unless there are specific closures under other sections of the proposed regulations). The issues presented are: **(i)** There is no provision for public and/or special notice of applications for enlarged nozzles; this should be included so that local residents can appear and voice their comments regarding whether or not the increased nozzle size should be allowed. Such input from knowledgeable citizens can be cogent and relevant, and should not be overlooked. **(ii)** DFG can issue permits for 8" nozzles "...at the Department's discretion." There are no defined standards governing that discretion, which is otherwise unfettered. That paradigm is inappropriate, and will lead to routine issuance of 8" nozzle permits, even where upon a reasonable investigation with proper notice, such a permit could be found to be inappropriate. **(iii)** There is no provision for CEQA analysis unless section 1602 would require it; this is inappropriate because, especially in smaller streams such as the North Yuba River (a listed allowable stream), the damage can be extreme. **(iv)** The American River system, because of its long mining history, has significant deposits of mercury buried in its sediments and substrate. Eight inch nozzles merely exacerbate the problems identified in the water quality analysis portion of the draft SEIR. The American River should be totally excluded from the enlarged nozzle permitting process for that reason, and because of the resolution of the Placer County Board of Supervisors, mentioned above, which specifically deals with the 8" nozzle issue.

Suggested Solution: The American River should be excluded from the listed rivers on page 2-18 of the draft SDEIR. Alternatively, the proposed regulations should be revised to include appropriate public and special notice provisions; a hearing procedure where citizens can express their comments; an absolute requirement that the applicant for an 8" nozzle permit provide adequate CEQA review for the permit; and a set of well-defined standards that would govern the discretion of DFG in issuing 8" nozzle permits, so that citizens (and applicants) are fully apprised of the decision criteria that govern these important decisions.

4. Section 228(k)(1), (2). Subsection (1) generally prohibits motorized winching except under the specified conditions. Although it is not entirely clear, it appears that no specific permit is required for this activity. As is the case with enlarged nozzles, there should be a permit process for motorized winching because of the damage that can be caused by moving very large rocks from their normal position in the stream. Large obstacles provide refugia in the form of shade, safety from predators, and food interception lies, for fish and aquatic insects. Removing these from the streambed permanently damages available habitat. Subsection (2)(E) allows moving of rocks and other material with winches tied to streamside trees as long as the trees are protected. This precaution is virtually unenforceable, because miners will move an obstacle without the protection specified, damage the tree, quickly remove the line, and then deny that the damage was caused by them. In the past, however, miners have left cables attached, where they eventually girdle the life from the tree. **Suggested Solution:** These provisions should be revised to: (i) Prohibit use of motorized winches entirely, or alternatively be allowed only with a special permit that would require the applicant to comply with CEQA and agree to a stringent set of written restrictions in the form of permit conditions; (ii) The permit process should include provisions for public and special notice so that members of the public can provide comments on the application; (iii) Prohibit the use of live trees to attach winch cables or ropes.

5. Section 228(K)(7).

requirements specified in the above comments regarding issuance of permits for enlarged nozzles should be included in the proposed regulations. **Suggested Solution:** The proposed regulations should be revised to: (i) Prohibit creation of a dam or weir, or otherwise concentrate flow; (ii) Alternatively, a special permit process similar to that specified in the comments above relating to enlarged nozzles, should be included.

6. Section 228(K)(14), (16), (17). Subsection 14 requires use of “reasonable care” to avoid siltation/turbidity. The term “reasonable care” as used in subsection 14 is unenforceable. A strict standard should replace this murky provision, in the form of a prohibition on creating silt and turbidity. In subsection 16, the danger of damage to redds is far too serious to allow dredging during rainbow and/or brown trout spawning periods. In subsection 17, the word “willful” renders this restriction completely unenforceable. The defense, which would be virtually impossible to rebut, would always be a lack of “willfulness.” By virtue of the criminal burden of proof, no enforcement would ever occur. **Suggested Solution:** (i) Prohibit the creation of silt and turbidity. (ii) Prohibit dredging during normal rainbow and brown trout spawning periods. (iii) Delete the word “willful” in subsection 17.

7. Section 228(m). This section requires permittee compliance with all other laws. **Other provisions should be added here, as permit conditions:** (i) A restriction should be added to prohibit a permittee from interfering in any manner with other river users, including anglers, hikers, and other recreationists. There have been many incidents where suction dredgers claim that no person can walk across their camping area, or on the shore near their claim, or be in the water. It should be made express in the regulations that such conduct is prohibited. (ii) A restriction should be added to require miners to remove each and every piece of equipment and other items when their dredging season closes. Debris, equipment, trash, and other items have routinely been left to be washed into the winter flows, including gas and oil filled engines and other equipment containing toxic materials.

8. Section 228.5(b)(9)—Dredging seasons. (i) Middle Fork Tributaries above Oxbow Dam. This subsection would allow dredging in Middle Fork tributaries above the confluence and up to Oxbow Dam from September 1 through January 31. These tributaries should be closed entirely to dredging because it has been demonstrated by the scientific studies done in connection with the PCWA hydropower facilities relicensing process that virtually all spawning in the Middle Fork in this reach occurs in the tributaries; none occurs in the main stem of the river due to the daily peaking. There are adult brown trout in the main stem that travel up the tributaries to spawn during the open period (i.e., during the fall). Because these streams are the “nursery” for the main stem, it is entirely inappropriate to allow dredging, which will inevitably cause damage to spawning trout habitat as well as live redds and young of the year. **(ii) Rubicon River (Placer County).** The closure is upstream from the Placer/Eldorado County line. This is vague and confusing because the two counties meet along a linear border for some distance. This definition should be made clear by a reference such as coordinates or an existing natural land mark. Additionally, the lower three miles of the Rubicon should be entirely closed in order to protect Foothill Yellow Legged Frogs (FYLF). In the PCWA relicensing process, DFG and USFS have rightly taken the very firm, consistent position that this section is one of the best FYLF habitats remaining, and needs to be protected. Cold water flow restrictions in this section have been established in the relicensing process for protection of FYLF. In order to be internally consistent, DFG needs to protect this area from dredging during the egg-laying, spawning, and rearing periods for FYLF. Additionally, this stream is a designated wild trout stream (see discussion above on that issue), and the Placer County Board of Supervisors’ resolution demands banning of dredges in designated streams. **(iii) Middle Fork—main stem just below Oxbow Dam:** In the PCWA relicensing process, tentative agreements have been reached on creation of a spawning area immediately below Oxbow Dam, in a stretch of the river that is approximately .53 miles in length. This is an important component of an overall settlement between federal and state agencies (including DFG), NGOs (including Foothills Angler Coalition), and PCWA. It is imperative that suction dredge mining be prohibited in this reach in order to preserve the benefit of the plan to achieve natural spawning in the main stem of the Middle fork, which is virtually non-existent at present due to peaking.

9. Section 2.28(b)(31)—Dredging seasons. (i) Middle Fork main stem above Oxbow. This tiny stream has been given designation “D” which would allow dredging from July 1 through January 31. This is inappropriate because the July period is the rearing period for young of the year rainbows. Also, the lower section above the Ralston Picnic Area upstream for approximately 1.5 miles to the waterfall is FYLF habitat and should be protected in the same manner as the Rubicon, as set forth above. Additionally, there are brown trout in this same reach that spawn in the fall; this reach should be closed to dredging during those periods to protect the FYLF, spawning fish, the redds, the eggs, and the young of the year. **(ii) North Fork American River.** See all of the general comments listed

above, which are specifically included here by reference. In addition, there are other issues that pertain to the novel allowance of dredging on the pristine waters of this river: **(a)** The regulations are confusing as to what the dredging season actually is. It is unclear whether the North Fork downstream of Clementine Dam is in the Placer County category of “all rivers and streams unless otherwise noted,” in which case it would be in category H (open year round), or in the “streams west of Placer Hills Drive and Interstate 80,” in which case it is in Class C (open June 1 through September 30). For Eldorado County, the same segment is classified as category C, which makes the proposed regulations contradictory. **(b)** The regulations fail to protect the North Fork’s wild trout fishery, even though it is designated as a Wild Trout Stream under California’s Heritage and Wild Trout Program. The draft SEIR, clearly states that there is a population of rainbows in the North Fork that are genetically identical with CV Steelhead that were anadromous prior to construction of Folsom Dam (Chapter 4.3, Table 4.3-1, pp 8-9). The season specified for the segment between Iowa Hill Bridge and Big Valley Canyon is category G, which is supposed to protect the spawning period of these fish; still, the regulations fail to protect them and their habitat (e.g., deep pool refugia) during the rest of the year, which is inconsistent. **(c)** The “normal” suction dredge intake nozzle size is 4”; on page 2-18 of the draft SEIR, the regulations would allow a nozzle on the North Fork of 8” in size, to be permitted “at the Department’s discretion.” As set forth above, there is no public input process for this exception, and there are no stated standards that would govern DFG’s discretion. We have witnessed the devastation that is caused by 8” nozzles—the impact is severe on the stream’s values, including benthic macroinvertebrates, fish, vegetation, and geomorphology—and, of course, its trout populations. Additionally, as mentioned above, the Placer County Board of Supervisors adopted a resolution that specifies banning of 8” nozzles on this river. **(d)** Because the North Fork is a designated Wild & Scenic River under both state law (1972) and federal law (1978), DFG is required to protect its extraordinary wild trout fishery, water quality, and clarity; the regulations simply fail to address these issues. Additionally, the USFS management plan for this river prohibits motorized suction dredging. It seems inconceivable that DFG would, in the face of these facts, allow permits to be issued for suction dredging in this river. It is submitted that by doing so, DFG appears to have abandoned its responsibilities to the people of the State of California as a “trustee agency” under California law, and to have lost sight of its own mission statement. **(iii) Middle Fork tributaries below Oxbow (North Fork of the Middle Fork).** These streams are assigned to the “E” category which allows dredging from September 1 through January 1. This would include the North Fork of the Middle Fork of the American River from its confluence with the Middle Fork below Oxbow, to its headwaters in the Deadwood Ridge area. This stream should be entirely closed to dredging because of its unique, unusual, and excellent values. The reasoning for this conclusion is set forth below.

The North Fork of the Middle Fork of the American River (“NFMF”) originates high up on the Forest Hill Divide in the Deadwood Ridge area. Winding for many miles through a scenic, steep canyon, it terminates at its confluence with the Middle Fork American River a short distance below Oxbow Dam. Set forth below is a partial, brief list of some of the values that characterize this stream:

- a. The NFMF is unobstructed--i.e., it is free flowing from its headwaters to its confluence with the Middle Fork below Ralston Afterbay (Oxbow Lake).
- b. The NFMF is characterized by a continuous series of waterfalls, pools, riffles, and runs that hold wild rainbows, and a smaller population of browns. These pristine conditions would be decimated by dredging where all fines and rubble are removed, and the entire stream ecology is altered.
- c. Fish have not been planted in this stream. All of the fish are wild, healthy, and brightly colored and spotted. I have a lot of pictures of fish caught and released over the years.
- d. The NFMF flows through a remote, forested canyon, with a canopy that provides summer shade and good trout refuge during periods of high water temperatures. This canopy would be decimated in areas where dredging would occur.
- e. The NFMF serves as a nursery for fish production for the main Middle Fork; MF fish migrate up this stream to spawn. I have seen this in the spring (rainbows), and to a lesser extent in the fall when the browns move up. There is virtually no spawning activity in the Middle Fork itself, according to the scientific studies conducted during the PCWA relicensing process, where I have for years been a participant and stakeholder for myself and for a broad coalition of conservation and related organizations. Virtually all MF spawning takes place in its tributaries, and

the NFMF is (aside from the Rubicon) the largest of those tributaries. Suction dredging would clearly cause siltation, substrate depletion, and other adverse conditions that would have a bad effect on spawning and rearing of rainbow and brown trout populations. In turn, this would have an adverse effect on the Middle Fork main stem.

f. The fish population varies depending on location. Certain areas of the stream are remote and/or unknown to the general public. I am one of the few people who know where all of the trails are, and where to access the river for the best fishing. These areas tend to hold the healthiest and largest fish specimens, and dredging would have an enormous impact on the fishery and the food supply in these areas.

g. The BMI population is probably average for an "infertile" stream, which category covers virtually all of the Middle Fork streams. Still, there are good populations of Pteronarcys and Golden Stoneflies, as well as mayflies and caddis. The adverse effects of dredging on benthic macroinvertebrates are well documented. Infertile streams suffer greatly and exponentially more because their BMI populations are limited by the stream's geomorphology.

h. Streamside vegetation is, in most places, entirely intact and, because the stream is uncontrolled, the spring hydrograph normally includes periodic high flows that both clean the streambed and control streamside vegetation reproduction. This situation would be impacted adversely by dredging, which rearranges the natural flow patterns in affected stretches.

For all of these reasons, dredging should be disallowed in this stream. The problem is compounded by its small size, and by the following provisions of the proposed regulations:

- (i) The "normal" suction dredge intake nozzle size is 4"; on page 2-18 of the draft SEIR, the regulations would allow a nozzle on the NFMF of 8" in size, to be permitted "at the Department's discretion." As set forth above, there is no public input process for this exception, and there are no stated standards that would govern DFG's discretion. I have witnessed the devastation that is caused by 8" nozzles—the impact is severe on the stream's values, including benthic macroinvertebrates, fish, vegetation, and geomorphology. The NFMF is a tiny stream compared to others in the area, thus magnifying the adverse effects of dredging. See also discussion above on the Placer County Board of Supervisors' resolution regarding 8" nozzles.
- (ii) The NFMF is placed into category "E" by the proposed regulations, which means that it would be open to dredging from September 1 through January 31. The spawning period for brown trout falls squarely within this period, and no dredging should be allowed during that period.

In addition to those issues, all of the comments above regarding the draft SEIR's "statewide" approach to impact analysis (instead of a stream-by-stream analysis); the current presence of remnant Central Valley Steelhead populations; the mandated reintroduction of Central Valley Steelhead and Chinook Salmon above Folsom Lake (those fish would have direct access to this stream); and the presence of mercury, all apply with equal force to the NFMF (See general comments 1, 2, 5 above, all of which are incorporated here). **(iv) Middle Fork tributaries above Oxbow (Rubicon River—Eldorado County).** The same provisions apply to the Placer County portions of the Rubicon as apply in Eldorado County. The issues here are the same as those specified above for the Rubicon River within Eldorado County, and those comments are incorporated here.

10. Section 2.28(b)(46). North Yuba River above Ladies Canyon Creek. Because there is no special season specified for this section of the North Yuba River, it is apparently subject to year-round dredging under category "H." This is inappropriate. The reasons for that statement are several: (i) This is the smallest, most fragile portion of the river. There is no apparent reason for allowing year-round dredging on the tiniest part of this small stream, while having a defined season on the larger part below Ladies Canyon Creek. (ii) The portion of the stream from Ladies Canyon Creek east to the westerly boundary of Sierra City is designated as a Wild Trout Stream where no fish planting occurs. The year-round dredging season clearly interferes with rainbow and brown trout spawning, BMI production during the heavy feeding season for fish, and available trout refugia during the summer months when the water warms due to high ambient air temperatures. Above Sierra City the stream is even smaller, and is open to the sun for the entire day, causing significant warming and consequent stress to the resident fish. These already-stressed fish

should not be subjected to all of the damaging effects of suction dredging. In addition, general comments 1, 2, 3, and 5 apply to this river, and are incorporated here. Finally, this stream has been subjected to heavy suction dredging for many years. There is miners' trash everywhere, and dredgers have dug deep holes, constructed dams and weirs, and committed many other violations of the existing regulations. There has been virtually no enforcement here, despite repeated attempts to obtain DFG cooperation in remedying violations. Miners are aggressive toward other users, and have engaged in threats and active violence, most likely because they are fully aware that there will be no consequences. In summary, this river is a poster child for why dredging should be disallowed entirely on small, pristine streams.

2. Chapter 4. Environmental Impacts.

a. Chapter 4.1 Hydrology and Geomorphology.

1. Section 4.1.4 Environmental Impacts (Impact Geo-1). A significant portion of this section is devoted to the controversial subject of geomorphic recovery. As is the case with the rest of this document, there has been no independent investigation done by DFG; rather, all that is done is a review of the available literature, which is diverse in its conclusions. This discussion fails to take into account the fact that, while the physical structure of the stream may recover following succeeding winter flows sufficient to initiate gravel motion, the damage to the biota in the area of disturbance does not recover—i.e., the interim damage to the fish (eggs, alevins, young of the year, and adults) and the BMIs, does not “bounce back.” Again, those of us who are on the rivers constantly see this problem, which is intimately related to the disturbing cycle of dredge-scour-recovery; yet, the draft SEIR fails to recognize this symbiotic relationship by treating the two issues separately. Because the biological recovery cycle is slower than the geomorphic recovery cycle, the net result is a continuous downward spiral of the biological resources. The faulty nature of this entire discussion is highlighted by the last several sentences of the recovery section on page 4.1.16 of the draft SEIR, where two factors supposedly reduce the impact to a less than significant level: (i) the provisions of the proposed regulations that require restoration by the dredger; and (ii) the precatory BMPs. The former will simply not be done, as there will be no enforcement or follow-up by DFG's own admission, because of a self-imposed dearth of funding; and the latter is an illusory measure (see discussion under general comment 7 above). When viewed through the lens of the fundamental error of assessing impacts on a statewide, rather than an individual stream basis, the document's discussion of geomorphic recovery is flawed and not helpful.

The discussion on “depositional processes” is also problematic because it fails to take into account the exponential effects of individual-to-club (or other multi-person entity) transfer of permits and claims. (See discussion of this issue under general comment 3 above). In other words, there are assumptions that in some cases are not valid, in the draft SEIR regarding the number of dredges in a particular location; obviously, if the assumptions in that regard are incorrect, that will affect the amount and degree of turbidity created, and the length of time/distance that it takes to dissipate.

Findings. The findings identify a number of potentially significant impacts, and then declare them to be “LTS” based on three criteria: (i) Regulations requiring restoration; (ii) the BMPs; and (iii) the unstated assumption that the proper viewpoint is statewide rather than local. As mentioned above, dredgers will not comply with either the regulation or the BMPs, there will be no enforcement, and the statewide viewpoint is erroneous and impermissible under CEQA. Thus, the findings are without substantial evidence and therefore arbitrary.

2. Section 4.1.4 Environmental Impacts (Impact Geo-2). In the findings on this impact (destabilization of banks), DFG admits that notwithstanding the mentioned regulations “...it is likely that some illegal activity will continue to occur that will cause bank erosion and instability.” Then, notwithstanding the potentially adverse impacts of erosion DFG concludes that on a statewide basis the impact is LTS. This finding is, for the reasons mentioned in general comment 1, without substantial evidence and therefore arbitrary.

3. Section 4.1.4 Environmental Impacts (Impact Geo-3). This section discusses the adverse effects of dredging on streambed forms such as riffles and bars, and reaches another LTS determination. Once again, the findings are faulty because: (i) the “1 to 3 years” reset of the channel morphology is a much shorter recovery period than that for the biological resources, resulting in a continuous downward biological spiral; (ii) the regulations cited as a form of mitigation will not be enforced (there will be 4,000 permits scattered over the state and no enforcement resources to monitor performance); (iii) the BMPs are illusory as “guidance;” and the statewide approach (“form and function of rivers and streams at the statewide scale”—lines 35-36, p. 4.1-23, is legally impermissible.

4. Section 4.1.4 Environmental Impacts (Impact Geo-4). Here the discussion centers on channel profile disturbance, which can result in effects such as “knickpoints,” which can cause redistribution of silt and other materials, and other identified adverse effects. Yet, the findings reach another “LTS” conclusion based on certain regulation provisions, and based on a statewide viewpoint. Once again, these findings are faulty for the same reasons mentioned above, and lacking in substantial evidence, they are arbitrary.

5. Section 4.1.4 Environmental Impacts (Impact Geo-5). This section discusses the adverse effects of channelization, flow concentration and similar activities of dredgers. The findings reach yet another LTS determination based on the same erroneous paradigm consisting of regulations (not enforced), guidance (illusory), the recovery period (out of cycle with biological recovery), and the erroneous statewide approach.

b. Chapter 4.2 Water Quality and Toxicology.

1. Section 4.2.2 Regulatory Setting. One of the important statements in this section reads as follows: “The discharge of the spoil from a suction dredging sluice box has been determined by the courts to constitute a discharge that may be regulated with permits issued pursuant to Section 402 of the CWA. As such, the SWRCB or the Regional Water Quality Control Boards (RWQCBs) may require suction dredge operators to obtain NPDES permits in order to ensure that they are in compliance with the CWA and California’s water quality standards.” (SEIR, p 4.2-2, LL 30-35). The discussion also cites the federal and state anti-degradation policies (see general comment 5 above). Principal among the constituents of concern that relate to dredging are elemental and suspended forms of mercury: “Mercury (Hg) is the constituent that poses the greatest toxicological risk to humans and fish and wildlife in areas where suction dredging activity might occur.” (SEIR, p. 4.2-14, LL 31-32). “The major pathway for human and wildlife exposure to methylmercury (MeHg) is consumption of Hg-contaminated fish. Dietary MeHg is almost completely absorbed into the blood and is distributed to all tissues, including the brain...MeHg is a highly toxic substance with a number of adverse health effects associated with its exposure in humans and animals.” (SEIR, p.4.2-15, LL 7-12). **Suggested Solution:** In order to properly address the impacts that follow this discussion, DFG should require as a condition of issuance of a suction dredge permit that each applicant provide evidence of having procured an NPDES permit from the RWQCB. If no such permit is produced, no permit should be issued.

2. Section 4.2.4 Impact Analysis (General and introductory comments). Others with far more technical expertise in water quality/toxicology issues will present comments on the issues presented by this chapter of the SEIR. However, from the local standpoint, the draft SEIR fails to include the most recent studies on the American River, and in fact the list of impaired water bodies with consumption advisories appears to be in error. In connection with the PCWA relicensing process, empirical and literature review water quality studies were done. The study results are summarized in the report, which is part of the draft and final license applications to the Federal Energy Regulatory Commission (we can provide a copy of the entire document, including the actual detailed study protocols and results, if desired):

“PCWA conducted a screening level assessment of methylmercury concentration in sport fish muscle tissue at French Meadows Reservoir, Hell Hole Reservoir, Middle Fork Interbay, and the Middle Fork American River at Otter Creek in 2007 as part of the MFP relicensing studies (PCWA 2010a; SD B). The field handling procedures used were consistent with those outlined by the California Environmental Protection Agency (Cal/EPA) (2005) and those used at the Department of Fish and Game Marine Pollution Studies Laboratory at Moss Landing (Method # MPLS-102a). Muscle tissue from individual fish (fillet with skin off and homogenized) and crayfish (tail only) was analyzed for concentrations of methylmercury in accordance with the General Protocol for Sport Fish Sampling and Analysis developed by the Cal/EPA (2005) and with methods comparable to those used at the Department of Fish and Game Marine Pollution Studies Laboratory at Moss Landing (MPLS 2005). Methylmercury concentrations in the sampled fish and crayfish were compared to the California’s (sic) OEHHA screening guidelines for methylmercury of 0.08 milligram per kilogram (mg/kg) (AQ 11-contingency TSR [PCWA 2010a; SD B). **Numerous fish tissue samples analyzed in 2007 exceeded this criterion** (AQ 11 TSR) (PCWA 2010a; SD B). [Emphasis added].

“Methylmercury concentrations in at least one fish and crayfish from each location exceeded the OEHHA screening value of 0.08 mg/kg. In addition, approximately 55% of the fish analyzed had methylmercury concentrations that exceeded the screening value. The highest concentrations (up to 2.31 mg/kg) were measured in fish from Hell Hole Reservoir, where the largest fish were caught and 75% of the sampled fish weighted between one and five pounds. The lowest concentrations were found in rainbow trout from Ralston

Afterbay. In general, the larger fish had higher methylmercury concentrations compared to the smaller fish. The results of the fish analyses are summarized by location in Table 7.4-6.

“Fifteen of the 24 crayfish analyzed from Hell Hole and French Meadows reservoirs exceeded the screening value of 0.08 mg/kg. The highest concentrations were from Hell Hole Reservoir (up to 0.264 mg/kg). The results of the crayfish analyses are summarized in Table 7.4-6.

“The Central Valley Regional Water Quality Control Board, Clean Water Act Section 305(b) and 303(d) Integrated Report for the Central Valley Region, includes the North Fork American river, Hell Hole Reservoir, and Oxbow Reservoir (Ralston Afterbay) on the 303(d) list of impaired waters for mercury (RWQCB 2009).”

The upshot of these studies is that both the North and Middle Forks of the American River are impaired for mercury, under existing and accepted standards. The draft SEIR does not include this information, which is critical to the impact analyses, and does not appear to contain any empirical study information done in connection with DFG’s proposed regulations project. The draft SEIR does mention the fact that the American River TMDL for mercury is in development (draft SEIR, p. 4.2-22, LL37-38). It is clear that no individual river assessments were prepared by DFG; rather, it relies on studies of certain rivers that it deems comparable as a surrogate for individualized determinations. (See, e.g., draft SEIR, p 4.2-23, LL 1-19). For all of the following impacts, it is our position that the findings lack supporting substantial evidence and therefore are arbitrary. Additionally, water quality impact comments prepared by others are incorporated into this document by reference for all purposes.

a. Section 4.2.5 Environmental Impacts (Impact WQ-1). As is the case in all of the water quality impacts in the draft SEIR, there is no analysis of individual rivers; as a surrogate DFG appears to be using (without explicitly so stating) a statewide analysis (see general impact 1 above). Impact WQ-1 relates to the effect of encampments used by dredgers at or near the river. DFG states that human waste, chemicals (including hydrocarbons), large trash deposits, and other contaminants are found regularly by wardens at or near the encampments. These contaminants and materials can (and do, based on personal observation) enter the river either during the dredging season or during high flows in the winter. DFG admits that it does not “...monitor or record the type or amount of camping activities of those that have obtained dredging permits in the past.” Instead it relies on a self-serving survey of dredgers for data as to where and when they camp. In its findings, DFG denies jurisdiction to police or regulate encampments, deferring to applicable USFS and BLM jurisdiction. DFG also refers to the illusory BMP guidelines that contain cleanliness suggestions. This type of approach evidences DFG’s intent to not enforce the law. The permit conditions could easily require permittees to comply with all USFS and/or BLM rules regarding encampments, and could easily make the guidelines mandatory. Reaching a conclusion of LTS based on such statements is inappropriate under CEQA, without substantial evidence, and therefore arbitrary.

b. Section 4.2.5 Environmental Impacts (Impact WQ-2). The same structural problems exist with this impact, which relates to gasoline and other hydrocarbons used by dredgers. As mentioned above, others with far more expertise in this area will deal with the internal inconsistencies, faulty analysis, and other problems with this impact analysis, but based on personal observations it is not true that dredgers use responsible practices regarding gasoline containers and the tanks on their dredges. There are pictures appended to these comments that demonstrate this point, as well as other illegal and destructive practices used by dredgers in the Upper American River area, and the North Yuba area.

c. Section 4.2.5 Environmental Impacts (Impact WQ-3). While problems and legal issues inherent in the analysis here are common to all of the water quality impacts in this chapter of the draft SEIR, one issue bears specific mention: The lack of discussion regarding the proliferation of dredges resulting from individual-to-group permit/claim transfers. (See general impact 3 above). Specifically, the analysis, in addition to its other defects, fails to take such transfers into account when determining the amount of sediment and other contaminants that will enter the water column in any given affected area. Another issue that is not discussed is the difference in impact where the stream is small. Treating all streams the same is not realistic. There is no individualized discussion of sedimentation effects on individual streams; at the very least, the discussion should consider the cumulative effects of additional siltation on streams that are impaired for mercury concentrations.

d. Section 4.2.5 Environmental Impacts (Impact WQ-4). This impact relates to resuspension of mercury in fines, resulting in MeHg concentration increases. The draft SEIR concludes that the impact is significant and unavoidable. Among potential mitigation measures (draft SEIR p. 4.2-53, LL 42 et seq.) is the identification of watersheds or sub-watersheds where there are high levels of elemental Hg and close those areas to dredging. Claiming no data exist, DFG mentions (but does not commit to) a study on the issue. Because such data do exist on the North and Middle Forks of the American River, closure is appropriate under the language of the draft SEIR, and that should be implemented immediately. Other purported mitigation measures are mentioned, but there is no commitment to any of them. This type of analysis is impermissible under CEQA, which require implementation of all available and feasible mitigation measures. **Suggested Solution:** Close the Middle Fork and North Fork of the American River to all dredging because of their high mercury impairment status, as demonstrated by the most recent studies.

e. Section 4.2.5 Environmental Impacts (Impact WQ-5). This impact relates to resuspension and discharge of other constituents, as listed in table 4.2-6 on page 4.2-56 of the draft SEIR. The same problems and legal issues inhere in this discussion as are present in the discussion of the other water quality impacts, especially impact no WQ-4.

c. Chapter 4.3 Biological Resources

1. Section 4.3.2 Regulatory Setting. On page 4.3-3, lines 31-33, DFG states: “While the Proposed Program assessed in this EIR is not seeking a Section 10(a)(1)(B) permit, it is possible this section of the ESA is applicable to individual suction dredgers if their activities have the potential for take of federally listed species.” This interpretation is misguided. Where a state or local agency is proposing to implement a project that could result in take of a federally protected species, an incidental take permit and habitat conservation plan are indeed required—and it is the permitting agency that needs to seek the permit and create the HCP, not the potential individual permittees. Therefore, to the extent that dredging could result in a take of a protected species, the incidental take permit/HCP requirement exists and DFG cannot avoid it. A good example would be the endangered anadromous species that will be reintroduced into the American River pursuant to the provisions specified in general comment 2 above. In order to issue permits within the American River drainage in areas where the reintroduced species will occur, DFG must comply with federal ESA section 10(a)(1)(B). Additionally, DFG makes the same error in this chapter regarding the method of analysis, ignoring its CEQA duty to assess impacts on a stream-by-stream basis instead of on a statewide basis. (See draft SEIR, p. 4.3-22, LL 26-32).

2. Section 4.3.5 Environmental Impacts (Impact BIO-FISH-1). This impact relates to spawning fish and the effects of dredging on them. The text identifies a host of impacts to spawning fish that can be caused by dredging, including disturbance and reduction of spawning gravels, crushing and intake of eggs, and damage to young of the year. The text states that for fish “action” species there are temporal and spatial restrictions that would prevent the harm to fish. For unprotected fish species such as rainbow and brown trout, however, the finding is conclusory and without substantial evidence: “Impacts of dredging to other Fish species (i.e., those listed in Table 4.3-2, as well as more common or widespread native and non-native Fishes) are also not likely to result in impacts that would be considered significant.” There is not a shred of evidence in the document to support this conclusion. Once again, use of the “statewide” criterion for measuring the impact’s significance would allow the complete trashing of a stream with spawning common rainbow and brown trout, their eggs, and their fry as long as the population statewide is satisfactory. There is no support in the applicable law (CEQA and the CEQA Guidelines) for such an illogical approach.

3. Section 4.3.5 Environmental Impacts (Impact BIO-FISH-2). This impact relates to direct entrainment, displacement or burial of eggs, larvae and mollusks. The studies cited by DFG identify major adverse impacts to fish, including entrainment, which kill larvae and eggs, as well as young of the year. The same study results apply to amphibians, and specifically FYLF. The findings as they relate to fish are once again superficial and

arbitrary with no substantial evidence supporting them. For FYLF, the conclusion is that although there are adverse impacts, there is not a significant impact on the species “as a whole.” In other words, specific populations can be sacrificed. This position is entirely contrary to the position taken by DFG in the PCWA MFA relicensing process, where the department has taken a very protective stance as to this species. The cited regulation sections do not ensure that entrainment will not occur for fish and amphibians, and do not directly address the problem.

4. Section 4.3.5 Environmental Impacts (Impact BIO-FISH-3). This impact relates to effects of silt and other fines that can cause clogging of interstitial spaces among the substrate in spawning grounds, which adversely affects developing eggs, emergent fry. In making its findings, DFG relies on the regulations which contain various restrictions that supposedly have the effect of reducing the severity of the impact. Unfortunately, the myopic “statewide” view undermines the findings. There is no substantial evidence in the record from which to draw the conclusions that DFG has made, rendering the finding of LTS arbitrary.

5. Section 4.3.5 Environmental Impacts (Impact BIO-FISH-4). This impact relates to direct entrainment of juvenile and adult fish. The text correctly points out the vulnerabilities of small fish to being entrained, crushed, or injured by dredger nozzles. Having done that, the findings reach some startling conclusions, including the following passage: “If left unrestricted, direct entrainment of juvenile and adult fish by suction dredging would be potentially significant with respect to Significance Criteria A and D. This impact would only be significant for those species who are not able to escape velocities at the dredge intake, and whose populations are severely limited in size or distribution. Streams within the state that provide habitat for species that are very limited in number and distribution are proposed to be closed to suction dredging (Class A), thus avoiding potential for impacts.” **In other words, if fish that are not limited in number and/or distribution are killed or injured, it doesn’t matter.** Once again the myopic “statewide” approach allows dredgers to trash any individual stream and its biota as long as on a statewide basis the population is satisfactory. Following that line of reasoning to its logical conclusion, we don’t need to protect any fish that is not listed as threatened, endangered, or of special concern. It is submitted that such an approach is clearly not sustainable under CEQA, and such findings are without substantial evidence. The screening mesh is of no help in this regard; fish will still be crushed as they are sucked against the screen and the dredge operator pushes the nozzle against the substrate.

6. Section 4.3.5 Environmental Impacts (Impact BIO-FISH-5). This impact relates to changes in genetically imprinted behavioral patterns of juvenile or adult fish. The text summarizes these effects: “Silt deposition as a result of mechanized activities, such as suction dredging, can have adverse effects on invertebrates and fish, including clogging of respiratory structures, reduced feeding rates, increased invertebrate drift, disruption of courtship displays and spawning behavior, and reduced hatching rates in fish....Suction dredging dislocates and can kill aquatic insects used as a food source by a variety of fish species in a variety of life stages. If animals avoid a refuge area as a result of disturbance or perceived predation, these animals may experience greater predation by other predators. If forced to relocate to new feeding areas, fish may experience increased stress due to predation, exposure to sub-optimal conditions, and increased competition with other fish for food and space, as well as stress from agonistic behavior (i.e., contests for dominance).” The findings on this impact are illogical. The admitted adverse impacts described above are made less than significant, according to the text, by a proposed regulation that “requires dredgers to avoid the disturbance of fish.” Such a regulation is clearly not enforceable, and is entirely illusory. In no way can it be considered to be a measure that would reduce the impact to any given stream, and is most certainly not a mitigation measure. The finding of LTS on this impact lacks any substantial evidence, and is therefore arbitrary.

7. Section 4.3.5 Environmental Impacts (Impact BIO-FISH-6). This impact relates to disturbance of fish migration and/or movement, and the adverse effects that exist when movement/migration are interfered with. Six adverse effects to fish are listed in the text. Regarding amphibians, there are similar effects noted. In the findings, the same problems analytical reoccur, with DFG endeavoring to minimize impacts with unenforceable

proposed regulation provisions, together with its ubiquitous “statewide” error. In addition, it is stated in the findings that where there is habitat for species that are limited in number and/or distribution, those streams are closed under category A. This is erroneous as it relates to the lower Rubicon River, where another branch of DFG is insisting on protection of FYLF because that species has a good population in the lower three miles. This position has been taken by DFG in the PCWA relicensing process. Thus, in addition to lacking substantial evidence, the findings contain a clear internal inconsistency.

8. Section 4.3.5 Environmental Impacts (Impact BIO-FISH-7). This impact relates to adverse impacts to benthic macroinvertebrate (“BMI”) populations caused by dredging. The text states that it has been demonstrated that there are statistically significant reductions in BMIs within 10 meters of dredges, and that values returned to upstream composition within 80 to 100 meters. Several factors undermine the clearly marginal validity of that conclusion: **(i)** If, as is the case, dredging occurs daily over protracted time periods, even if BMIs reproduce themselves the young will be damaged, killed, or relocated on a daily basis; that means that there will, during the dredging season, be no adults for fish food, and/or for reproduction; and **(ii)** Where, as is the case on certain streams such as the North Yuba River, mining clubs or other organizations place numerous dredges in certain portions of the river, with the result that the return to normalcy (even if that was a correct statement in the text) is pushed significantly farther downstream. In other words, both of these problems point out the cumulative impact to BMIs—a factor that is not taken into account in the text, except for a few paltry statements such as “Invertebrate species richness and density were reduced as disturbance frequency increased.” The balance of the text contains a discussion of the conflicting conclusions reached in available literature. It also parrots an argument that unsophisticated dredgers are often heard to voice: The mobilization of BMIs caused by dredging brings fish to the area to feed; comments such as “The fish are all around my dredge” are common. The fact is that this scenario is completely out of synch with the natural cycle of drift and feeding, and is ultimately a factor in both BMI and fish population decline. This observation is based on many years of personal experience on rivers. The findings, once again, minimize the adverse effects and term them “short term and localized.” As pointed out above, this is simply not true; in fact, the text discussion belies such a conclusion. The cited regulation provisions do not address the issue, and it is inappropriate to consider this impact LTS using the “statewide” approach.

9. Section 4.3.5 Environmental Impacts (Impact BIO-FISH-8). This impact relates to artificial creation of deep pools and/or alteration of natural pools by dredging operations. The text identifies some of the adverse effects of artificial creation or alteration of pools within a stream. The effects are numerous and significant as they relate to individual streams. The text itself points out the need for individual stream analysis in several places: **(i)** “However, the authors of this study found, overall, that the creation of a pool at the dredged site led to no net loss of pool habitat *in the stream.*” (See p. 4.3-41, LL 6-7) (Emphasis added). In other words, for the particular stream involved, no overall damage occurred. That conclusion may or may not be correct for that stream, but at least the geographic scope of the analysis is correct. **(ii)** “Where pools form, their size and how they are maintained is dictated by gradient, sediment source, substrate size, channel width, flow and the presence of forcing features (e.g., bedrock outcropping, boulders, wood material). These factors are rarely, if ever, considered by suction dredgers when creating pools.”(See p. 4.3-41, LL 9-13). In other words, individual streams are affected differently based on local factors. Therefore, it is inconceivable, based on the document’s own statements, that such effects can properly be measured on a “statewide” basis. The cited regulation provisions do not even come close to addressing the issues. The findings are unsupported by substantial evidence, and are therefore arbitrary.

10. Section 4.3.5 Environmental Impacts (Impact BIO-FISH-9). This impact relates to removal or destabilization of coarse woody debris (“CWD”), alteration of riffles, and removal of large boulders, and the adverse effects created by dredgers who engage in such conduct. The text and all of the cited studies extol the beneficial virtues of CWD, large boulders, and riffles for BMIs and fish, their habitat, and the overall health of the

stream itself. As before, DFG cites the same regulation provisions claiming that they reduce the impacts to LTS. Such circular and superficial reasoning is inappropriate for a CEQA analysis. One major defect—and this defect permeates all of the previous impact findings—is the lack of an intellectual bridge between the cited regulation sections and the findings. In other words, how does each of the cited regulations cause the impact to be reduced to LTS? The reader is left with no understanding of the critical nexus between regulations and findings. The probable explanation for this failure is that **there simply is no nexus**. Again, the geographical scope of the analysis is inappropriate; each stream is different, and requires its own analysis. The findings are therefore without substantial evidence and thus are arbitrary.

11. Section 4.3.5 Environmental Impacts (Impact BIO-FISH-10). This impact relates to stream bank destabilization by dredgers, and the biological effects of such actions. The text can be summarized with the following quote: “Stream bank erosion is one of the primary non-point sources of sediment in a watershed. While stream bank erosion is a natural process, excessive erosion caused by human activity can substantially degrade aquatic habit downstream of the erosion site.” (See p. 4.3-45, LL 20-22). The findings, based on the text, are baffling in concluding that the regulations would reduce the adverse impact to a LTS level. One cited regulation requires notification to DFG as to dredging location—all that means is that 4000 permittees, each of whom can have 6 sites, tells DFG where they will operate. Potentially, that means 24,000 sites would have to be monitored. The fact is that DFG does no monitoring whatsoever, lacking funding and manpower to do so. Additionally, there is no bridge between the evidence and the finding, as to how the regulation would improve the situation. Amazingly, the findings admit that there is (and will be) a lack of enforcement: “...it has been observed that some illegal activity occurred that caused bank erosion and instability; this is likely to occur under the Proposed Program.” (See p. 4.3-46, LL 6-8). From there the analysis totally breaks down for lack of any substantial evidence: “The potential for bank erosion and instability as an outcome of suction dredge activities is considered a departure from the current baseline condition whereby no suction dredging occurs because it is prohibited by statute and court order. It is anticipated that with the Proposed Program regulations in place, the extent of bank destabilization caused by dredging activity would be minimal and would not substantially degrade the biological function of rivers and streams of the state.” (See p. 4.3-46, LL 8-15). This is a classic case of internal inconsistency: Just a few sentences earlier it is stated that under current regulations which are substantially the same, illegal activity occurred (presumably causing excessive erosion); with the proposed regulations, which are the same, illegal activity will continue to occur, and thus excessive erosion; how, then, does the proposed regulation address the problem? Where is the nexus? How can it be used as a means of reducing the severity of the impact to LTS?

12. Section 4.3.5 Environmental Impacts (Impact BIO-FISH-11). This impact relates to the effects of dewatering, damming, or diversion of flows. This is a situation that we have observed repeatedly in the canyons of the upper American River, and on the North Yuba River, in the Wild Trout section. Contrary to what is stated in the text, the effects are extremely damaging, and despite us having reported cases of this to DFG, nothing was ever done, the claim being that it is “not illegal.” Pictures of this type of action are appended to these comments. What in fact occurs is that the entire flow dynamic of the stream is changed; the silt that is dredged out to make the pool and dam is deposited downstream in other prime trout habitat and remains there for at least a year, and in many situations longer; because the stream is altered significantly, anglers and other users are prevented from fishing or otherwise using the area that has been damaged. It is well that the regulations will prohibit this activity unless the dredger has a Section 1602 agreement; however, that is not a transparent process; rather, it has no mechanism for input from affected users and the general public interested in preserving stream integrity. The cited regulations may help, but they certainly do not, in and of themselves, reduce the adverse impacts to individual streams to a LTS level. Therefore, there is no substantial evidence to support the findings, and they are therefore arbitrary.

d. Chapter 4.4 Hazards and Hazardous Materials

1. Section 4.4.4 Environmental Impacts (Impact Haz-4). This impact relates to human wastes associated with miners' camps. Based on personal observation, the problem is far more extensive and damaging than depicted by the text. The measure expressed by DFG for addressing this problem is their precatory BMP pamphlet, along with a statement that such problems are outside its jurisdiction to remedy. That is patently wrong. Instead of having "guidelines," DFG could attach conditions to its permits regarding health and cleanliness—i.e., make their "suggestions" mandatory. Still, enforcement is a problem. There is no substantial evidence in the record that would provide a basis for the LTS finding on this impact.

Foothills Angler Coalition, a California Non-profit Corporation

By: _____

(Bill Carnazzo, Vice President and Board Member)

North Fork American River Associates, a California Non-profit Corporation

By: _____

(Jim Ricker, President)

Upper American River Foundation, a California Non-profit Corporation

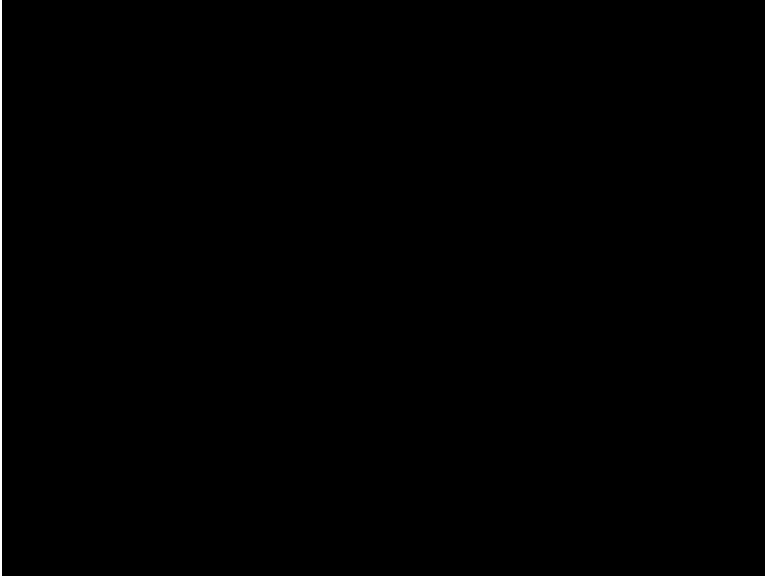
By: _____

(Bill Carnazzo, President)

Spring Creek Flyfishing Guide Service

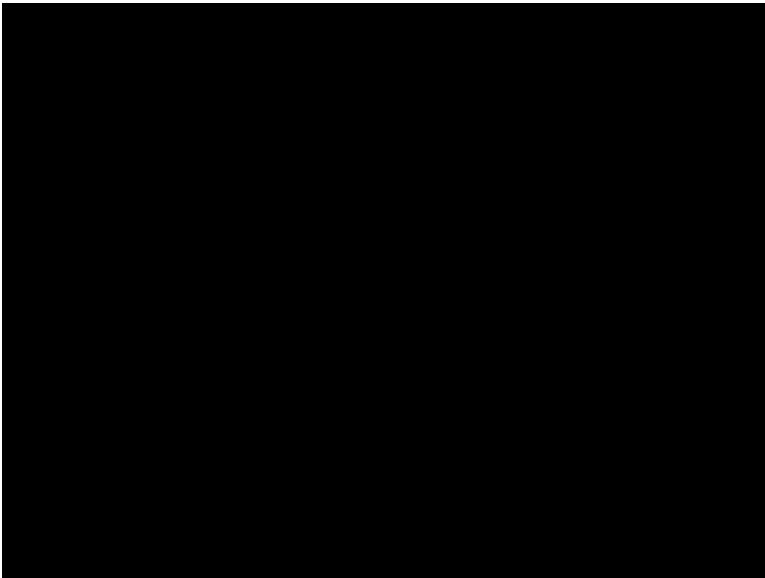
By: _____

(Bill Carnazzo, Owner)

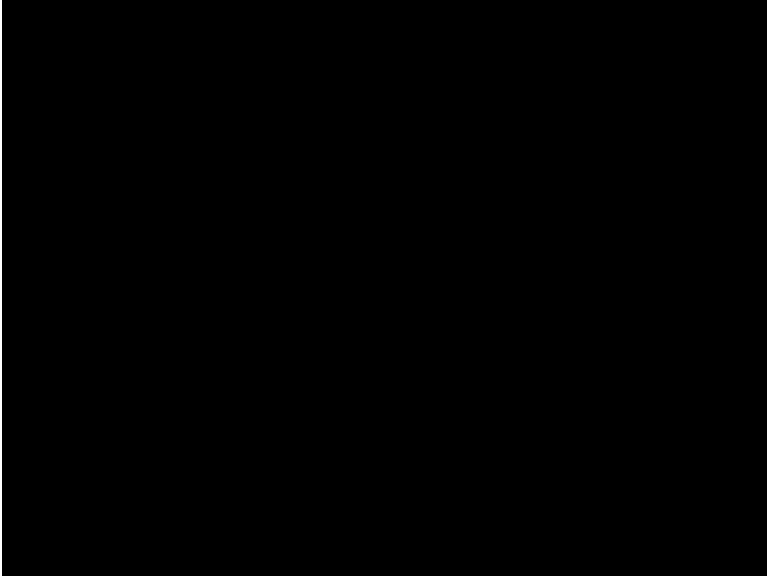


Illegal dam on a small stream, with illegal movement of boulders.

Note complete diversion of stream channel. North Yuba River.



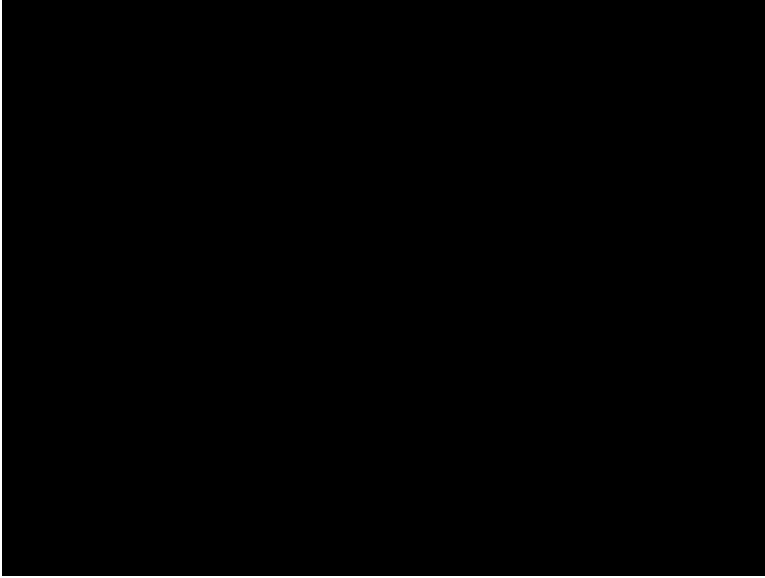
Large illegal deep lake on small stream. North Yuba River.



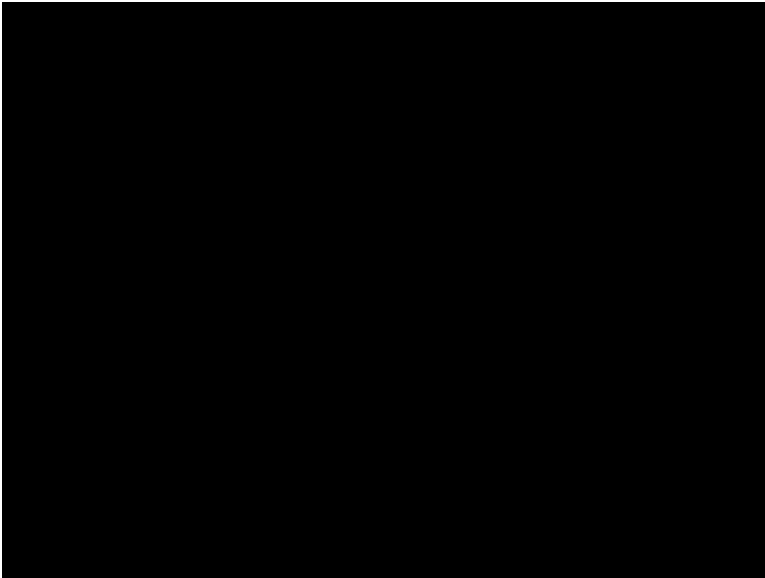
Dredge effluent into illegal lake. North Yuba River.



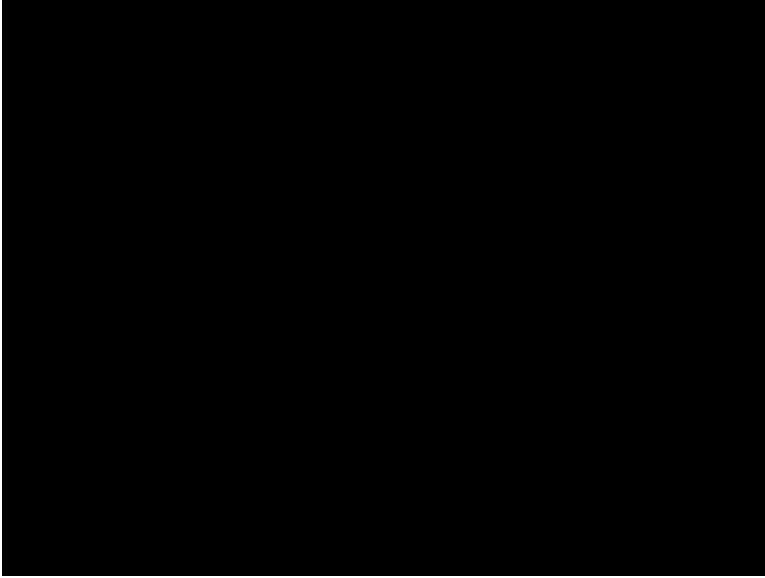
Trash heap next to river (North Fork of the Middle Fork).



North Fork American. Large dredge.



Same location on North Fork American—silt plume extending far downstream.

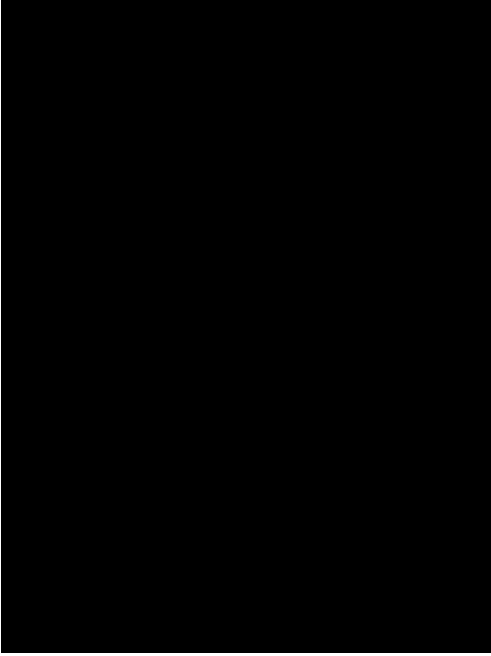


Illegal hose used for washing soil from a high bank next to the river.

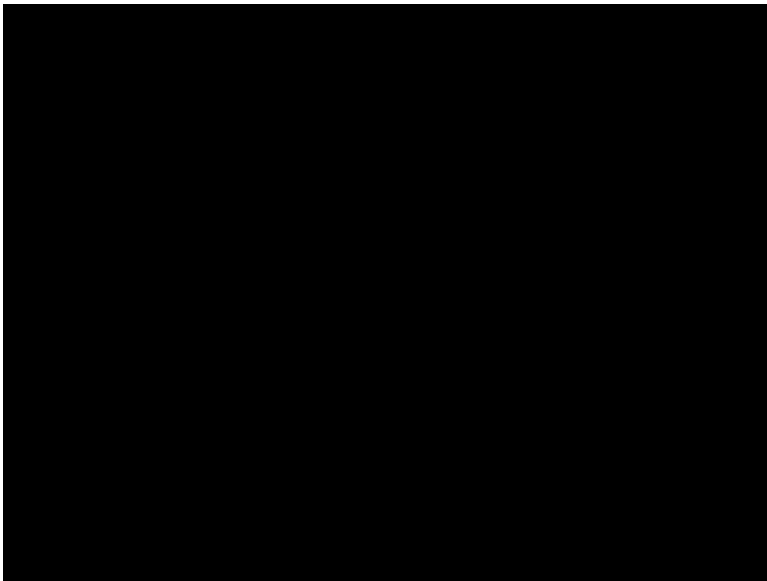
North Fork of Middle Fork.



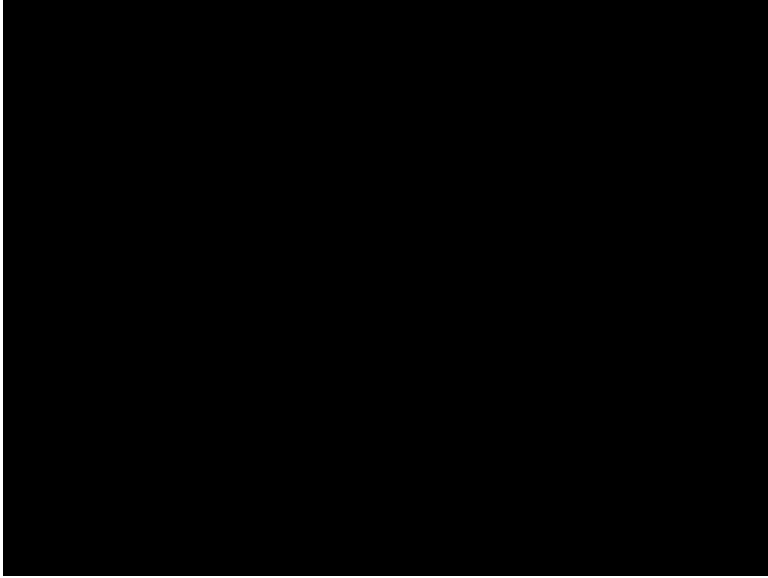
Pick, shovel, and other equipment used to dig soil from high bank
prior to washing it down into sluice and into river. North Fork of Middle Fork.



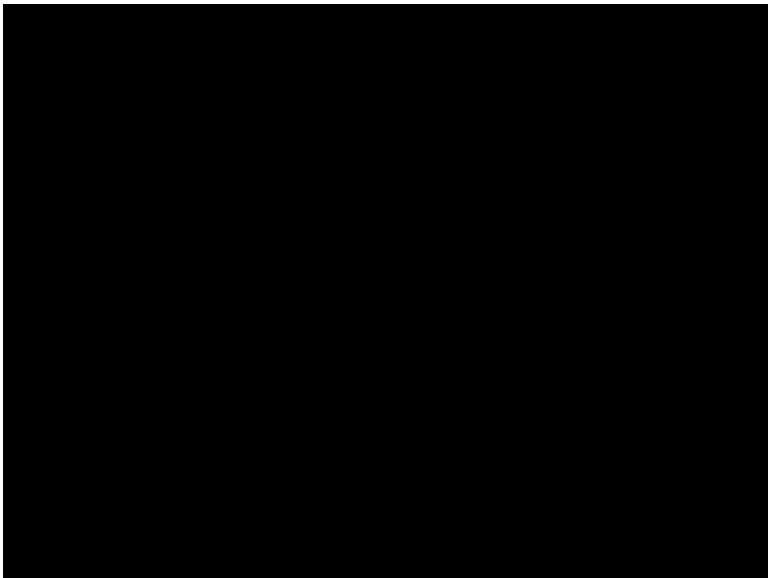
Area where soil was washed with hose, from high bank
next to river. North Fork of Middle Fork.



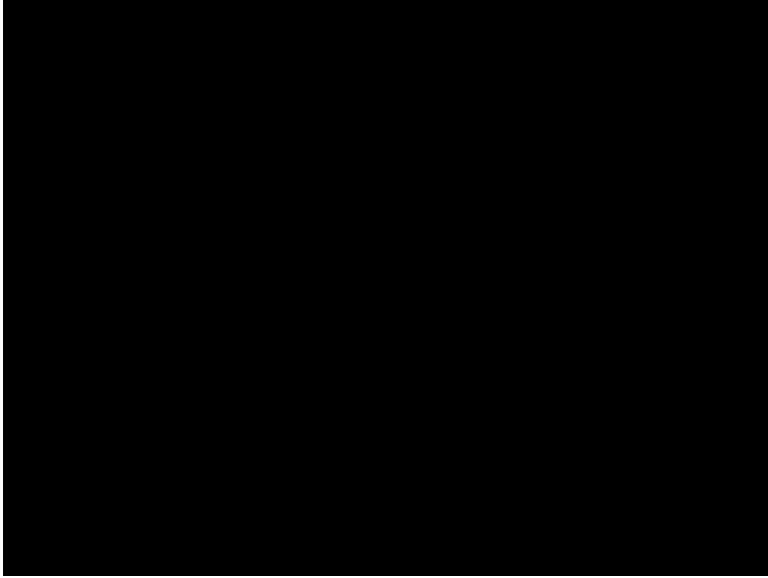
Hoses used to wash soil from high bank. North Fork of Middle Fork.



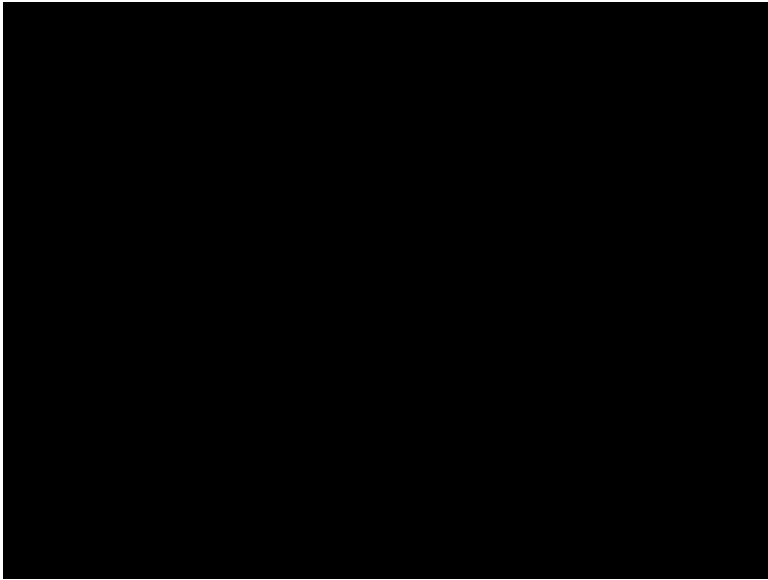
Trailhead to site of next few pictures.



Trash left by suction dredge miners. North Fork of Middle Fork.

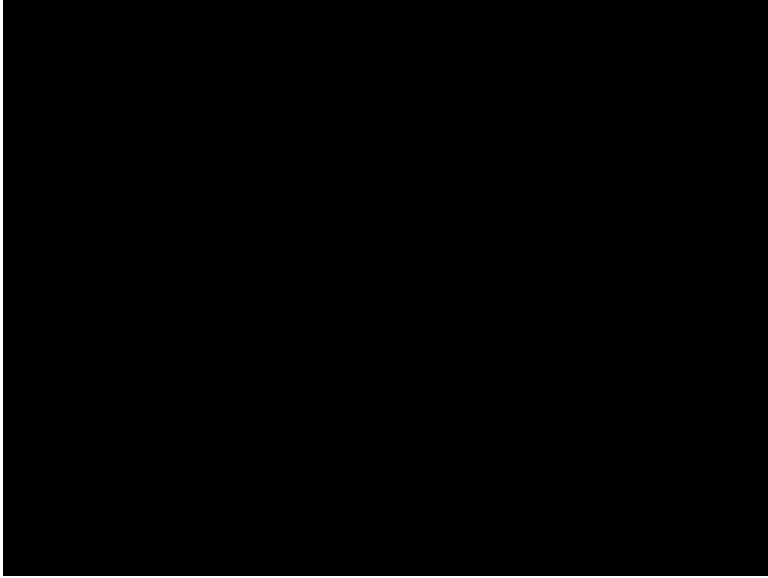


More trash. North Fork of Middle Fork.



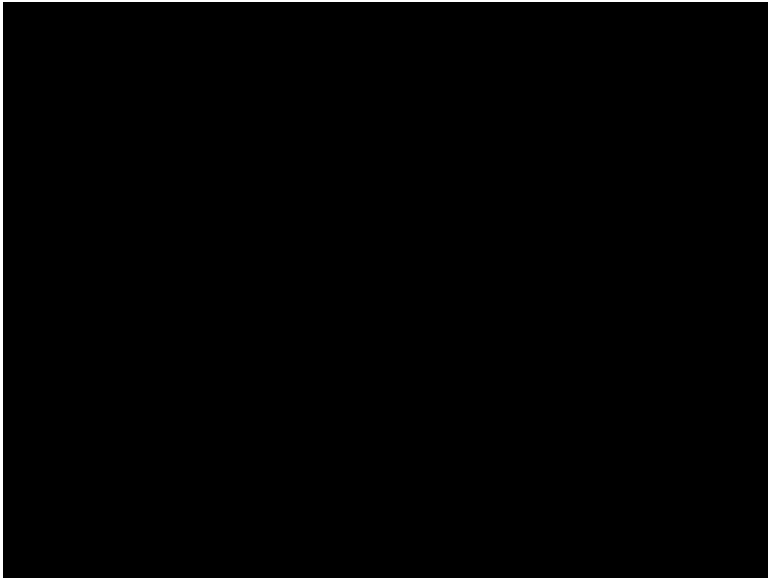
Showing proximity to stream; winter flows pass through this point.

North Fork of Middle Fork.



Silt load from suction dredge downstream from dredge site.

Rubicon river, approximately 1 mile above Ralston Afterbay (Oxbow Lake).



“Mining club” situation. Two of six dredges located in a small section of the river. Substrate nearly completely removed. No room for anglers to fish. Note cable stretched across stream.

ATTACHMENT “A”

List of Foothills Angler Coalition Supporting Organizations

National and Regional Organizations

- Federation of Fly Fishers, a national and international organization
- Northern California Council, Federation of Fly Fishers
- California Trout (“Cal Trout”)
- Sacramento-Sierra Chapter, Trout Unlimited
- Trout Unlimited, national organization
- Upper American River Foundation
- North Fork American River Associates (“NFARA”)
- North Area Sportsmen’s Association

Fly Fishing Clubs

- Granite Bay Flycasters
- California Fly Fishers Unlimited
- Gold Country Fly Fishers
- Auburn Flycasters
- Peninsula Fly Fishers
- Chico Fly Fishers
- Fly Fishers of Davis
- Flycasters of San Jose
- Ladybugs Fly Fishing Club
- Golden Gate Angling and Casting Club
- Tracy Fly Fishers
- Golden West Women Flyfishers

Private Companies

- American Fly Fishing Company
- Fly Fishing Specialties
- Sportsman’s Warehouse
- The Orvis Company
- Rio Line Company
- Sage Rod Company
- Redington Company
- C & F Design Company
- Fishpond Company
- The Fly Shop, Redding

ATTACHMENT “B”

EPA Fact Sheet on Suction Dredge Mining Permits

The United States Environmental Protection Agency (EPA) Plans To Issue A National Pollutant Discharge Elimination System (NPDES) General Permit To:

Small Suction Dredge Miners in Idaho

Technical Contact

Name: Cindi Godsey Phone: (907) 271-6561 Email: godsey.cindi@epa.gov

EPA Proposes NPDES Permit Issuance

EPA proposes to issue a National Pollutant Discharge Elimination System (NPDES) General Permit to placer mining operations in Idaho for small suction dredges (intake nozzle size of 5 inches in diameter or less and with equipment rated at 15 horsepower or less). The draft permit sets conditions on the discharge - or release - of pollutants from these operations into waters of the United States.

This Fact Sheet includes:

- Information on public comment, public hearings, and appeal procedures
 - a description of the industry
 - a description of draft permit conditions
- background information supporting the conditions in the draft general permit

The State of Idaho Clean Water Act (CWA) § 401 Certification

EPA has requested that the Idaho Department of Environmental Quality (IDEQ) certify the NPDES permit for this operation under CWA § 401.

Persons wishing to comment on State Certification should submit written comments by the public notice expiration date to Johnna Sandow, Idaho Department of Environmental Quality, 1410 N. Hilton Boise, Idaho 83706. Ms. Sandow may be reached by phone at (208) 3730163 or by e-mail at johnna.sandow@deq.idaho.gov. IDG-37-0000

EPA invites comments on the draft permit

EPA will consider all substantive comments before issuing a final permit. Those wishing to comment on the draft permit or request a public hearing may do so in writing by the public notice expiration date. Please submit comments to the Director, Office of Water and Watersheds, USEPA-Region 10, 1200 Sixth Avenue, Suite 900, OWW-130, Seattle, Washington 98101. Comments may be submitted by e-mail to godsey.cindi@epa.gov or faxed to (206) 553-0165.

All comments should include name, address, phone number, a concise statement of basis for the comment and relevant facts upon which it is based. A request for public hearing must state the nature of the issues to be raised as well as the requester's name, address and telephone number. EPA has scheduled four information workshops in the locations below. Persons wishing to learn about the NPDES permit process, the conditions of this GP, and for an opportunity to provide written comments are encourage to attend one of these workshops.

The workshops are as follows:

City Grangeville Boise Salmon Idaho Falls
Location NezPerce National Forest 104 Airport Road (park in front)
IDEQ Conference Room C
1410 N. Hilton Salmon-Challis National Forest 1206 S. Challis Street

2 pm – 5 pm Wednesday,
February 24
4 pm – 7 pm Thursday,
February 25
3 pm – 6 pm

Documents are available for review

ID Department of Fish & Game 4279 Commerce Circle
Date & Time Monday, February 22
4 pm to 7 pm (PST) Tuesday, February 23

The draft NPDES permit and fact sheet can be reviewed at EPA's Regional Office in Seattle between 8:30 a.m. and 4:00 p.m., Monday through Friday. This material is also available for inspection and copying at the following locations in Idaho:

EPA Idaho Operations Office Idaho Department of Environmental Quality 1435 North Orchard Street State Office Boise, Idaho 83706 1410 North Hilton
(208) 378-5746 Boise, Idaho 83706

(208) 373-0502

Idaho Department of Environmental Quality Idaho Department of Environmental Quality Twin Falls Regional Office Boise Regional Office 1363 Fillmore Street 1445 North Orchard Twin Falls, Idaho 83301 Boise, Idaho 83706
(208) 736-2190 (800) 270-1663 (208) 373-0550 (888) 800-3480 IDG-37-0000

Idaho Department of Environmental Quality Lewiston
Regional Office 1118 F Street Lewiston, Idaho 83501
(208) 799-4370 (877) 541-3304

Idaho Department of Environmental Quality Idaho Falls
Regional Office 900 N. Skyline Suite B Idaho Falls, Idaho
83402

(208) 528-2650 (800) 232-4635

Idaho Department of Environmental Quality Pocatello
Regional Office 444 Hospital Way, #300 Pocatello, Idaho
83201

(208) 236-6160 (888) 655-6160

Idaho Department of Environmental Quality Coeur d'Alene
Regional Office 2110 Ironwood Pkwy Coeur d'Alene, Idaho
83814

(208) 769-1422 (877) 370-0017

Copies of the draft permit and fact sheet can be found on the EPA, Region 10 website at <http://www.epa.gov/r10earth/waterpermits.htm> (click on 'Current public comment opportunities'). IDG-37-0000

TABLE OF CONTENTS

List of Acronyms 5

I. Background on General Permits..... 6

II. Operations and Receiving Waters Covered By This General Permit (GP) 6

 A. Industry Description.....6

 B. Operations Covered by the GP..... 7

 C. Receiving Waters 7

III. Obtaining Coverage Under The GP..... 9

IV. Effluent Limitations Required By The GP 11

 A. Statutory Requirements for Determining Effluent Limits 11

 B. Technology-based Effluent Limitations.....11

 C. Water Quality-based Effluent Limitations..... 12

 D. Monitoring 15

V. Best Management Practices (BMPs).....15

VI. Other Permit Provisions..... 18

VII. Other Legal Requirements..... 19

 A. Endangered Species Act 19

 B. Essential Fish Habitat (EFH) 22

 C. National Forest System Lands..... 22

D. State Certification	22
E. Permit Expiration	23
Appendix A – References.....	24
Appendix B Waterbodies Where Placer Mining Is Not Authorized Under The General Permit.....	25
Part 1: National Wild And Scenic Rivers.....	25
Part 2: Withdrawn River Segments.....	25
Part 3: State Protected Rivers	27
Part 4: 303(d) Listed Waterbodies for Sediments.....	32
Appendix C – Areas of Coverage/Areas of Closure.....	33
Appendix D – Draft CWA § 401 Certification	39

IDG-37-0000 Fact Sheet
 Page 5 of 40

LIST OF ACRONYMS

AR Annual Report

BE Biological Evaluation BLM Bureau of Land Management BMP Best Management Practices

CFR Code of Federal Regulations CSU Conservation System Unit CWA Clean Water Act

EFH Essential Fish Habitat EPA Environmental Protection Agency ESA Endangered Species Act

FR Federal Register

GP General Permit

IDEQ Idaho Department of Environmental Quality IDWR Idaho Department of Water Resources

NOAA National Oceanic and Atmospheric Administration NMFS National Marine Fisheries Service NOI Notice of Intent NPDES National Pollutant Discharge Elimination System NTU Nephelometric Turbidity Unit

SPPC Spill Prevention Control and Countermeasure

T&E Threatened and Endangered

USFS United States Forest Service USFWS United States Fish & Wildlife Service USGS United States Geological Survey

WQS Water Quality Standard IDG-37-0000 Fact Sheet Page 6 of 40

I. BACKGROUND ON GENERAL PERMITS

Section 301(a) of the Clean Water Act (CWA) prohibits most point source discharges of pollutants to waters of the U.S. unless they are authorized by a National Pollutant Discharge Elimination System (NPDES) permit. NPDES permits authorize the discharge under certain conditions described in the permit. Such permits are usually issued to individual dischargers, i.e., an individual discharger receives its own individual permit. However, the NPDES regulations also authorize the issuance of "general permits" to categories of discharges. Issuance of a general permit allows EPA to authorize discharges from a number of dischargers at one time.

EPA's implementing regulations that authorize the issuance of general NPDES permits are under Title 40 of the Code of Federal Regulations (CFR), Part 122, Section 28 (40 CFR 122.28). EPA may issue a general NPDES permit if there are a number of point sources operating in a geographic area that: 1) involve the same or substantially similar types of operations; 2) discharge the same types of wastes; 3) require the same effluent limitations or operating conditions; 4) require the same or similar monitoring requirements; and 5) in the opinion of the Director, are more appropriately controlled under a general permit than under individual NPDES permits.

EPA Region 10 has determined that issuance of a general permit to authorize discharges from small suction dredge miners in Idaho is appropriate due to the similarity of operations, pollutants discharged, management practices, and need for similar limitations and monitoring requirements.

II. OPERATIONS AND RECEIVING WATERS COVERED BY THIS GENERAL PERMIT (GP)

A. Industry Description

Placer mining involves the mining and extraction of gold or other heavy metals and minerals primarily from alluvial deposits. These deposits may be in existing stream beds or ancient, often buried, stream deposits, i.e., paleo or fossil placers.

Many placer deposits consist of unconsolidated clay, sand, gravel, cobble and boulders that contain very small amounts of native gold or other precious metals. Most are stream deposits that occur along present stream valleys or on benches or terraces above existing streams. Areas for locating gold are around boulders near the upstream end of pools where the current first starts to slow, in seams and pickets in exposed bedrock around midstream boulders, or on the inside of a river bend at or near the head of a gravel bar where larger materials have accumulated.

Dredging systems are classified as hydraulic or mechanical (including bucket dredging), depending on the methods of digging. Suction dredges, the most common hydraulic dredging system, are popular with small and recreational gold placer miners. Suction dredges consist of a supporting hull with a mining control system, excavating and lifting mechanism, gold recovery circuit, and waste disposal system. All floating dredges are designed to work as a unit to dig, classify, beneficiate ores and dispose of waste. Because suction dredges work the

stream bed rather than stream banks, the discharges from suction dredges consist of stream water and bed material.

The primary pollutant of concern in the discharges from a suction dredge is suspended solids. The suspended solids in the effluent discharged from suction dredge outlets result from the agitation of s

1. Receiving Waters not covered by this GP

The following are the receiving waters excluded from coverage, i.e., this GP does not authorize the discharge from placer mining in the water bodies described below.

National Protected Areas: The draft GP does not apply to facilities that are proposed to be located in National Parks System Units (i.e., Parks and Preserves), National Monuments, National Sanctuaries, National Wildlife Refuges, National Conservation Areas, National Wilderness Areas, or National Critical Habitat Areas

National Wild and Scenic Rivers: Pursuant to the authorities specified in Section 47-1323, Idaho Code, the State Board of Land Commissioners prohibits dredge mining in any form in water bodies making up part of the National Wild and Scenic Rivers System. This includes the following water bodies: Middle Fork of the Clearwater River, Middle Fork of the Salmon River, and St. Joe River.

Appendix B of this Fact Sheet (Appendix C of the GP), Part 1 provides specific details on the prohibited waterbodies.

Withdrawn River Segments: Pursuant to the authorities specified in Section 58-104(a) and 47-702, Idaho Code, the State Board of Land Commissioners has prohibited recreational dredge and placer mining in certain segments of the following rivers: Boise River, Payette River, Priest River, Salmon River, and Snake River.

Appendix B of this Fact Sheet (Appendix C of the GP), Part 2 provides the complete list of specific withdrawn river segments that are closed to placer mining.

State Protected Rivers: Pursuant to the authorities specified in Section 421734A, Idaho Code and adopted by the Idaho Water Resource Board, certain waterways and/or stream segments are protected as either a State Natural River or as a State Recreational River with recreational dredge or placer mining prohibited.

Suction dredge mining is prohibited in portions of the following water bodies: Priest River Drainage, Payette River Drainage, Boise River Drainage, Snake River Drainage, Henry's Fork Snake River Drainage, South Fork Snake River Drainage, North Fork Clearwater River Drainage, and Main Salmon River Drainage.

Appendix B of this Fact Sheet (Appendix C of the GP), Part 3 provides a complete list of the segments of State Protected Rivers where placer mining is prohibited.

Water Quality Limited Segments: A water quality limited segment is any waterbody, or definable portion of a waterbody, where it is known that the water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards. Under CWA § 303(d) of the CWA, states must identify and list water quality limited segments.

CWA § 303(d) requires states to develop a Total Maximum Daily Load (TMDL) management plan for impaired waterbodies on the list. A TMDL is a mechanism for estimating the assimilative capacity of a water body and allocating the capacity between point and nonpoint sources.

There are many waterbodies identified on the State of Idaho's 303(d) list as water quality limited for sediments. This permit does not authorize discharges from placer mining operations in these waterbodies, unless there is a TMDL that specifies waste load allocations for placer mining activities. Currently the only sediment TMDL that specifies allocations for placer mining is the South Fork Clearwater TMDL.

Appendix B of this Fact Sheet (Appendix C of the GP), Part 4 contains an internet link to a current list of segments that are water quality limited for sediment as of December 2008 and are therefore not included in the coverage area of this GP. IDEQ may be updating this list during the duration of this GP. Because this general permit does not relieve a permittee of the requirements of other applicable federal, state or local laws, it is the responsibility of the permittee to contact IDEQ for the most up-to-date list. Pages 2 and 3 of this Fact Sheet and Appendix A of the draft GP contain contact information.

2. Receiving Waters Covered Under This GP

The IDWR's permit contains closed areas as well as timing restrictions. EPA is including the current list in Appendix C of this Fact Sheet. The GP does not contain this list since it could be updated during the duration of the GP. Instead, a requirement to contact IDWR for the most current list of closures and timing restrictions is included. Because this GP does not relieve a permittee of the requirements of other applicable federal, state or local laws, compliance with the IDWR or IDEQ restrictions is expected.

III. OBTAINING COVERAGE UNDER THE GP

Suction dredge operators seeking authorization to discharge under this GP must first submit to EPA a written Notice of Intent (NOI) to be covered. See 40 CFR 122.28(b)(2).

The required contents of the NOI are specified in Appendix A of the draft GP and include information necessary for EPA to adequately implement the NPDES program and GP. The NOI must include the following information: legal name and address of the owner and operator; the operation name; the nature and size of the operation; the name of the receiving stream and location of discharge; the contact information for Idaho Department of Water Resources (IDWR) and, the dates of operation. IDG-37-0000 Fact Sheet Page 10 of 40

All operators that wish to be covered under this GP must meet the requirements of the permit, submit an NOI, and must receive written authorization to discharge from EPA.

After EPA receives an NOI, EPA will provide written authorization to the permittee regarding coverage under the GP. In certain circumstances, EPA may require the facility to apply for and obtain an individual NPDES permit. These situations are described in Permit Part I.F.1. and include circumstances where:

- the single discharge or the cumulative number of discharges is/are a significant contributor of pollution
- the discharger is not in compliance with the GP
- a change occurred in the pollutant control technology or practices
- effluent limitation guidelines are promulgated for the point sources covered by the GP
- a Water Quality Management Plan containing requirements applicable to such point sources is approved
- a TMDL and corresponding wasteload allocation has been completed for a waterbody
- circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the GP

There are also situations where EPA may deny coverage under the GP. These are described in Permit Part I.F.2. and include circumstances where:

- a land management agency with jurisdiction over affected portions of the receiving water submits to EPA a request that GP coverage be denied within 30 days of EPA's receipt of the NOI
- the land management agency's request includes proposed additional or revised permit terms that the requesting agency believes are necessary to protect the natural values of the affected location
- the land management agency's request concerns a person who either seeks to discharge into waters of the U.S. located in certain protected areas, is in significant noncompliance with the permit, or intends to discharge into impaired waters
- the National Marine Fisheries Service (NMFS) or the U.S. Fish and Wildlife Service (USFWS) believes that consultation under Section 7 of the Endangered Species Act is necessary for suction dredge operations to protect listed threatened and endangered species and their habitat.

IV. EFFLUENT LIMITATIONS REQUIRED BY THE GENERAL PERMIT

A. Statutory Requirements for Determining Effluent Limits

NPDES permit conditions are developed in accordance with various statutory and regulatory authorities established pursuant to the CWA. CWA Sections 101, IDG-37-0000 Fact Sheet Page 11 of 40

301(b), 304, 308, 401, and 402 provide the process and statutory basis for the effluent limitations and other conditions in the NPDES permit. The EPA evaluates discharges with respect to these sections of the CWA and the relevant NPDES regulations in determining which conditions to include in the permit.

In establishing permit limits, EPA first determines which technology-based limits apply to the discharges in accordance with national effluent guidelines and standards. EPA then determines which water quality-based limits apply to the discharges based upon an assessment of the pollutants to be discharged and a review of state water quality standards. The effluent limit for a particular pollutant is the more stringent of the technology-based effluent limit or the water quality-based effluent limit.

B. Technology-based Effluent Limitations

CWA § 301(b) requires technology-based controls on effluents. EPA has established technology-based controls, also called effluent limitation guidelines (ELGs), for numerous industry categories. On May 24, 1988, EPA established ELGs for the Gold Placer Miner industry. However, these guidelines apply to mechanical placer mining and certain large dredging operations but do not apply to small suction dredge operations. In the absence of established ELGs, EPA may establish limits based upon Best Professional Judgment (CWA 402(a)(1) and 40 CFR 122.43, 122.44, 125.3).

It is EPA's Best Professional Judgment (BPJ) that Best Management Practices (BMPs) be established to minimize environmental impacts of the sediment in discharges from suction dredge operations. BMPs are commonly required in NPDES permits. BMPs are measures that are intended to prevent or minimize the generation and the potential for the release of pollutants from facilities to the waters of the United States.

The use of BMPs is allowed under CWA § 402(a)(2) and 40 CFR 122.44(k)(2) of the NPDES regulations. 40 CFR 122.44(k)(2) allows the inclusion of BMPs in lieu of numerical effluent limits under certain circumstances including where numeric effluent limits are infeasible or the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.

Suction dredging's unique method of intake and displacement present unusual permitting issues. As discussed above, a suction dredge is a mechanical device that floats on the stream surface and pumps stream water and stream bed material through a suction intake conduit to a sluice box from which gold or other minerals may be recovered.

The discharge from suction dredges consists totally of stream water and bed material immediately released back into the receiving water. It is infeasible to establish numeric limits directly to the discharge point, therefore BMPs are required in the permit to reduce the discharge of sediment and meet the intent of the CWA. IDG-37-0000 Fact Sheet Page 12 of 40

The specific BMPs included in the draft permit are described in Section V. of the Fact Sheet.

C. Water quality-based Effluent Limitations

CWA § 301(b)(1)(C) requires the establishment of limitations in permits necessary to meet water quality standards. All discharges to state waters must comply with state water quality standards, including the state's antidegradation policy. The NPDES regulations at 40 CFR 122.44(d)(1) implement CWA § 301(b)(1)(C). These regulations require that permits include limits for all pollutants or parameters which are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any state water quality standard (WQS). The limits must be stringent enough to ensure that WQS are met and must be consistent with any available waste load allocation.

As discussed previously, the primary pollutant of concern in the discharge of effluent from suction dredge operations is suspended solids which can be measured by turbidity. Turbidity is a measure of light transmission and is measured in nephelometric turbidity units (NTUs). High levels of turbidity can adversely impact water quality and can have indirect effects on fish and other aquatic life. The State of Idaho has established the following turbidity standard for protection of the cold water aquatic life beneficial use:

Turbidity, below any applicable mixing zone set by the Department, shall not exceed background turbidity by more than 50 NTU instantaneously or more than 25 NTU for more than 10 consecutive days.

IDEQ has also established a turbidity standard for small public water supplies:

Turbidity as measured at the public water intake shall not be (1) increased by more than 5 NTU above natural background, measured at a location upstream from or not influenced by an human induced nonpoint source activity when background turbidity is 50 NTU or less or (2) increased by more than 10% above natural background, measured at a location upstream from or not influenced by any human induced nonpoint source activity, not to exceed 25 NTU, when background turbidity is greater than 50 NTU.

Water quality-based effluent limits for turbidity are included in the draft GP. One set of limits applies specifically to operations in the South Fork Clearwater River based on the South Fork Clearwater TMDL. The other set of limits applies to suction dredge operations in other watersheds. These limits are described below.

1. Turbidity Limits and Monitoring Required for All Dischargers

The permit requires BMPs to reduce turbidity and to monitor to ensure that the BMPs are implemented properly. Proper implementation of BMPs will be protective of the Idaho WQS for turbidity. . IDG-37-0000 Fact Sheet Page 13 of 40

In addition, the draft GP includes the following turbidity effluent limit:

Any visible increase in turbidity (any cloudiness or muddiness) above background beyond any point more than 500 feet downstream of the suction dredge during operations is considered a violation of this permit. This requirement includes any turbidity that may result from any other part of the operation.

The 500 foot distance downstream is based upon the mixing zone included in the draft CWA § 401 Certification (Appendix D) from the State of Idaho. After the public comment period, the State will issue a final CWA § 401 certification. The mixing zone size in the final permit will be based on the State's final certification.

A mixing zone is a defined area or volume of receiving water around a wastewater discharge where the receiving water, as a result of the discharge, may not meet all applicable WQS. State WQS can be exceeded in the mixing zone, as long as acutely toxic conditions are prevented and the mixing zone does not impair the beneficial uses of the receiving water. Any authorized mixing zone will ensure that the WQS are met at all points outside the mixing zone.

The draft permit requires that the permittee conduct a daily visual inspection to monitor turbidity within the area 500 feet downstream of the suction dredge during operation

If any visible increase in turbidity is observed above background beyond any point more than 500 feet downstream of the dredge, it is a violation of the GP and the permittee must modify the operation to meet the permit limitation or cease operations.

2. Turbidity Limits for Dischargers to the South Fork Clearwater River

The NPDES regulations at 40 CFR 122.44(d)(1)(vii)(B) require that effluent limits be consistent with the assumptions and requirements of any available wasteload allocation (WLA) for the discharge in an approved TMDL. EPA reviewed the approved TMDLs for sediment impaired streams and found only one, the TMDL for the South Fork Clearwater River, that included WLAs for suction dredge operations. This TMDL was approved by EPA in July 2004.

The SF Clearwater River TMDL specified the following WLAs for the suction dredge industry. These WLAs are established as effluent limits in the draft GP.

South Fork Clearwater River above Harpster Bridge, including tributaries:

July 15 – August 15: IDG-37-0000 Fact Sheet Page 14 of 40

- ☐ When background turbidity is 50 NTU or less: Turbidity below the 500 foot mixing zone shall not exceed background turbidity by more than 5 NTU :
 Visual monitoring is required to ensure compliance with this effluent limit
- ☐ When background turbidity is more than 50 NTU: Turbidity below the 500 foot mixing zone shall not exceed background turbidity by more than 10% and shall not exceed a maximum increase of 25 NTU, and
- ☐ 314 tons/day total sediment discharge to the bed of the stream

The TMDL developed for this stream reach allows a daily mass sediment loading of 314 tons/day. The development of this was based on 15 dredges operating for 8 hours a day mining no more than 2 cubic yards (yd³)/hour. Based on this information, EPA is proposing that facilities on the SF Clearwater operate under these conditions and reapply for GP coverage on an annual basis so no more than 15 authorizations will be granted during any one year.

To facilitate this process, EPA is proposing that NOIs be submitted on an annual basis starting on April 1st. EPA would cover the first 15 NOI submittals and notify additional applicants that coverage is no longer available.

August 16 – July 14:

- ☐ The TMDL specifies that zero wasteload allocation is available between August 16 and July 14. Therefore, no discharges are allowed to the SF Clearwater River above Harpster bridge and tributaries between August 16 and July 14.

South Fork Clearwater River below Harpster Bridge:

The TMDL specifies that zero wasteload allocation for the entire year. Therefore, no discharges are allowed at any time to the SF Clearwater River below Harpster Bridge.

D. Monitoring

Section 308 of the Clean Water Act and the federal regulations at 40 CFR 122.44(i) require that permits include monitoring provisions to determine compliance with effluent limitations. Monitoring may also be required to gather data for future effluent limitations or to monitor effluent impacts on receiving water quality. Monitoring frequencies are based upon the nature and effect of the pollutant, as well as a determination of the minimum sampling necessary to adequately monitor performance. The permittee is responsible for conducting the monitoring and for reporting results to EPA. The draft permit requires

monitoring daily of the suction dredge turbidity plume and recording of the extent downstream that the plume occurs.

V. BEST MANAGEMENT PRACTICES (BMPs)

As discussed in the previous section, the draft GP requires compliance with BMPs to minimize the effect and the potential for the release of turbidity from suction dredge operations.

The draft permit requires compliance with the following BMPs (see Permit Part II.C.):

A. Silt and Clay Areas:

Dredging of concentrated silt and clay should be avoided.

The Permittee shall use reasonable care to avoid dredging silt and clay materials that would result in a significant increase in turbidity. Reasonable care includes moving the dredge to a new location or reducing the volume of effluent discharge by limiting operation speed of the suction dredge.

B. Mercury: If mercury is found during suction dredge operation, (i.e. mercury is collected in the sluice box), the operator must:

1. Stop dredging immediately;
2. Contact the local regional office of IDEQ (see Appendix A of the GP);
3. Keep the mercury collected, do not remobilize the collected mercury; and
4. Work with the appropriate regional office of IDEQ to dispose of the mercury properly.

C. Spacing between operations:

Suction dredges shall not operate within 800 feet of:

1. another suction dredging operation occurring simultaneously or,
2. a location where it is apparent that another operation has taken place within the past month

D. Fish Passage, Spawning Fish and Spawning Habitat:

1. Dredging and discharging are prohibited within 500 feet of locations where:
 - a. fish are spawning or
 - b. fish eggs or alevins are known to exist at the time dredging occurs
1. Suction dredge operation must not occur in gravel bar areas at the tail of pools or where operations result in fine sediments discharging onto gravel bars.
2. The Permittee shall ensure there is adequate passage for fish around and through the mining area at all times.

The following information can be used to determine if you are located in an area that may be a spawning area of a species of concern. These areas should be avoided.

- ☐ Trout construct spawning nests (redds) in clean gravel from 0.25 to 1.5 inches in diameter. The preferred site is a gravel bar at the tail or side of pools covered by 6 to 12 inches of smoothly flowing water. Redds may be recognized as round or oval depressions in the gravel which appear cleaner or brighter than the surrounding gravel.
 - ☐ Salmon and Steelhead spawn in similar areas in gravel and cobblestones up to 3-4 inches in diameter.
 - ☐ Steelhead, Rainbow and Cutthroat Trout can spawn from March through June, but primarily in the months of April and May, and their eggs and fry remain in the gravel until mid-summer.
 - ☐ Spring and Summer Chinook Salmon typically spawn in August and September, Fall Chinook Salmon spawn in October and November. Their eggs and fry remain in the gravel until the following spring.
 - ☐ Brook Trout, Brown Trout, Bull Trout, Kokanee and Mountain Whitefish spawn from September into December and their eggs and fry remain in the gravel during winter. Incubation of Bull Trout eggs also occur over a longer period than other species and their young have an extended period of residency in spawning gravels - 200 days as opposed to about 60 days for other trout.
 - ☐ Pacific Lamprey are an anadromous species present in the Snake River Drainage utilizing similar stream habitats to Chinook Salmon and Summer Steelhead. Lamprey adults migrate into the Columbia and Snake River basins from June through October, over winter, and spawn during April through July. Spawning substrates are fine to medium size IDG-37-0000
- Fact Sheet Page 17 of 40

gravels (0.25 to 1.0 inch diameter). Following a hatching period of 2-3 weeks, larvae (ammocoetes) rear in fine substrates where they remain for over 5 years until the transformation to adult is complete. Adults migrate to the ocean where they become parasitic.

E. Stream Channel:

Suction dredge operations must not change the stream channel in such a way that alters the bottom elevation of the active stream channel or redirects the flow of water into the stream bank, which may cause bank erosion or destruction of the natural form (width/depth configuration) of the active stream channel.

F. Erosion:

Suction dredge operations that result in undercutting, littoral channeling, stream bank or beach erosion, are prohibited. Removal or disturbance of boulders (cobbles or larger rock) or any type of vegetation (dead or alive) on the stream bank, leading to erosion or undercutting of the banks is prohibited.

In addition, per IDAPA 37.03.07.64.04, the operation of the dredge shall be done in a manner so as to prevent the undercutting of stream banks.

G. Dams or Diversions:

Damming or diversions within a stream channel are not authorized by this GP.

H. Boulders and Natural Obstructions:

Explosives, motorized winches or other motorized equipment to move boulders, logs, or other natural obstructions are prohibited under this GP.

I. Mechanized Equipment:

Wheeled or tracked equipment use in-stream is prohibited while dredging is in progress.

With the exception of the suction dredge itself and any life support system necessary to operate the dredge, mechanized equipment shall not be used below the mean high water mark.

J. Refueling and Hazardous/Deleterious Material Storage

Care shall be taken by the operator during refueling of equipment to prevent spillage.

The Permittee must check the equipment for fuel and oil leaks daily prior to operation. Equipment must be in proper working order and shall not leak petroleum products.

Any spills shall be cleaned up using materials such as sorbent pads and booms.

All chemical or petroleum products shall be stored in a safe and secure location at all times. Fuel not stored and dispensed with an ANSO or UL approved safety container must be maintained not less than 100 feet from the mean high water mark.

Hazardous and deleterious material must not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of state waters unless adequate measures and controls are provided to ensure that those materials will not enter state waters as a result of high water, precipitation runoff, wind, storage facility failure, accidents in operation or unauthorized third party activities.

Spills shall be reported IDEQ and the National Response Center (see Permit Part II.C.10.e.). Spills of petroleum products that exceed 25 gallons or cause a visible sheen on nearby surface waters should be reported to IDEQ within 24 hours. Spills of petroleum products less than 25 gallons or that do not cause a visible sheen on nearby surface waters should be reported to IDEQ only if cleanup cannot be accomplished within 24 hours.

K. Invasive Species

Pursuant to IDAPA 02.06.09, operators must ensure their dredging equipment does not house invasive species. Equipment must be decontaminated prior to its placement in waters of the state. Furthermore, dredging equipment used in multiple streams should be decontaminated before each deployment. IDEQ Decontamination procedures can be found at: IDG-37-0000 Fact Sheet Page 19 of 40

VI. OTHER PERMIT PROVISIONS

Specific regulatory requirements for NPDES permits are contained in 40 CFR 122.41. These conditions are included in the GP in Parts III., IV., and V. as monitoring and reporting requirements, compliance responsibilities, and general requirements. Since these conditions are federal regulations, they cannot be challenged in the context of an NPDES permit action.

VII. OTHER LEGAL REQUIREMENTS

A. Endangered Species Act

Section 7 of the Endangered Species Act (ESA) requires federal agencies to consult with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) if the federal action, such as issuing a permit, could beneficially or adversely affect any threatened or endangered (T&E) species.

EPA has prepared a biological evaluation (BE) analyzing the effects of the GP on the listed species. A not likely to adversely effect determination has been made primarily on the basis that dredging operations are closed on streams where and when threatened or endangered species exist.

If necessary, EPA will enter into informal or formal consultation with USFWS and NMFS to ensure that the GP will not result in unacceptable impacts to any of the species identified on these lists.

NMFS has been reviewing applications that propose to alter stream channels and has been providing IDWR with pre-application assistance on possible ESA Section 10 incidental take permits. NMFS will continue to provide comments through this process. The draft GP contains conditions meant to minimize impacts to T&E species and their habitats. These include the turbidity effluent limits and restrictions on locations and timing of suction dredge activities.

The IDWR recreational placer mining permit does not allow dredging during periods when fish are spawning and eggs or alevins are in the gravel. The following is information from the IDWR permit that is also included in the draft GP:

To protect important spawning populations of salmon, steelhead, and trout, streams are closed to dredging during the periods when fish are spawning and eggs or alevins are in the gravel. Because different species of fish spawn at IDG-37-0000 Fact Sheet Page 20 of 40

different times, some streams have fish eggs or alevins in the gravel during every month of the year and are therefore closed year round to dredging (See Appendix C for more details).

Critical habitat was designated for the Snake River Sockeye Salmon (*Oncorhynchus nerka*); Snake River Spring/Summer Chinook Salmon (*Oncorhynchus tshawytscha*) and Snake River Fall Chinook Salmon (*Oncorhynchus tshawytscha*) in December 1993. Critical habitat was designated for Snake River Steelhead in 2005. Critical habitat was designated for the Bull Trout (*Salvelinus confluentus*) in 2005. Revised critical habitat was designated for the Kootenai River White Sturgeon on July 9, 2008. Critical habitat for the KR white sturgeon consists of 18.3 river miles of the Kootenai River within Boundary County, Idaho, from river mile 141.4 to river mile 159.7.

The critical habitat in Idaho for the Snake River Salmon, Steelhead and Bull Trout is described as follows:

Snake River Sockeye Salmon

Consists of river reaches of the Columbia, Snake and Salmon Rivers, Alturas Lake Creek, Valley Creek, and Stanley, Redfish, Yellow Belly, Pettit and Alturas lakes (including their inlet and outlet creeks)

Snake River Spring/Summer Chinook Salmon

Consists of river reaches of the Columbia, Snake, and Salmon Rivers, all tributaries of the Snake and Salmon Rivers (except the Clearwater River) presently or historically accessible to Snake River Spring/Summer Chinook Salmon (except reaches above impassable natural falls and Hells Canyon Dam)

Snake River Steelhead

Consists of river reaches of the Columbia, Snake, and Salmon Rivers, and all tributaries of the Snake and Salmon River presently or historically accessible to Snake River Steelhead (except reaches above impassable natural falls, Dworshak Dam and Hells Canyon Dam)

Bull Trout

Consists of Lake Pend Oreille Subunit of Clark Fork River Drainage (East River, Gold Creek, Granite Creek, Grouse Creek, Lightning Creek, Middle Fork East River, N.F. Grouse Creek, Pack River, Priest River, Tarlac Creek, Trestle Creek, Twin Creek, and Uleda Creek). The Priest Lake and River Subunit (Cedar Creek, Granite Creek, Hughes Fork, Indian Creek, Kalispell Creek, Lion Creek, N.F. Indian Creek, Soldier Creek, S.F. Granite Creek, S.F. Indian Creek, S.F. Lion Creek, Trapper Creek, Two Mouth Creek, and Upper Priest River). The Coeur d'Alene Lake Drainage (Beaver Creek, Coeur d'Alene Lake and River, Eagle Creek, Fly Creek, North Fork Coeur d'Alene River, Prichard Creek, Ruby Creek, IDG-37-0000 Fact Sheet Page 21 of 40)

St. Joe River, Steamboat Creek, and Timber Creek). The Snake River in Adams and Washington Counties.

In streams where suction dredging occurs, the most critical life stage for salmon is the egg stage. To protect important spawning populations of salmon, steelhead and trout, streams are closed to dredging during the periods when fish are spawning and eggs or alevins are in the gravel.

B. Essential Fish Habitat (EFH)

The 1996 amendments to the Magnuson-Stevens Fishery Management and Conservation Act set forth a number of new mandates for NMFS, regional fishery management councils and other federal agencies to identify and protect important marine and anadromous fish habitat. The action agency needs to make a determination on Federal actions that may adversely impact EFH.

In freshwaters, the GP is unlikely to be used during the critical phase (egg stage) and if it were, studies show that the impacts of an operation are minimal after 500 feet so a 500 foot buffer (Permit Part II.C.4.a.) should be sufficient protection. EPA determines that, with the inclusion of the 500 foot buffer, no adverse impact to EFH would result from the issuance of this permit. This EFH assessment is documented in the BE for this GP.

C. National Forest System Lands

Dredging activities under the GP on National Forest System Lands must comply with US Forest Service Mining regulations found at 36 CFR 228A. These regulations require that a “notice of intent to operate” be submitted to the US Forest Service District Ranger who is in charge of the area on which the proposed operation will take place.

D. State Permit Requirements

Pursuant to IDAPA 37.03.07, operators must obtain a recreation dredging permit from the Idaho Department of Water Resources. An application may be obtained from the following web page:

www.idwr.idaho.gov/WaterManagement/StreamsDams/Streams/DredgingPermit/DredgingPermit.htm

E. State Certification

CWA § 401 prohibits EPA from issuing a permit which may result in any discharge to navigable waters until the State in which the discharge will originate has certified that the discharge will comply with certain CWA provisions (or has waived certification). The regulations at 40 CFR 124.53 allow for the State to require more stringent conditions in the permit, if the certification cites the CWA or State law references upon which that condition is based. In addition, the regulations require IDG-37-0000 Fact Sheet Page 22 of 40

a certification to include statements of the extent to which each condition of the permit can be made less stringent without violating the requirements of State law.

The State of Idaho, Department of Environmental Quality, provided EPA with their draft CWA § 401 Certification for the draft GP on November 13, 2009. See Appendix D for certification conditions.

After public comments have been evaluated, a preliminary final GP will be sent to the State to begin the final certification process. If the state authorizes different or additional conditions as part of the certification, the permit may be changed to reflect these conditions.

F. Antidegradation

In setting permit conditions, EPA must consider the State's antidegradation policy. This policy is designed to protect existing water quality when the existing water quality is better than that required to meet the standards and to protect water quality from being degraded below the standard when existing quality meets the standard. For high quality waters, antidegradation requires that the State find that allowing lower water quality is necessary to accommodate important economic or social development before any degradation is authorized.

The draft GP does not authorize discharges from suction dredge mining in streams that are already impaired for sediments. The one exception is the allowance for suction dredge discharges in some parts of the South Fork Clearwater during certain times of year under the conditions recommended in the SF Clearwater TMDL that are meant to bring the SF Clearwater into compliance with WQS.

For waters that are not impaired, discharges from suction dredge operations are allowed in certain waters and at certain times of year under the conditions of the draft GP. The draft permit limits turbidity and requires use of BMPs. IDEQ has indicated in their preliminary certification that the permit complies with the State's antidegradation requirements.

G. Permit Expiration

This permit will expire five years from the effective date of the permit. IDG-37-0000 Fact Sheet Page 23 of 40

APPENDIX A – REFERENCES

NPDES Permit Writer's Manual. EPA, Office of Water, Office of Wastewater Management, Permits Division. Washington, DC. 20460; EPA-833-B-96-003, December 1996, 220pp.

Technical Support Document for Water Quality-based Toxics Control. EPA, Office of Water Enforcement and Permits, Office of Water Regulations and Standards. Washington, DC, 20460; EPA/505/2-90-001, March 1991, 145pp.

Instructions for Idaho Department of Water Resources Recreational Dredging Permit Application. IDWR, Boise, ID. February 2009, 26 pp.

Impact of suction dredging on water quality, benthic habitat, and biota in the Fortymile River, Resurrection Creek, and Chatanika River, Alaska. Prepared for EPA by Aaron M. Prussian, Todd V. Royer, and G. Wayne Minshall, Idaho State University. June 1999.

Regional Baseline Geochemistry and Environmental Effects of Gold Placer Mining Operations on the Fortymile River, Eastern Alaska. Department of Interior, U.S. Geological Survey. Open-File Report 99-328. 1999.

Regional Geochemical Results from the Analyses of Rock, Water, Soil, Stream Sediment, and Vegetation Samples--Fortymile River Watershed, East-Central Alaska. Department of Interior, U.S. Geological Survey. Open-File Report 99-33. 1999.

South Fork Clearwater River Subbasin Assessment and Total Maximum Daily Loads. Idaho Department of Environmental Quality and EPA in consultation with the South Fork Clearwater River Watershed Advisory Group. IDG-37-0000 Fact Sheet Page 24 of 40

APPENDIX B Waterbodies Where Placer Mining is Not Authorized Under the General Permit

Part 1: National Wild and Scenic Rivers

Pursuant to the authorities specified in Section 47-1323, Idaho Code, the State Board of Land Commissioners prohibited dredge mining in any form from water bodies making up part of the National Wild and Scenic Rivers System.

1. Middle Fork of the Clearwater River From the town of Kooskia upstream to the town of Lowell; the Lochsa River from its junction with the Selway at Lowell forming the Middle Fork, upstream to the Powell ranger station; and the Selway River from Lowell upstream to its origin.
2. Middle Fork of the Salmon River From its origin to its confluence with the main Salmon River.
3. St. Joe River

Including tributaries, from its origin to its confluence with Coeur d'Alene Lake, except for the St. Maries River and its tributaries.

Part 2: Withdrawn River Segments

Pursuant to Section 58-104(a) and 47-702, Idaho Code, the State Board of Land Commissioners has prohibited recreational dredge or placer mining in the following segments.

1. Boise River

- a. The Bed of the South Fork of the Boise River from Anderson Ranch Dam in T01S, R08E, downstream to Neal Bridge in Section 34, T03N, R06E.
- b. The Bed of the Middle Fork of the Boise River from the east boundary of T05N, R08E, downstream to the west boundary of Section 1, T03N, R05E.
- c. The Bed of the Boise River from Lucky Peak Dam in T02N, R03E, down River to Star Highway in T04N, R01W. Note: This withdrawal does not include the removal of sand and gravel, which is necessary for flood control purposes.

2. Payette River

- a. The Bed of the North Fork of the Payette River, from Cabarton Bridge to Banks, between the ordinary high water marks, situated in Section 31, T13N, R 05E, to Section 32, T 09N, R 03E.

IDG-37-0000 Fact Sheet Page 25 of 40

b. The Bed of the South Fork of the Payette River from the Sawtooth Wilderness Boundary to Banks, between the ordinary high water marks, situated in Section 12, T 09N, R09E to Section 32, T 09N, R 03E.

c. The Bed of the Main Payette River, from Banks to Black Canyon Dam, between the ordinary high water marks, situated in Section 32, T09N, R03E, to Section 22, T07N, R01W.

3. Priest River

a. The Bed of Upper Priest River, from the Canadian border to the confluence with Priest Lake, between the ordinary high water marks, situated in Section 12, T65N, R05W, B.M., to Section 19, T63N, R04W.

4. Salmon River

a. The Bed of the Salmon River from the mouth of the North Fork of the Salmon River in T24N, R21E, downstream to Long Tom Bar. The Bed of the Salmon River from the mouth in T29N, R04W, upstream to Hammer Creek in T28N, R01E. The Bed of the Middle Fork of the Salmon River from its origin to its confluence with the main Salmon River. The Bed of the South Fork of the Salmon River from the mouth through T20N, R06E.

5. Snake River

a. The Bed of the Henry's Fork of the Snake River from its point of origin at Henry's Fork to the point of its confluence with the backwaters of Ashton Reservoir, situated in Section 21, T15N, R43E, to Section 13, T09N, R42E.

b. The Bed of the Snake River from the east boundary of T06S, R08E, to the west boundary of T01S, R02W, encompassing the Birds of Prey Area.

c. The Bed of the Snake River from the mouth of the east ordinary high water mark to the center of the main channel (State of Idaho ownership in the Hells Canyon National Recreation Area), from the north boundary of T20N, R04W to the south boundary of T31N, R05W.

Part 3: State Protected Rivers

Pursuant to the authorities specified in Section 42-1734A, Idaho code and adopted by the Idaho Water Resource Board, the following waterways and/or stream segments are protected as either a State Natural River or as a State Recreational River with recreational dredge or placer mining prohibited.

1. Priest River Drainage

☐ Upper Priest River, International Boundary to confluence with Upper Priest Lake IDG-37-0000
Fact Sheet Page 26 of 40

- ☐ Upper Priest Lake
- ☐ The Thoroughfare, Upper Priest Lake to beginning of private property along south bank.
- ☐ The Hughes Fork, headwaters to mouth
- ☐ Rock Creek, headwaters to mouth
- ☐ Lime Creek, headwaters to mouth
- ☐ Cedar Creek, headwaters to mouth
- ☐ Trapper Creek, headwaters to mouth
 - ☐ Granite Creek, confluence of its North and South Forks to mouth
 - ☐ Priest River, Priest Lake outlet structure to McAbee Falls
- ☐ Lion Creek, headwaters to mouth
- ☐ Two Mouth Creek, headwaters to mouth
- ☐ Indian Creek, headwaters to mouth

2. Payette River Drainage

- ☐ South Fork Payette River, Deadwood River to Big Pine Creek
- ☐ Payette River, confluence of its South and Middle Forks to Beehive Bend
- ☐ North Fork Payette River, Cabarton Bridge to mouth
- ☐ North Fork Payette, headwaters (includes Cloochman and Trail Creeks) to Payette Lake inlet

3. Boise River Drainage

- ☐ South Fork Boise River, Anderson Ranch Dam to a point 250 yards upstream of Neal Bridge
- ☐ Lime Creek and all tributaries, headwaters to mouth
 - ☐ Big Smoky Creek and all tributaries, headwaters to mouth
- ☐ Boise River, from confluence of its North and Middle Forks to backwaters of Arrowrock Reservoir
- ☐ Sheep Creek, headwaters to mouth
- ☐ South Fork Sheep Creek, headwaters to mouth
- ☐ Devils Creek, headwaters to mouth
- ☐ East Fork Sheep Creek, headwaters to mouth
- ☐ Middle Fork Boise River, mouth of Roaring River to confluence with the North Fork Boise River
- ☐ Roaring River, headwaters to mouth
- ☐ East Fork Roaring River, headwaters to mouth
- ☐ Middle Fork Roaring River, headwaters to mouth
- ☐ North Fork Boise River, mouth of Crooked River to confluence with the Middle Fork Boise River
 - ☐ North Fork Boise River, Sawtooth Wilderness Area to mouth of Hunter Creek
- ☐ McNutt Creek, headwaters to mouth
- ☐ Taylor Creek, headwaters to mouth IDG-37-0000 Fact Sheet Page 27 of 40

3. Boise River Drainage Continued

☐ McDonald Creek, headwaters to mouth ☐ Horsefly Creek, headwaters to mouth ☐ Blue Jay Creek, headwaters to mouth ☐ Lodge Pole Creek, headwaters to mouth ☐ Bow Creek, headwaters to mouth ☐ Big Silver Creek, headwaters to mouth ☐ Johnson Creek, Sawtooth Wilderness Area to mouth ☐ Robin Creek, headwaters to mouth ☐ Grouse Creek, headwaters to mouth

4. Snake River Drainage

☐ Snake River, downstream boundary of the Milner Hydroelectric Project to Clover Creek, but excluding hydroelectric project boundaries.

5. Henry's Fork Snake River Drainage

- ☐ Targhee Creek, including West and East Forks, source to National Forest boundary
- ☐ Henry's Fork, Big Springs to Island Park Reservoir, and the lower 2 miles of Henry's Lake Outlet
- ☐ Henry's Fork, Island Park Reservoir to Ashton Reservoir
- ☐ Golden Lake
- ☐ Silver Lake
- ☐ Thurman Creek, Golden Lake to mouth
- ☐ Buffalo River springs approximately 8 miles upstream of mouth to mouth
- ☐ Elk Creek, right-of-way lines below Elk Creek Dam to mouth
- ☐ Warm River, Partridge Creek to upper boundary of Warm River Campground
- ☐ Robinson Creek, Yellowstone Park boundary to mouth
- ☐ Rock Creek, Yellowstone Park boundary to mouth
- ☐ Henry's Fork, Ashton Dam to Falls River
- ☐ Falls River, Idaho border to Kirkham Bridge
- ☐ Boone Creek, Idaho border to mouth
- ☐ Conant Creek, Idaho border to Conant Creek diversion structure
- ☐ Teton River, Trail Creek to Felt Dam
- ☐ Teton Creek springs near Highway 33 to mouth
- ☐ Fox Creek springs approximately 2.5 miles upstream of mouth to mouth
- ☐ Badger Creek springs approximately 3 miles upstream of mouth to mouth
- ☐ Bitch Creek, Idaho border to mouth

6. South Fork Snake River Drainage

- ☐ South Fork Snake River, Palisades Dam to confluence with Henry's Fork ☐ Fish Creek, headwaters to confluence with McCoy Creek IDG-37-0000 Fact Sheet Page 28 of 40

6. South Fork Snake River Drainage, cont.

☐ South Fork Snake River, Palisades Dam to confluence with Henry's Fork ☐ Fish Creek, headwaters to confluence with McCoy Creek

☐ Big Elk Creek, Idaho-Wyoming state line to Palisades Reservoir backwaters ☐ Little Elk Creek, headwaters to Palisades Reservoir backwaters ☐ Bear Creek and perennial tributaries, headwaters to Palisades Reservoir backwaters and the following perennial tributaries:

- South Fork Bear Creek, headwaters to mouth
- Deadman Creek, headwaters to mouth
- Warm Springs Creek, headwaters to mouth
- North Fork Bear Creek, headwaters to mouth
- Small Creek, headwaters to mouth
- Poison Creek, headwaters to mouth
- Currant Creek, headwaters to mouth
- Muddy Creek, headwaters to mouth
- Elk Creek, headwaters to mouth

☐ Palisades Creek and perennial tributaries, headwaters to South Fork Snake Confluence and the following perennial tributaries:

- o North Fork Palisades Creek, headwaters to mouth
- o East Fork Palisades Creek, Idaho-Wyoming state line to mouth
- o Corral Creek, Idaho-Wyoming state line to mouth
- o Lost Spring Canyon, headwaters to mouth
- o Dead Man Canyon, headwaters to mouth
- o Little Dry Canyon, headwaters to mouth
- o Dry Canyon, headwaters to mouth, including Upper Palisades Lake
- o Water Fall Canyon, headwaters to confluence with Dry Canyon

☐ Fall Creek and perennial tributaries, headwaters to mouth, and the following perennial tributaries:

- o East Fork Fall Creek, headwaters to mouth
- o Willow Springs Creek, headwaters to mouth
- o Beaver Creek, headwaters to mouth
- o Trap Creek, headwaters to mouth
- o Haskin Creek, headwaters to mouth
- o Camp Creek, headwaters to mouth
- o Gibson Creek, headwaters to mouth
- o Blacktail Creek, headwaters to mouth
- o South Fork Fall Creek, headwaters to mouth
- o Currant Hollow, headwaters to mouth

☐ Pine Creek and perennial tributaries, headwaters to confluence with South Fork Snake River, and the following perennial tributaries: IDG-37-0000 Fact Sheet Page 29 of 40

6. South Fork Snake River Drainage, cont.

- o Tie Canyon, headwaters to mouth
- o Poison Canyon, headwaters to mouth
- o Mike Spencer Canyon, headwaters to mouth

☒ North Fork Pine Creek and perennial tributaries, headwaters to mouth, and the following perennial tributaries:

- o Elk Flat Fork, headwaters to mouth
- o Holter Creek, headwaters to mouth
- o Red Creek, headwaters to mouth
- o Corral Creek, headwaters to mouth
- o Lookingglass Creek, headwaters to mouth

☒ West Pine Creek, headwaters to mouth, including unnamed headwater tributaries.

☒ Burns Creek and perennial tributaries, headwaters (including unnamed headwater tributaries) to South Fork Snake Confluence, and the following perennial tributaries:

- o Beartrap Canyon, headwaters to mouth
- o Little Burns Canyon, headwaters to mouth
- o Jensen Creek, headwaters to mouth
- o Hell Hole Canyon, headwaters to mouth

☒ Burns Creek (tributary to reservoir), headwaters to Idaho-Wyoming state line

☒ Trout Creek, headwaters (including all unnamed headwater tributaries), to confluence with Palisades Reservoir

☒ McCoy Creek and perennial tributaries, Fish Creek Confluence to backwaters of Palisades Reservoir, and the following perennial tributaries:

- o Spring Creek, headwaters to mouth
- o Clear Creek, headwaters to mouth
- o Wolverine Creek, headwaters to mouth
- o Kirk Creek, headwaters to mouth
- o Box Canyon Creek, headwaters to mouth

☒ McCoy Creek and perennial tributaries, Fish Creek Confluence to backwaters of Palisades Reservoir, and the following perennial tributaries continued:

- o Hell Creek, headwaters to mouth
- o Jensen Creek, headwaters to mouth
- o Bitters Creek, headwaters to mouth

☒ Indian Creek (tributary to Palisades Reservoir)-Idaho-Wyoming state line to IDG-37-0000 Fact Sheet Page 30 of 40

6. South Fork Snake River Drainage, cont.

Smith Canyon ☐ Sheep Creek, headwaters to South Fork Snake Confluence

☐ Indian Creek (tributary to South Fork Snake River), headwaters to South Fork Snake Confluence

☐ Rainey Creek and perennial tributaries, headwaters to South Fork Snake Confluence, and the following perennial tributaries:

- o North Fork Rainey Creek, headwaters to mouth
- o South Fork Rainey Creek, headwaters to mouth

☐ Prichard Creek, headwaters to South Fork Snake Confluence ☐ Black Canyon, headwaters to South Fork Snake Confluence ☐ Warm Springs, source to South Fork Snake Confluence ☐ Wolverine Creek, headwaters to South Fork Snake confluence ☐ Cress Creek, source to South Fork Snake confluence

7. North Fork Clearwater River Drainage

☐ Isabella Creek, headwaters to mouth ☐ Weitas Creek, headwaters to mouth ☐ Little North Fork Clearwater River, Meadow Creek to Cedar Creek ☐ North Fork Clearwater River, headwaters to Wrangler Creek and from

Isabella Creek to the backwater of Dworshak Reservoir (Thompson Creek) ☐ Reeds Creek, Calhoun Creek to mouth ☐ Beaver Creek, Charlie Creek to mouth

8. North Fork Clearwater River Drainage

☐ Little North Fork Clearwater River, headwaters to backwaters of Dworshak Reservoir at Meadows Creek ☐ Elk Creek, headwaters to Deep Creek ☐ Kelly Creek, headwaters to mouth ☐ Cayuse Creek, headwaters to mouth

9. Main Salmon River Drainage

☐ Little Salmon River - Hwy 95 bridge above "The Falls" to confluence with the Salmon River ☐ Boulder Creek - from its headwaters to its confluence with the Little Salmon

River ☐ Hard Creek - from its headwaters to its confluence with Hazard Creek ☐ Hazard Creek - from the outlet of Hazard Lake downstream to its confluence

with the Little Salmon River IDG-37-0000 Fact Sheet Page 31 of 40

Part 4: 303(d) Listed Waterbodies for Sediments

Discharges from suction dredge operations are not authorized in waterbodies that are listed for sediment.

The Idaho Department of Environmental Quality's document: Final 2008 Integrated Report, Section 5: Impaired Waters: Lakes and Rivers ("§303(d) list"), which was approved by EPA, contains the list of water quality limited waterbodies.

The document can be accessed at:

http://www.deq.idaho.gov/water/data_reports/surface_water/monitoring/2008.cfm

It is the responsibility of the Permittee to check the website or contact IDEQ for the most upto-date, EPA approved, 303(d) list. IDG-37-0000 Fact Sheet Page 32 of 40

APPENDIX C – Areas of Coverage/Areas of Closure

<p>The following is a list of waterbodies that are open for dredging and the times of year that they are open. This list also specifies closed areas. The waterbodies are organized by river drainage. This list is current per the IDWR Instruction Booklet published in 2009. Please note if you apply after the 2009 dredging season, you must consult the most up-to-date version of the area of coverage/areas of closure list or contact EPA for the most up-to-date list. Table C-1</p>	OPEN	CLOSED
Kootenai River Drainage		
Kootenai River & tribs not listed	July 15 - Aug 15	Aug 16 - July 14
Myrtle Creek & tribs	Entire year	
Long Canyon Creek & tribs	Entire year	
Parker Creek & tribs	Entire year	
Callahan Creek & tribs	Entire year	
N. Callahan Creek & tribs	Entire year	
S. Callahan Creek & tribs	Entire year	
Boulder Creek & tribs	Entire year	
Debit Creek & tribs	Entire year	
Caboose Creek & tribs	Entire year	
Curley Creek & tribs	Entire year	
Snow Creek & tribs	Entire year	
Moyie River Drainage		
Moyie River & tribs not listed	July 15 - Aug 15	Aug 16 - July 14
Canuck Creek & tribs	Entire year	
Keno Creek & tribs	Entire year	
Spruce Creek & tribs	Entire year	
Deep Creek Drainage		
Deep Creek & tribs not listed	July 15 - Aug 15	Aug 16 - July 14
Trail Creek & tribs	Entire year	
Ruby Creek & tribs	Entire year	
Fall Creek & tribs	Entire year	
Boundary Creek Drainage		
Boundary Ck. & tribs not listed	July 15 - Aug 15	Aug 16 - July 14
Grass Creek & tribs	Entire year	
Saddle Creek & tribs	Entire year	
Pend Oreille Lake Drainage		
Pend Oreille Lake drainage not listed	July 15 - Aug 15	Aug 16 - July 14
Pack River & tribs	Entire year	
Grouse Creek & Tribs	Entire year	
Trestle Creek & tribs	Entire year	