

United States Department of the Interior
Bureau of Land Management
Cottonwood Field Office
1 Butte Drive
Cottonwood, Idaho 83522

DECISION RECORD

Small-Scale Suction Dredging in Orogrande and French Creeks and South Fork Clearwater River
DOI-BLM-ID-C020-2016-0020-EA

1. Background

The Bureau of Land Management Cottonwood Field Office (BLM), in conjunction with the Nez Perce-Clearwater National Forests (Forests), has prepared the referenced Environmental Assessment (EA) in compliance with the National Environmental Policy Act (NEPA) and other relevant Federal and State laws and regulations. This EA discloses the direct, indirect, and cumulative environmental effects that would result from the Proposed Action and alternatives outlined in the EA. Additional documentation, including detailed analyses of project area resources, may be found in the project planning record located at the Forests' North Fork Ranger District Office in Orofino, Idaho.

The BLM and Forests (Agencies) proposed to allow for the approval of a limited number of small scale suction dredge Plans of Operations (POOs) in specified reaches of the Orogrande and French creeks and the South Fork Clearwater River. Specifically the BLM proposed to approve POOs on the portion of the South Fork Clearwater River located in Township 29 North, Range 8 East, Sections 29, 30, 32, and 33, Boise Meridian. The overall purpose and need for the EA's proposed action was to protect surface resources through the approval of acceptable mining POOs. All mining proposals, including those submitted by small scale suction dredge operators, are made under the authority of the United States mining laws (30 U.S.C. 21-45) which confer the statutory right to enter upon public lands for the purpose of exploration and development of mineral resources. The Agencies have the responsibility to analyze submitted POOs and if the analysis shows that surface resource protection requirements are reasonable and will prevent unnecessary and undue degradation to public lands, as determined by the Field Manager (BLM) and the District Ranger (Forest Service), the POOs will be approved.

2. Decision

It is my decision to implement **Alternative 2: Proposed Action** (section 2.1.2) of the referenced EA as it relates to BLM managed land on the South Fork Clearwater River. This alternative would allow for the approval of proposed suction dredging POOs on the South Fork Clearwater River. The POOs would include specified design criteria which were derived from public comments, government-to-government consultation with the Nez Perce Tribe, and consultation with other governmental agencies. **The maximum number of operations approved in any year under this alternative would be up to 15 for the subject portion of the South Fork Clearwater River** (EA: Figure 2-2). Suction dredging would be approved only during periods consistent with Idaho Department of Water Resources (IDWR) and Environmental Protection Agency (EPA) regulations.

The activities authorized would be substantially restricted to reduce or eliminate effects on federally managed resources and on aquatic and riparian animal and plant species in the project areas. Many of these restrictions were developed to conform to IDWR's "letter permit" and the EPA's National Pollutant Discharge Elimination System (NPDES) General Permit restrictions. Others have been developed in the course of Endangered Species Act (ESA) Section 7 consultation with the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (FWS). In addition to restrictions on the specifics of

the POOs, the Agencies have also proposed monitoring and reporting on the implementation of the POOs to Federal and State agencies and the general public.

The full list of restrictions, monitoring, and reporting which would be associated with the approval of proposed POOs is provided in the EA. Briefly, miners with approved POOs would be limited to operating during the respective IDWR “letter permit” dredging seasons (for the South Fork Clearwater River it is July 15th – August 15th), would be limited to 300 linear stream feet of dredging distance in any one season, and operations would be spaced a minimum of 800 linear stream feet apart. Specific areas within approved dredging reaches would be off-limits to operation, including some types of primary habitat for ESA-listed and Agencies’ Sensitive species. Agency staff would delineate approved dredging reaches prior to the start of the respective dredging seasons and would monitor operations and/or stream habitat characteristics before, during, and after dredging operations. The results of this monitoring would be reported before the end of each calendar year.

This decision does not apply to more than 15 suction dredging POOs for the subject portion of the South Fork Clearwater River. If a POO is submitted to the BLM after 15 have already been approved (cumulatively by the Forest Service and the BLM for the project area), the BLM will prepare additional environmental analysis and issue a separate decision.

3. Authority

The BLM’s mineral objectives are to manage public lands to accommodate and facilitate the exploration, development, and production of mineral resources, while integrating these activities with the use and conservation of other resources to the fullest extent possible. This project analysis and documentation of effects is consistent with the direction described below.

Permitting Process

Title 43, Code of Federal Regulations, Subpart 3809 directs the BLM to prepare the appropriate level of environmental analysis and documentation when proposed operations may affect surface resources. These regulations do not allow BLM to deny entry or preempt the miners’ statutory right on lands open to mineral entry granted under the Mining Law of 1872. The regulations require development of mitigation measures to minimize adverse effects to public resources. The Agencies should avoid adverse effects related or incidental to mining by imposing reasonable conditions that do not materially interfere with operations.

The permitting process for small scale suction dredging on the South Fork Clearwater River:

- Operators submit an application to Idaho Department of Water Resources and a pre-project inspection would be conducted.
- Operators submit any additional information to the BLM that may be required to be considered a complete POO.
- BLM completes the suitable environmental analysis to comply with NEPA. This analysis demonstrates operator’s compliance with Clean Water Act, Endangered Species Act and Section 7 consultation and Biological Opinions, which includes corresponding design criteria in a POO.
- Discharges from suction dredge operations qualify as point sources and require a Section 402 permit, NPDES permit, authorization by EPA. The operators apply for their NPDES permit with EPA. All Section 402 permits must be certified by Idaho Department of Environmental Quality (IDEQ) under Clean Water Act, Section 401. IDEQ must grant, deny, or waive certification for a project before a federal permit or license can be issued. Upon completion of 401 certification by IDEQ, EPA can issue their NPDES permit to individual applicants.
- The BLM approves POOs for operations after operators have received their NPDES permit. Under the Idaho Stream Channel Protection Act [Idaho Code Section 42-3803(a)] dredge

operators would also obtain a 3804-B Joint Stream Alteration Permit under Section 404 from the IDWR and US Army Corps of Engineers (COE) before any suction dredge mining can be done.

The **Mining Law of 1872** states that all valuable mineral deposits in lands belonging to the United States are to be free and open to exploration. In order to make a discovery of a valuable mineral deposit, the operator has a right under the Mining Law of 1872 to enter upon public lands open to mineral entry, and to prospect and explore for mineral resources. The Law allows for mining claim location and possessory title to the valuable minerals within the location. While miners have rights under the Mining Law of 1872, they are legally required to comply with any applicable laws passed since 1872 that have placed additional requirements upon miners.

The **Federal Land Policy and Management Act of 1976** (FLPMA) (43 U.S.C. 1701-1782), as amended, requires the Secretary of the Interior to prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values, giving priority to areas of critical environmental concern, and develop, maintain and, if appropriate, revise land use plans. The Act also addresses the sale, withdrawal, acquisition and exchange of public lands; the issuance of conveyances for public lands and mineral interest; grazing rights; and rights-of-way.

4. Rationale

I believe that Alternative 2 best meets the purpose and need of the project. I have based my decision on how well the actions analyzed in the EA address the purpose and need of the project, how well the purpose and need is supported by scientific information, and conclusions of issues that were raised during the scoping process and the comment period. I considered the Cottonwood Resource Management Plan (RMP) and Record of Decision for the project area, and took into account competing interests and values of the public.

I have reviewed the alternatives analyzed in detail (EA, Section 2.1) and found that they are responsive to the issues and concerns as well as the purpose and need for action. The issues (EA, Section 1.9) developed are based on public comments and an interdisciplinary review of existing conditions in the project area. I also find the purpose and need for action (EA, Section 1.2) is consistent with the goals and objectives of the RMP.

I reviewed the alternatives analyzed but not considered in detail (EA, Section 2.2) to ensure that an adequate range of alternatives was considered. I also reviewed public comments from the scoping and public comment periods. All issues raised during the scoping process have been appropriately analyzed and considered. Some issues were addressed through alternative development, design criteria features and resource protection measures. Other concerns, such as potential effects to water quality, fisheries and wildlife habitats, cultural resources and recreation were carried through the analysis.

The interdisciplinary team (IDT) considered all public comments that were received throughout the NEPA process. Two alternatives were considered, the No Action and Proposed Action alternatives. I believe the range of alternatives considered was thorough and complete, and reflects public comments and concerns.

Meeting the Purpose and Need

I selected Alternative 2 over the No Action alternative because it best meets the purpose and need for action while being responsive to public comments and other agency concerns.

Alternative 2 would allow for the potential approval of up to **15 suction dredging POOs for the subject portion of the South Fork Clearwater River**. The POOs would include specified design criteria which were derived from public comments, government-to-government consultation with the Nez Perce Tribe, and consultation with other governmental agencies.

Effects of Alternative 2

A summary comparison of alternatives is presented in the EA, Section 2.3. Alternative 2 would allow for the approval of proposed POOs on the South Fork Clearwater River.

Fish Species and Habitat

Short-term and localized changes would occur. Potential long-term effects on habitat have been eliminated or minimized to biological insignificance through project location, design, and the mitigation measures that would be implemented. The timing of the project, as well as specific mitigation measures regarding project implementation and specific identification by the Agencies of areas within stream channels that would be allowed to be dredged, should eliminate or minimize the potential for individuals to be injured or killed by the proposed activities.

Recreation Resources

There would be minimal or no effects to total recreation visitation. The proposed suction dredging activity is located in the "Rural" Recreation Opportunity Spectrum (ROS), which is defined as a substantially modified environment in which the sights and sounds of man are readily evident. The proposed actions will not alter the "Rural" setting as defined and therefore would result in no impacts to ROS. Most people camping in the immediate vicinity of current suction dredging operations are miners; therefore, it is anticipated that effects due to noise from the suction dredge pumps and/or compressors would not be annoying. It is also anticipated that there would be no change in campsite concentration in the project area, and thus no overall change in the number of recreational visitors.

The physical presence of suction dredges and associated noise during operations may detract from recreational fishing experiences during the mining season for some fisherman. However, due to the paralleling roads and highways, recreational solitude is typically not experienced along the subject portion of the South Fork Clearwater River.

Water Quality and Soil Resources

No terrestrial sediment would be disturbed from streambanks or other sources outside the stream channel with this alternative. Therefore there would be no increase in in-stream sediment into the South Fork Clearwater River. Cobble embeddedness levels would decrease where dredges operate and may increase slightly downstream from dredge holes as sediment is moved from one location to the other. Decreases and increases would be localized and therefore overall cobble embeddedness levels would not be expected to change on any larger scale.

Turbidity levels would increase slightly downstream while dredges operating. Small dredges typically do not create long plumes of turbidity. Turbidity levels as a result of the proposal are expected to remain low, and be of short duration (only while dredges are operating), and distance (less than 150 feet). They are not expected to exceed State standards based on past monitoring.

It is possible that elemental mercury (from natural sources or as the result of historic placer mining activities) currently buried in stream channel substrate could be excavated or entrained through suction dredges. It is also possible that some mercury may be inadvertently dispersed into the water column by dredge miners, but the IDEQ, in their Section 401 Clean Water Act review of the EPA's General NPDES permit (in 2013) certified that there is "reasonable assurance" that suction dredging following the terms and conditions of the NPDES permit and conditions of the 401 certification) would comply with applicable Clean Water Act requirements and Idaho Water Quality Standards.

There would be no measurable project related change to listed State water quality standards for bacteria, nutrients, sediment, or temperature. Sediment levels would not be increased and effects to soil in existing and developed camping areas would not be noticeable. Dredging activities would not affect stream temperature as they function no differently than the flowing water in the stream.

Rare Plant Species and Habitat

Miners in riparian areas may trample individual sensitive plants in riparian areas as they move their equipment to and from the stream channel. The risk would be low since the area potentially disturbed would likely be limited to a few trails along the creeks and to existing camp sites and most of the sensitive riparian plant species do not occur on disturbed sites. The risk would also be low due to the limited numbers of occurrences and potential habitat in the project areas.

Idaho strawberry, Payson's milkvetch and Constances' bittercress often occur in edge habitats and intermittent conditions such as dispersed camping sites and trails. These species may experience some negligible levels of disturbance if they occur within localized areas where suction dredging occurs. For other species, potential effects would generally be negative if present, though effects would generally be uncommon. There would be no threats to overall species viability.

If short style toefieldia should be present along these streams, it could be affected or displaced by the proposed mining activities. Currently there are no known occurrences in these areas.

Wildlife Species and Habitat

The risk of wildlife being inadvertently killed by project activities outside the riparian zone is non-existent. Direct effects are minimal and of short duration. There would be no indirect effects. Considering minimal direct and no indirect effects, cumulative effects would not occur. There are no other activities within the project areas that contribute to cumulative effects.

Cultural Resources

Four known cultural resources are recorded on BLM administered lands within the project area. All consist of historic dredge tailings that are eligible to the National Register of Historic Places. The currently known resources were created by historic dredge mining in the 1950s that has extensively disturbed these areas. Cultural resource inventories have not been previously conducted in the area of potential effect for the entire proposed action area on BLM; however, several parts of this area have been previously inventoried.

The cultural resources located on BLM administered lands would be evaluated for impacts and appropriate design measures developed based on the nature of the proposal described in the submitted POO. The review includes the actual suction dredging as well potential associated activities such as camping.

Consideration of Issues and Concerns

Issues were generated internally by the Interdisciplinary Team (IDT), and externally, through public comments. I sought involvement of all interested individuals, businesses, organizations and county, state and federal agencies and the Nez Perce Tribe to define the issues, concerns, mitigations and treatment options. The interdisciplinary team designed the project to minimize effects on resources. I used unresolved issues to develop the range of alternatives, while site specific project design criteria alleviated others.

Some issues were raised and discussed in the EA (Section 2.1), but were not evaluated in detail because the alternatives already mitigated the issue (such as water quality, soil stability, wildlife species and habitats, invasive species, cultural resources, economics and recreation). Discussion of other issues, such as impacts to fish species and habitat, water resources, soil resources, rare plant species and habitat, wildlife species and habitat, cultural resources, recreation, and cumulative impacts were carried through the analysis for all alternatives (EA, Chapter 3).

Some issues were not discussed in the EA (Section 2.2), because they have already been decided by law, policy or were unrelated to the specific decision being made or were not affected by the proposal.

I believe these issues and concerns identified through the scoping and planning process were fully addressed during alternative development and analysis.

Consideration of Public and Other Agency Comments

The formal scoping period for this project ended on May 22, 2015. Comments received during the scoping period were used to develop the issues and alternatives that were included in the NEPA document, and to ensure that those issues and alternatives were adequately analyzed.

The 30-day comment period for the EA ended on January 18, 2016. I considered submitted comments from 209 groups/individuals when making my decision. I consulted with the Nez Perce Tribe, and federal and state agencies.

One alternative was developed and analyzed in response to public and agency comments. I believe Alternative 2 (Proposed Action) responds to the issues and concerns brought forward by the public and other agencies.

In addition, I have considered the objections submitted to the Forest Service during their objection period. I have reviewed the objections and the responses and agree with the responses from the Forest Service.

Management Plan Consistency and Regulatory Compliance

The selected action meets the purpose and need of the project and is in conformance with the applicable goals, objectives, and management actions specified in the Cottonwood Resource Management Plan. Implementation of the selected alternative will ensure compliance with federal, state, and local laws, regulations, and agency policies; and, the impact analysis provided in the EA revealed that the decision will not cause significant impacts to the environment.

5. Public Involvement

As part of the public involvement process, the Forest Service listed the proposal in the quarterly Schedule of Proposed Actions (SOPA) beginning July 1, 2015. Also, a legal notice and request for public comment on the proposed action was published in the Lewiston Tribune in April 2015, for a 30-day comment period. The document was mailed to groups or individuals on the Nez Perce-Clearwater National Forests NEPA mailing list. The Nez Perce Tribe, and federal and state agencies were contacted. Letters or messages were received from 147 individuals and organizations and were considered in the analysis.

Comment Period

An Environmental Assessment (EA) was prepared by the Forest in December 2015. A request for public comment on the EA was published in the Lewiston Tribune on December 18, 2015, for a 30-day comment period. The document was also mailed to 138 groups or individuals and posted on the Forest website. Letters or messages were received from 209 individuals and organizations and were considered in the analysis.

Comments submitted by the public, other agencies, and the Nez Perce Tribe during scoping and the comment period, were used by the interdisciplinary team to identify issues regarding the effects of the proposed action. Main issues of concern included criticism of the Agencies for suggesting that any conditions could or should be placed on small-scale suction dredge operations, to support for the proposal, to opposition to all suction dredging.

In addition, the BLM considered the objections submitted to the Forest Service as additional comments. As previously mentioned I agree with the responses prepared by the Forest Service and considered these in my decision.

6. Coordination and Consultation

The Agencies consulted with the following individuals, Federal, State, and local agencies, Tribes, and non-Forest Service and non-BLM persons during the development of this EA:

Interdisciplinary Team (IDT)

Cheryl Probert – Forest Supervisor
Robbin B. Boyce – BLM Acting Field Manager
Andrew Skowlund –North Fork District Ranger
Terry Nevius – Red River District Ranger
Jeff Shinn – Salmon River District Ranger
Rebecca Anderson – Forest Service Project Lead, Minerals Geologist
Steve Armstrong – Forest Service Cultural Resources
Judy Culver – BLM Outdoor Recreation Planner
Jeremy Harris - Forest Service Recreation
Mike Hays - Forest Service Botany
Craig Johnson – BLM Fisheries and Wildlife Biologist
Sheila Lehman – Forest Service NEPA Planner
Dan Kenney – Forest Service Fisheries Biologist
Scott Pavey – BLM Planning and Environmental Coordinator
Scott Sanner – BLM Mining Engineer
David Sisson – BLM Cultural Resources

Federal, State, and Local Agencies

Idaho Department of Water Resources (IDWR)
Idaho Department of Environmental Quality (IDEQ)
Idaho Department of Fish and Game (IDFG)
Environmental Protection Agency (EPA)
National Marine Fisheries Service (NMFS)
U.S. Fish and Wildlife Service (FWS)
US Army Corps of Engineers (COE)
Idaho County Commissioners

Tribes

Nez Perce Tribe

7. Protest and Appeal

Title 43, Code of Federal Regulations, Part 3800 - Mining Claims Under the General Mining Laws:

§ 3809.800 - Who may appeal BLM decisions under this subpart?

- (a) A party adversely affected by a decision under this subpart may ask the State Director of the appropriate BLM State Office to review the decision. {Per 43 CFR 3809.804:
A State Director review request must be received no later than 30 calendar days after receipt of BLM's decision. Required information for a State Director review request is provided at 3809.805, and State Director review protocol is provided at 3809.806 - 809.}
- (b) An adversely affected party may bypass State Director review and directly appeal a BLM decision under this subpart to the Office of Hearings and Appeals (OHA) under part 4 of this title. {Per 43 CFR 3809.801 (b): In order for OHA to consider your appeal of a decision, you must file a notice of appeal in writing with the BLM office where the decision was made. Required information for an OHA appeal is provided at 3809.802.}

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4, and Form 1842-1. If an appeal is taken,

your notice of appeal must be filed in this office (address on title page) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error,

§ 3809.803 - *Will the BLM decisions go into effect during an appeal to OHA?*

“All decisions under this subpart go into effect immediately and remain in effect while appeals are pending before OHA unless OHA grants a stay under § 4.21 (b) of this title.”

Pursuant to 43 CFR 4.21, if you wish to file a petition for a stay of the effectiveness of this decision, during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413), at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- A. The relative harm to the parties if the stay is granted or denied;
- B. The likelihood of the appellant's success on the merits;
- C. The likelihood of immediate and irreparable harm if the stay is not granted; and
- D. Whether the public interest favors granting the stay.



Richard White
Field Manager



Date