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Agriculture
Forest Service



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the Interior
Bureau of
Land
Management

July
2016

Decision Notice and Finding of No Significant Impact

Small-Scale Suction Dredging in Orogrande and French Creeks and South Fork of the Clearwater River

Nez Perce-Clearwater National Forests
North Fork Ranger District
Red River Ranger District
Salmon River Ranger District

BLM Cottonwood Field Office



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South Fork of the Clearwater River**

**Decision Notice and
Finding of No Significant Impact**

**North Fork Ranger District
Red River Ranger District
Salmon River Ranger District
Nez Perce-Clearwater National Forests
Northern Region, USDA Forest Service**

July 2016

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USDA, Forest Service

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I. Decision Summary

This decision notice documents my plan to implement the Small-Scale Suction Dredging in Orogrande and French Creeks and South Fork of the Clearwater River. I plan to implement Alternative 2 as described in the Small-Scale Suction Dredging in Orogrande and French Creeks and South Fork of the Clearwater River Environmental Assessment (EA) issued in December 2015.

The selected alternative will allow for the approval of proposed Plan of Operations (POOs) in specified reaches of Orogrande and French creeks and the South Fork of the Clearwater River. The decision will include specified design criteria which were derived from public comments, consultation with the Nez Perce Tribe, and consultation with other governmental agencies. The maximum number of operations approved in any year under this alternative will be 35 (20 for the Orogrande and French creeks and 15 for the South Fork of the Clearwater River).

Proposed suction dredge mining areas will be located in the mainstems of the Orogrande and French creeks, 5-16 miles east to northeast of Pierce, Idaho in several sections of T37N, R6E, T37N, R7E, T38N, R7E, T38N, R8E, Boise Meridian, Clearwater County, Idaho. They are also located in the mainstem of the South Fork of the Clearwater River in several sections from T30N, R3 and 4E upstream through T29N, R3, 4, and 5; T28N, R5 and 6, and then back into T29N, R6 and 7 and 8, about 1½ miles upstream of Harpster to about Elk City, Idaho County, Idaho.

II. Purpose and Need for Action

The purpose of the action is to allow the Agencies to efficiently and expeditiously process POOs for suction dredging in French and Orogrande creeks and the South Fork of the Clearwater River by requiring that these POOs include standard procedures and conditions to prevent unnecessary and undue degradation of public lands and effectively protect resources.

The need for action is that each year the Forest Service and the Bureau of Land Management (BLM) must individually process multiple individual POOs for small-scale suction dredging within the project areas. This involves preparation of a separate environmental analysis for each POO to comply with the National Environmental Policy Act (NEPA), and consultation with the US Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to comply with Section 7 of the Endangered Species Act (ESA). Processing each POO individually is time consuming and inefficient given that the proposed activities in each POO are essentially the same. By completing a programmatic analysis for the approval of up to 35 POOs, the consultation and analysis to permit these POOs has already been completed. This will allow the Agencies to approve POOs in a more timely, effective, and efficient manner.

III. Alternatives Considered

In addition to the selected alternative, I considered one other alternative, the No Action Alternative, that was analyzed in detail. I selected Alternative 2 after considering how the other alternative will respond to the purpose and need to allow the Agencies to approve the POOs in a more timely and efficient manner. A comparison of the alternatives considered in detail can be found in the EA, Section 2.3.

I considered how each alternative will respond to the issues used to develop design criteria and/or mitigation and issues carried through the analysis. I also considered the potential direct, indirect and cumulative effects of resources, such as fish species and habitat, watershed resources, soil resources, rare plant species and habitat, wildlife species and habitat, cultural resources and recreation for each of the alternatives. Specialist reports are located in the Small-Scale Suction Dredging Project Record and include more detailed analysis. I find that the range of alternatives considered accurately reflects the issues raised during the scoping process and is thorough and complete. The features that I considered when making my decision are briefly discussed below for each alternative.

Alternatives Considered in Detail

Alternative 1 - No Action

Under this alternative, miners who submit POOs for suction dredging in Orogrande and French creeks and the South Fork of the Clearwater River will not receive approval until separate individual NEPA is completed for each submitted POO.

Alternative 2 – Proposed Action

Alternative 2 analyzed the effects of potentially approving up to 35 POOs within specified reaches of Orogrande and French creeks and the South Fork of the Clearwater River. Individual NEPA analysis will be required for approval of any POOs submitted in excess of the proposed 35.

Alternatives Not Considered in Detail

Alternative 3 - Withdrawal of Special Areas from Mining

A commenter requested that the Agencies withdraw all Riparian Habitat Conservation Areas (RHCAs), potentially eligible National Wild and Scenic Rivers, and/or all areas that contain special features. Withdrawn lands are closed to mineral entry under the mining laws. This alternative was not carried forward because it is not consistent with the purpose and need to develop operating conditions that protect surface resources so that the POOs can be approved and the NOIs acknowledged. This alternative is not in compliance with the Mining Law of 1872 and Agencies minerals regulations at 36 CFR 228.4(f) and 43 CFR 3809.

Neither PACFISH nor INFISH or the BLM's Aquatic and Riparian Management Strategy (BLM, 2009) direction precludes mining activities in RHCAs. PACFISH does require an approved POO, a reclamation plan, and a reclamation bond. INFISH requires the Agencies to take all practicable measures to maintain, protect, and rehabilitate fish and wildlife habitat affected by mining operations within RHCAs, but does not require POOs or bonding. Proposed activities are also consistent with standard MM-6 for the inspection, monitoring and reporting for mineral activities.

The proposed project area along the South Fork of the Clearwater River is eligible for Wild and Scenic River designation. The Forest Plan does not prevent mining with these areas and Forest Plan standards for managing minerals within Wild and Scenic River corridors require mitigation of

mineral extraction on visual, recreation and water resources. Design criteria were developed as part of the project that would meet Forest Plan standards to protect ORVs.

Alternative 4 – Limit the number of suction dredgers to less than 15 operations and/or allow more than 35 operations.

The limit of 15 suction dredge operations within the mainstem South Fork of the Clearwater River proposed under Alternative 2 is based on the limit imposed for the Environmental Protection Agency's (EPA's) National Pollutant Discharge Elimination System (NPDES) General Permit, which itself was derived from the sediment total maximum daily load (TMDL) for the mainstem of the South Fork of the Clearwater River. Mining law and Forest Service and BLM regulations do not place a pre-set limit on the number of miners in a given area, and the number of miners seeking to suction dredge in the South Fork of the Clearwater River is expected to be at or near the NPDES permit/TMDL limit of 15. Because the limitations and conditions on suction dredging described in this EA are expected to greatly reduce or eliminate potential impacts on aquatic organisms, water quality, etc., the Agencies do not believe that an arbitrary increase or reduction of the number of approved POOs meets the purpose need.

Alternative 5 – Limit the duration of the suction dredging season (14 days vs. 30 days).

Suction dredging will be approved only during periods consistent with Idaho Department of Water Resources (IDWR) and EPA regulations. Orogrande and French creeks' season is June 30 – September 15; the South Fork of the Clearwater River's season is July 15 – August 15. . In absence of information showing excessive or disproportionate harm to resources during particular portions of the IDWR seasons, modifications of the existing dredging seasons are not justified and would be arbitrary.

Alternative 6 – Not allow suction dredging in the years with high fish returns (i.e. administrative closures when the runs for steelhead and chinook runs are projected to be high).

The timing of the dredging season on the South Fork of the Clearwater River is designed to fit between the periods of steelhead fry emergence and spring Chinook salmon spawning, and is well before adult steelhead and fall Chinook salmon arrival. In addition, design criteria will greatly reduce or eliminate effects on all lifestages of all these species, so the projected or actual run sizes for these species are not a sufficient reason to disapprove POOs.

IV. Decision

I plan on implementing **Alternative 2**. Based on my review of all alternatives, potential effects as analyzed in the EA and in this document, and consideration of public comments I plan to:

- Select Alternative 2 with specific terms and conditions in accordance Section 7 consultation (Appendix A), and design criteria and mitigation measures that are needed for its implementation, as described below.
- Select Alternative 2 with specific monitoring requirements to evaluate project implementation, as described below.

Alternative 2 includes following actions:

- Suction dredging will be approved only during periods consistent with Idaho Department of Water Resources (IDWR) and the Environmental Protection Agency (EPA) regulations. Orogrande and French creeks' season is June 30 – September 15; the South Fork of the Clearwater River's season is July 15 – August 15.
- The activities authorized will be substantially restricted to reduce or eliminate effects on Forests and BLM-managed resources and on aquatic and riparian animal and plant species in the project areas. Many of these restrictions were developed to conform to existing IDWR "letter permit" and EPA National Pollutant Discharge Elimination System (NPDES) General Permit restrictions, and others have been developed in the course of ESA Section 7 consultation with the NMFS and 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 will be associated with the approval of the proposed POOs for the South Fork of the Clearwater River project area is provided in the EA. The restrictions, monitoring, and reporting associated with the Orogrande/French Creek were developed during ESA consultation with the U.S. Fish and Wildlife Service in 2014, but are not listed in the EA; these conditions are similar to those developed for suction dredging in the South Fork of the Clearwater River and would result in similar effects to aquatic organisms, stream channels, and other resources.

Design Criteria and Mitigation Measures

A. Mining Operations

The act of placer mining inherently modifies some portion of the stream channel or riparian zone, because substrate, sediment, or soil is moved from one place to another and sorted. As described above, the Agencies do not have the authority to deny this basic activity, but do have the ability to place conditions on the methods, timing, and (to some extent) location of this movement and sorting. Site-specific operating conditions, design features, terms and conditions, and mitigation measures which are required, as applicable, for mining operations and associated activities covered by this consultation include:

1. The relevant Forests or BLM Field Office will require each operator to sign a written statement listing and accepting all mitigation and terms and conditions as part of their NOI/POO prior to acknowledging/approving implementation of their placer mining operation. The operator will also be required to provide the Forests and BLM a description of the specific location(s) of the operation within the delineated operating reach, the surface areas and estimated volume of substrate dredged/disturbed, the number of days/hours per day operated, length/breadth of maximum turbidity plume each day, any sightings of ESA-listed species, and descriptions of unusual events. Field forms will be provided to each operator to facilitate recording of this information.

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2. Suction dredging operations will occur only within the wetted perimeter below the ordinary high water line during the IDWR dredge season, and activities which will expand the wetted perimeter (such as streambank alteration) will not be permitted.
 3. Prior to dredging or other "may affect" activities, operators must meet with the relevant FS/BLM unit fisheries biologist and/or other relevant staff who will inspect the proposed operation sites. No dredging or other movement or modification of substrate will be allowed in localized areas where ESA-listed salmonids are known to spawn or otherwise concentrate or in likely spawning/early rearing habitat. Miners will also be required to avoid known localized, preferred, and uncommon habitat of salmonid fry, Pacific lamprey larvae, and western pearlshell mussel, including low-velocity backwaters, alcoves, and side channels (as indicated by clay, silt, or sand substrate). The areas that will be required to be avoided during dredging reach delineation will be specific locations within the proposed operation areas rather than extensive stream reaches.
 4. Suction dredges will have a nozzle diameter of 5 inches or less and a horsepower rating of 15 horsepower or less.
 5. Pump intakes (but not dredge nozzles) must be covered with 3/32-inch mesh screen or other appropriate size.
 6. Dredging operations and other instream activities must take place only during daylight hours.
 7. Any cobble or small boulders moved from their initial location in the channel (in order to reach bedrock) will be repositioned into its approximate original configuration in elevation and stream channel morphology and all dredge or other spoil piles must be dispersed by the end of the dredging season. In particular, the operator will not move cobbles or small boulders in the stream course to the extent that substantial alterations of the deepest and fastest portion of the stream channel (i.e., the thalweg) persist beyond the end of the dredging season.
 8. Operations must not constrict or dam the stream channel or otherwise cause a potential structural barrier to upstream or downstream fish movement; any such substrate arrangements must be dispersed on a daily basis. Dredged or other excavated holes must be backfilled before any new dredge holes are excavated.

Operations must not constrict or dam the stream channel or otherwise cause a potential structural barrier to upstream or downstream fish movement; any such substrate arrangements must be dispersed on a daily basis. Dredged or other excavated holes must be backfilled before any new dredge holes are excavated.

Dredging will be excluded from mainstem SFCR areas within 15 feet laterally and 30 feet downstream of fish-bearing tributary mouths, and daily operations will not be permitted to hinder fish access to fish-bearing tributary mouths through disturbance, turbidity, or modifications of channel depth or substrate arrangement.

For the five SFCR tributaries known or thought to currently support bull trout spawning/ rearing (Johns Creek, Tenmile Creek, Newsome Creek, Crooked River, and Red River) and for American River, dredging will be excluded within 50 feet laterally (up to half the width of the SFCR), and 50 feet upstream and 150 feet downstream of the tributary mouths.

If miners desire to dredge between 150 and 300 feet downstream of the subject tributary mouths (and on the tributary entrance side of the river), FS/BLM biologists will survey stream habitat quality in these areas prior to delineation of dredging reaches. Based on the combination of tributary “plumes” and high quality stream habitat type (in the form of substantial pools, LWD and boulder cover, etc.) FS/BLM and Level 1 Team biologists will then come to agreement on whether and where additional exclusion areas should be recognized during dredging reach delineation.

9. Dredging will be excluded from mainstem of the South Fork of the Clearwater River areas within 15 feet laterally and 30 feet downstream of fish-bearing tributary mouths, and daily operations will not be permitted to hinder fish access to fish-bearing tributary mouths through disturbance, turbidity, or modifications of channel depth or substrate arrangement.
10. For the five of the South Fork of the Clearwater River tributaries known or thought to currently support bull trout spawning/ rearing (Johns Creek, Tenmile Creek, Newsome Creek, Crooked River, and Red River) and for American River, dredging will be excluded within 50 feet laterally (up to half the width of the South Fork of the Clearwater River), 50 feet upstream, and 150 feet downstream of the tributary mouths.
11. If miners desire to dredge between 150 and 300 feet downstream of the subject tributary mouths (and on the tributary entrance side of the river), FS/BLM biologists will survey stream habitat quality in these areas prior to delineation of dredging reaches. Based on the combination of tributary “plumes” and high quality stream habitat type (in the form of substantial pools, LWD and boulder cover, etc.) FS/BLM and Level 1 Team biologists will then come to agreement on whether and where additional exclusion areas should be recognized during dredging reach delineation.
12. Per IDWR “letter permit” instructions, dredges must not operate in the gravel bar areas at the tails of pools. Dredges or other types of operation cannot be conducted in such a way that fine sediment (sand or silt) covers portions of gravel bars to a depth of more than 0.5 inch, but fine sediment mixed as a minority component with larger substrate is acceptable.
13. Dredging or other mining activities will not occur within 2 feet of stream banks. Operators must prevent the undercutting and destabilization of stream banks and woody debris or boulders that extend from the bank into the channel and may not otherwise disturb streambanks. If streambanks are inadvertently disturbed in any way, they must be restored to the original contour and re-vegetated with native species at the end of the operating season.
14. Dredges and sluices must not operate in such a way that the current or the discharge from the sluice is directed into the bank in a way that causes disturbance to the bank and

associated habitat, deposits sediment against the bank, causes erosion or destruction of the natural form of the channel, undercuts the bank, or widens the channel.

15. Operators may not remove, relocate, break apart, or lessen the stability of substantial in-channel woody debris or instream boulders (>12 inches median diameter) unless it was determined by the appropriate Forests or BLM minerals and fisheries staff that such wood or substrate particles are common enough that re-arrangement will not affect habitat availability or Forests or BLM staff agree that the wood or boulder can be temporarily moved, but re-installed at the same location and elevation by the end of the operating season. The operator will not remove any large down or standing woody debris or trees for firewood within 150 feet of the stream.
16. Operators must visually monitor the stream for 150 feet downstream of the dredging or sluicing operation (this is a condition of the general NPDES permit). If noticeable turbidity is observed downstream, the operation must cease immediately or decrease in intensity until no increase in turbidity is observed 150 feet downstream.
17. No mechanized equipment will be operated below the mean high water mark except for the suction dredge, sluice, or pump itself and any life support system necessary to operate a suction dredge. No mechanized equipment will be used for conducting operations, including, unless specifically acknowledged or approved in an NOI or POO.
18. Operators must maintain a minimum spacing of at least 800 linear feet of stream channel between active mining operations (i.e., any operating within the same year), or the minimum distance between suction dredges required by the relevant NPDES general permit (whichever is greater).
19. To avoid reducing the quality of critical migratory and holding habitat for adult listed salmonids (as determined by the appropriate Forests/BLM minerals and fisheries staff and discussed with the Level 1 team), operators will be required to avoid operating dredges within 150 linear feet upstream and 50 feet downstream of the highest quality pool within each ¼ mile of the relevant stream channel so that adult bull trout and other salmonids seeking cover and thermal refuge are not disturbed and so that a turbidity plume produced by the dredge does not reduce water quality or deposit sediment in the pool.
20. The suction dredge and other motorized equipment must be checked for leaks, and all leaks repaired, prior to the start of operations each day. The fuel container used for refueling equipment within the active stream channel must contain less fuel than the amount needed to fill the tank. Unless the dredge or other motorized equipment has a detachable fuel tank, operators may transfer no more than one gallon of fuel at a time during refilling. Operators must use a funnel while pouring, and place an absorbent material such as a towel under the fuel tank to catch any spillage from refueling operations. A spill kit must be available in case of accidental spills. Soil contaminated by spilled petroleum products, must be excavated to the depth of saturation and removed from Federal lands for proper disposal.

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21. Except for the 1-gallon or smaller container used for frequent refueling of the dredge or other equipment, gasoline and other petroleum products must be stored in spill-proof containers at least 100 feet from any stream channel and at a location that minimizes the opportunity for accidental spillage to reach the a stream channel.
 22. Operators will not entrain, mobilize, or disperse any mercury discovered during mining operations. Operators must cease operations and notify the Forests/BLM if mercury is encountered in dredged material. Operators must not use mercury, cyanide, or any other hazardous or refined substance to recover or concentrate gold.
 23. Mining operations must shut down immediately if any sick, injured, or dead specimen of a threatened or endangered species is found within 100 linear stream feet of a dredge operation, and the operator must notify the appropriate Forests/BLM minerals and fisheries staff member within 24 hours of the sighting or discovery of an ESA-listed individual in any condition. The relevant Forests/BLM unit will contact the Level 1 Team or FWS Division of Law Enforcement at (208) 378-5333 for the discovery of any dead or moribund individual of an ESA-listed species. Operators and FWS/BLM staff must record the date, time, and location of the sighting or discovery, and, if practical, the cause of fish injury or death. A temporary suspension of operations will allow the FWS/NMFS to investigate whether any take of ESA-listed species is related to suction dredging operations, and whether any modifications of operations is necessary to minimize take.
 24. Operators must also comply with all additional conditions or measures stipulated in all necessary permits, and must comply with the State of Idaho's Placer Mining - Best Management Practices (IDWR, 2004).
 25. To prevent the threat of aquatic invasive species, suction dredges, tools used while dredging, and associated equipment must be thoroughly cleaned and dried at least 5 days prior to use on National Forests or BLM-managed land.

B. Mining-Associated Activities

Mining operation sites are typically remote from residential areas, so many operators will need to establish camping and equipment/supply sites in relatively close proximity to the proposed mining site. Camp site, staging areas, and access routes will be proposed by the miner and approved by the appropriate Forests/BLM minerals and fisheries staff /Level 1 team in order to minimize disturbance, reduce impacts to riparian vegetation, minimize the potential erosion into stream channels, and minimize the potential for toxic or sanitary contamination of operational areas.

Site specificity and the level of protection necessary will be evaluated by the Forests/BLM fisheries and minerals staff and will take into account, but may not be limited to the following: presence of listed species, flow regime, floodplain width, riparian characteristics, stream size, and valley shape.

1. Boundaries of camping, equipment and materials storage areas, locations where motorized vehicle use is authorized, and other locations where impacts might be anticipated will be designated and recorded by the appropriate Forests/BLM minerals and fisheries staff and

described in the pre-project checklist. Because of the close proximity of many roads and dispersed campsites to stream channels, these proposed camping and activity sites will often be within RHCA default buffers, so the presence of the RHCA is not, in and of itself, a reason to disapprove a miner's proposed site.

2. Existing disturbed areas, such as existing dispersed campsites, road pull-offs, and prisms, will be utilized whenever possible for miner camping and equipment/supply storage, and areas of minimally sufficient size could be cleared outside of default RHCAs if staging or stockpile areas do not exist.
3. Camping areas, paths, and other disturbed sites that are located within RHCAs and that are created or expanded by mining operations or associated activities must be re-vegetated or otherwise restored to their pre-project condition at the end of the mining season.
4. All human waste and gray water must be kept more than 200 feet away from any live water, unless deposited in an appropriate Forests/BLM waste disposal facility. All refuse from dredging activities must be packed out and disposed of properly. No burning of human waste or garbage is permitted.
5. Proposed motorized vehicle access to mining sites via roads or trails not currently open to the general public must be detailed in NOIs or POOs, but the Agencies will not allow or approve the construction of any new roads or trails. The Agencies may allow motor vehicle access necessary for transportation of equipment or temporary housing on existing roads/trails which are closed to the general public, but only such access that is possible through hand brushing or light road surface maintenance/repair. Any brushing, repair, or maintenance proposed by the claimant that will occur within any RHCA or which has the potential to transmit sediment to stream channels must be specifically approved by the appropriate Agencies' minerals and fisheries staff and Level 1 team and will be inspected by the Agencies during the dredging season.
6. Operators must cease impactful activities during wet periods when project activities are causing excessive ground disturbance (visible ground disturbance due to soil saturation) or excessive damage (muddying/rutting) to roads.

C. Permitting and NOI/POO Processing

Prospective placer miners on Forests' managed public land are required to submit an NOI if they believe that their proposed operation might cause a "significant disturbance of surface resources" and a POO is required if the Forests conclude that "significant disturbance" is a likely outcome. For BLM managed land, a POO is required for any proposed operations in any waters known to contain Federally proposed or listed threatened or endangered species or their proposed or designated critical habitat (CH). In order to allow the proposed operation to conform with NEPA guidance and the conditions of this consultation, the Agencies will:

1. Require the prospective miner to provide sufficient information (in the form of a complete NOI or POO) to allow the appropriate Agencies' unit to determine whether the proposed

operation has the potential to affect individuals of an ESA-listed species and, if so, whether the proposed operation is potentially consistent with the BA. In particular, the mining must specify the location, approximate amount of surface area they plan to dredge, and likely dates of operation as well as any operating conditions, design features, and mitigation measures proposed.

2. To facilitate the processing of NOI/POO submissions, the appropriate Agencies' minerals and fisheries staff for each Agency will develop and publicize, with the input of the relevant Level 1 team, its proposed schedule for submission of NOIs or POO applications. The application for a proposed operation will be submitted on a schedule that will allow the Agencies' staff and Level 1 team sufficient time to review and suggest modifications to the operation to ensure that effects to ESA-listed species are minimized, but the NOI/POO must be made at least 2 months prior to the beginning of the IDWR dredge mining season for the relevant proposed operating site. The information in a NOI/POO will be used to delineate operational reaches, establish appropriate monitoring protocols, and determine appropriate mitigation measures, and is not intended to constrain the timing and location of operations.
3. Require the prospective miner to demonstrate the actual or likely relevant permission/approval of the IDWR, US EPA, and IDEQ of their proposed mining operations, and agree to adhere to the relevant requirements/terms/conditions of this permission/approval prior to POO approval/NOI acknowledgment. To the extent that conditions for a specific activity conflict among the agency rules (e.g., dredge spacing), the most stringent condition will be applied to the POO approval/NOI acknowledgment.
4. If the rules or conditions associated with the relevant IDWR/EPA/IDEQ permits are modified in a manner which could affect ESA-listed species in manner or magnitude not anticipated in this consultation, the Agency will reinitiate consultation with the NMFS and/or FWS.
5. Each of the appropriate Agencies' minerals and fisheries staff will provide the local Level 1 team with a completed pre-project checklist for each proposed mining operation no later than one month prior to the proposed commencement of each operation. The pre-project checklist will describe mining site locations, operational timing, and operational methods proposed in the POOs/NOIs (and potentially modified, with the consent of the prospective miner, to ensure consistency with the consultation conditions).
6. After review of each pre-project checklist, the Level 1 Team may suggest additions or modifications of operation-specific mitigation measures necessary to ensure that anticipated effects to ESA-listed species or CH are no greater than anticipated in this consultation. These additions or modifications will be made a condition of the relevant POO, assuming they are consistent with Agencies' interpretation of regulatory authority.

D. Mining Monitoring and Reporting

To ensure that the South Fork of the Clearwater mining operations are conducted in a manner consistent with the operational conditions associated with the consultation, Agencies will be required to conduct some level of implementation and effectiveness monitoring. In addition, the Agencies' unit will be required to communicate the results of this monitoring to the Level 1 team, FWS/NMFS staff, and other appropriate agencies and entities.

1. Annually, the Level 1 team, after reviewing each pre-project checklist and considering the likelihood of effect on ESA-listed species and CH and the staffing and other resources available to the Agencies' unit, will determine in discussion with the relevant and appropriate Agencies' minerals and fisheries staff the appropriate type and amount of monitoring and reporting necessary for each mining operation and for the Agencies' unit as a whole.
2. As minimum annual site preparation and monitoring activities by the Forests for each mining operation, the appropriate Agencies' minerals and fisheries staff or other Agencies' unit staff will fully delineate (by 15-m reach), photograph, and sketch suction dredging or other placer mining sections after receiving Level 1 team approval of the pre-project checklist. The photographs and sketches will clearly document the condition of the active channel of each operational site at the upper and lower boundaries of the delineated site, and at least three cross sections within or in proximity to the site which are likely to be modified by the mining operation.
3. The initial maximum length of a delineated mining operation site will be 45 meters (3 reaches or approximately 150 feet). To the extent that the miner demonstrates that a site is of an insufficient size for the operation the appropriate Agencies' minerals and fisheries staff may add additional reaches up to a maximum site length of 90 meters per season. (If the miner proposes to mine more than 90 linear meters of the South Fork of the Clearwater River in a season, then this programmatic consultation will not be valid and individual consultation for the operation will be required).
4. The appropriate Agencies' minerals and fisheries staff or Agencies' staff will coordinate closely with operators to either conduct full-site delineation and any additional pre-project data collection prior to initiation of placer mining at the site or to initially direct operators to specific areas within their dredging sections that will have little or no potential for direct effects on individual ESA-listed fish or enduring habitat effects. The appropriate Agencies' minerals and fisheries staff will also be required to make site visits at all active mining operations during the dredging season to record site information and ensure that miners are complying with NOI/POO conditions. The frequency of these visits will be determined by the Level 1 team, and could depend on the scale of the operation, sensitivity of the operation site, perceived discrepancies between action agency observations and miner reporting, local density of operations, or other logistical, physical, or biological reasons; a minimum of weekly action agency inspections will be the default frequency.

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5. The specifics of any additional operation site monitoring will vary with each FS/BLM unit with the location, number, and likelihood of effect of individual mining operations, as well as FS/BLM staff and resources availability and will be determined in discussions between the appropriate Forests/BLM minerals and fisheries staff and Level 1 Team. Common additional monitoring procedures at placer mining sites could include documentation of potential changes in channel morphology, turbidity, or riparian condition as a result of mining, and spawning or fish presence surveys. Common channel morphology monitoring protocols at the mining site and/or in the pool/riffle sequences immediately upstream and downstream from the mined area, before and after mining: (1) Cobble embeddedness estimates and Wolman pebble counts (or other substrate categorization/enumeration methods) at appropriate cross-sections; (2) channel elevation cross-sections; and (3) a longitudinal elevation profile in the stream thalweg. The timing of the pre- or intra-season data full delineation/data collection will depend on streamflow levels, operator readiness, and Forests/BLM staff availability, and may not begin until after the commencement of the IDWR suction dredging season.
 6. A post-project monitoring visit of each mining site will also be annually required of the Agencies' unit within 1 month of the end of the IDWR dredging season. At a minimum, post-project photographs will be sufficient in location and number to allow the Agencies' unit to document any substantial changes in stream channel and riparian conditions when compared with pre-project photos. In particular, project area modifications which are likely to persist into the next steelhead spawning season should be noted.
 7. With timing determined by the Level 1 team (but typically early in the dredging season) an interagency field trip will be held annually to review one or more mining operations on each of the Agencies' unit (ideally with the permitted miners present) to inform Level 1 team discussions and determine if any additional mitigation or monitoring measures will be needed to minimize impacts to listed species. In addition to the Level 1 team members, representatives from the IDFG, IDWR, Tribes, and other interested parties will be invited to attend.
 8. With timing determined by the Level 1 team (but typically no later than November 30 of each calendar year) each Agencies' unit with active placer mining operations covered by this programmatic consultation will provide annual draft post-project checklists to the relevant Level 1 team and to the State NMFS/FWS office. A final version of these checklists, with any requested supplemental information, will be provided to the Level 1 team and State NMFS/FWS office by December 31 of each year that dredging occurs that describes operator compliance with suction dredging rules, the amount of stream area mined at each site, relevant photos of the mining sites, details about stream bank disturbance and re-vegetation other types of persistent alterations, if any.
 9. In particular, as supplemental information provided with the annual checklists, the FS and BLM units will coordinate and calculate the total stream channel area dredged each year and cumulatively under this consultation. Cumulative disturbance area must not exceed 0.2% of the calculated area of the project reach for a period longer than two consecutive years or as an average by program's end.

E. Enforcement of the Agencies' Mining Regulations

The Biological Assessment (BA) has been developed that identified and analyzed the effects of listed species and type of suction dredging in the South Fork of the Clearwater River. POOs will be authorized by the respective Agency's decision document following the NEPA analysis.

In 2015 (and to some extent in several previous years) suction dredgers operated in the South Fork of the Clearwater River without benefit of a POO, and so without ESA Section 7 scrutiny of the effects of their activities on ESA-listed species. The development of the NEPA/decision documents and accompanying BA assumes that the Agencies will attempt to prevent any suction dredging in the South Fork of the Clearwater River that is not consistent with an approved POO.

1. The Agencies will complete NEPA documentation and decisions in 2016 in a timely and sufficient manner to allow the approval of POOs, which will conform to the terms and conditions of the ESA consultation.
2. Concurrent with monitoring of approved-POO miners (See D.4., above), Agencies' aquatics/minerals staff will attempt to detect and describe non-approved mining in the South Fork of the Clearwater River. Any such non-approved mining will be reported to the Agencies' law enforcement personnel for disposition.
3. The Agencies, with the potential assistance of the NMFS, FWS, EPA, and Idaho Departments of Water Resources and Fish and Game, will take necessary and prudent enforcement actions to prevent suction dredging in the South Fork of the Clearwater River not consistent with approved POOs or state permits.
4. As an activity separate from any law enforcement, Forests/BLM aquatics/minerals staff will gather information about the potential effects on ESA-listed individuals and habitat from any non-approved South Fork of the Clearwater River suction dredging. This information will include photographs, measurements, and qualitative observations of the mining site.

As an activity separate from any law enforcement, the Agencies' aquatics/minerals staff will gather information about the potential effects on ESA-listed species and habitat from any non-approved South Fork of the Clearwater River suction dredging. This information will include photographs, measurements, and qualitative observations of the mining site.

V. Rationale for the Decision

Rationale

I believe 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 Forest Plan, as amended, and Record of Decision standards and guidance for the project area, and took into account competing interests and values of the public.

I have taken into consideration the definition of the phrase “will likely cause significant disturbance of surface resources” as defined in an amendment to the 36 CFR 228 regulations (Federal Register, Vol. 70, No. 107, June 6, 2005). Significant disturbance of surface resources means that, based on past experience, direct evidence, or sound scientific projection, the District Ranger reasonably expects that the proposed operations will result in impacts which more probably than not need to be avoided or ameliorated by means such as reclamation, bonding, timing restrictions, and other measures to minimize adverse environmental impacts to Forest Service resources.

I have reviewed the alternatives analyzed in detail (EA, Section 2.1; DN, pages 5-7), 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 believe the purpose and need for action (EA, Section 1.2) is consistent with the goals and objectives of the Forest Plan, as amended.

I also 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 considered 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, 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 will allow for the potential approval of up to 35 proposed POOs in specified reaches of Orogrande and French creeks and the South Fork of the Clearwater River. The POOs will 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.

This decision provides an opportunity for prospective miners to legally dredge within these stream segments. Without this decision, that opportunity would not be offered. This decision streamlines the requirements and process to the extent possible.

Effects of Alternative 2

A summary comparison of alternatives is presented in the EA, Section 2.3. When compared to Alternative 1, Alternative 2 will allow for the approval of proposed POOs in specified reaches of Orogrande and French creeks and the South Fork of the Clearwater River.

Fish Species and Habitat

Short-term and localized changes will occur, potential long-term effects on habitat have been eliminated or minimized to biological insignificance through project location, design criteria, and the mitigation measures that will be implemented. The timing of the project, as well as specific design criteria regarding project implementation and specific identification by the Forests of areas within stream channels that will 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 will be minimal or no effects to total recreation visitation and no change in the Recreation Opportunity System (ROS) in either watershed. 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 will not affect individuals recreating on Forest Service or BLM administered lands. It is also anticipated that there will 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 in the South Fork of the Clearwater, and the Orogrande and French creek drainages.

Water Quality and Soil Resources

No terrestrial sediment will be disturbed from streambanks or other sources outside the stream channel under this alternative. Therefore, there will be no increase in in-stream sediment into the South Fork of the Clearwater River or Orogrande and French creeks. Cobble embeddedness levels will 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 will be localized; and therefore, overall cobble embeddedness levels will not be expected to change on any larger scale.

Turbidity levels will increase slightly downstream while dredges are 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 will comply with applicable Clean Water Act requirements and Idaho Water Quality Standards.

There will be no measurable project related change to listed State water quality standards for bacteria, nutrients, sediment, or temperature. Sediment levels will not increase and effects to soil in existing and developed camping areas will not be noticeable. Dredging activities will 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 will be low since the area potentially disturbed will likely be limited to a few trails along the creeks and to existing campsites and most of the sensitive riparian plant species do not occur on disturbed sites. The risk will also be low due to the limited number of occurrences and potential habitat in the project areas.

Idaho strawberry, Payson's milkvetch and Constances' bittercress generally do well with some disturbance and often occur in edge habitats and intermittent conditions, such as dispersed camping sites and trails (Crawford 1980, Lorain 1990), so effects to these species can be mixed. For other species, potential effects will generally be negative if present, though effects will generally be uncommon. There will 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 will be no indirect effects.

Considering minimal direct and no indirect effects, cumulative effects will not occur. There are no other activities within the project areas that contribute to cumulative effects.

Cultural Resources

Twelve known cultural resource sites are present within the proposed project area. Two of these sites have been determined to be eligible for inclusion in the National Register of Historic Places (NRHP), three sites have not yet been evaluated as to their historical significance and, seven not eligible (not significant) for inclusion in the NRHP.

All of these sites have been affected in the past to varying degrees; however, there will be "no adverse effects" as a result of the proposed activities.

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 IDT 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 analyzed 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, were unrelated to the specific decision being made, or were not affected by the proposal.

I believe the 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.

A legal notice advertising the start of a 45-day objection period was published in the *Lewiston Tribune* on 29 February 2016. The Forest received objections from ten objectors accepted by the Region 1 Regional Forester. An Objectors Meeting, which was open to the public, was held between Region 1, the Nez Perce-Clearwater National Forests, and the objectors on 2 June 2016. As instructed by the Regional Forester, the Forest updated the Decision Notice and the EA analysis. The updated EA was posted on the Forest website in June 2016.

Forest Plan Consistency and Regulatory Compliance

Forest Plan

The proposed project will be implemented in compliance with the relevant Nez Perce and Clearwater National Forest Plans (NPNF 1987, CNF 1987). The Forest Plans were based on the requirements of the National Forest Management Act (NFMA) of 1976, and the NFMA implementing regulations found at 36 CFR 219.

I have reviewed the Forest Plans, as amended, the Forest Plan Final Environmental Impact Statements and the Records of Decision. Implementing Alternative 2 will be consistent with the intent of both the Forest Plans' long-term goals and objectives.

NPNF and CNF Plan goals that relate to the proposed project include:

Maintain the integrity and equilibrium of all stream systems in the forest. Channel stability is expected to be maintained in all project area streams. Mitigation measures developed through consultation with NMFS and the USFWS will protect channel stability by minimizing impacts during suction dredging operations.

Manage water quality and stream conditions to assure that the National Forest management activities do not cause permanent or long term damage to existing or specified beneficial uses. Because the selected alternative, in concert with the included mitigation measures, is not expected to significantly affect channel morphology, sediment levels, stream flow regime, riparian conditions, or temperature, small-scale suction dredging operations will not cause permanent or long term damage to any existing beneficial uses.

Apply Best Management Practices (BMPs) to project activities to ensure water quality standards are met or exceeded. The mitigation measures listed in Chapter 3.1.2.2 of the EA and in Section IV above include all State of Idaho suction dredging BMPs; and NMFS and USFWS conservation, reasonable and prudent measures. The mitigation measures are designed to minimize dredging impacts to threatened fish and their habitat.

Manage all waters in the Forest under a basic standard. The selected alternative will maintain the stability, equilibrium, and function (physical and biological) of all tributary streams as they relate to the beneficial uses of local, downstream, and parent streams. This standard also requires that individual projects identify the beneficial uses and the criteria necessary to protect them.

Manage all watershed systems in the Forest that are considered important for the fishery resource. Water quality objectives for area streams are listed in the Forest Plans (NPNF Appendix A, CNF Appendix K).

Monitor, analyze, and evaluate water quality within the critical reaches of specified streams. A list of specific streams systems and their standards is in Forest Plans (NPNF Appendix A and CNF Appendix K).

Design, schedule, and implement management practices at the project level that: maintains water quality and stream conditions that are not likely to cause sustained damage to the biological potential of fish habitat; will not reduce fish habitat productivity in the short term below the assigned standards; maintain water quality in a condition that is not likely to inhibit recovery of the fish habitat for more than the stated duration; and requires cumulative effects feasibility analysis of projects involving significant vegetation removal, prior to including them on implementation schedules, to ensure that the project, considered with other activities, will not increase water yields or sediment beyond acceptable limits. Also require that this analysis identify any opportunities for mitigating adverse effects on water-related beneficial uses, including capital investments for fish habitat or watershed improvement. Since there are negligible adverse effects on channel morphology, sediment levels, stream flow, stream temperature, or riparian areas; there are negligible adverse effects expected on fish habitat.

Prohibit extraction or disposal of common variety minerals within the normal high water line of any perennial water body. The selected alternative will not extract or dispose of common variety minerals within the normal high water line of Orogrande and French creeks or the South Fork of the Clearwater River.

MM-1 PACFISH. *Avoid adverse effects to listed species and designated critical habitat from mineral operations.* A reclamation plan, approved Plan of Operations, and reclamation bond will be required.

MM-1 INFISH. *Minimize adverse effects to inland native fish species from mineral operations.* Ensure operators take all practicable measures to maintain, protect, and rehabilitate fish and wildlife habitat which may be affected by the operations.

MM-3. *Prohibit solid and sanitary waste facilities in RHCAs.* All human waste must be at least 200 feet from the stream channel which will minimize bacteria or nutrient input.

The Forest Plans state that no action will be taken that will jeopardize a threatened and/or endangered species. As stated under the regulatory framework, the objective for managing sensitive species is to ensure population viability throughout their range on National Forest lands and to ensure they do not become federally listed as threatened or endangered. The Forest Plans support this direction but does not set specific standards and guides for sensitive plants. The alternatives are consistent with this direction to the extent that proposed management actions will not adversely affect viability of existing sensitive plant populations or habitat.

The Forest Plans document goals, standards and guidelines for recreation opportunities. Manage area for "Roaded natural" recreation is the Forest Plan standard for recreation opportunities and will be met. The proposed action is in compliance with the Nez Perce Forest Plan and the Clearwater Forest Plan.

The proposed action complies with the Forest Plans relevant to Cultural Resources. The 1987 Forest Plans with amendments, documents goals, standards, and management directions for Cultural Resources within the forest boundary.

Also, in ceding lands to the United States, the Nez Perce Tribe reserved, in part, the exclusive right of taking fish at all usual and accustomed places...with the privilege of hunting, gathering roots and berries, and to gather traditionally used plants on lands now administered by the Nez Perce National Forest (Article 3, Treaty with the Nez Perce, 1855). As a result, the Forest, as an agency of the United States, has a trust responsibility to ensure the availability and accessibility of those resources to the Tribe.

Other Laws and Regulations

This decision to implement Alternative 2 is consistent with applicable statutory laws, policies and regulations (EA, Chapter 3; Project Record by resource area) including:

- Delegation of Authority
- Mining Law of 1872
- Organic Administration Act of 1897
- National Forest Management Act of 1974 (NFMA)
- Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701-1782)
- National Environmental Policy Act of 1970 (NEPA) (42 U.S.C. 4321 et seq.)
- Multiple Use Mining Act of 1955
- Mining and Mineral Policy Act of 1970
- Agencies Surface Use Regulations (36 CFR Part 228 Subpart A and 43 CFR 3809)
- Forest Service Manual (FSM) 2800 and BLM Regulations 43 CFR 3809
- Wild and Scenic River Act
- Idaho Stream Channel Protection Act
- State Water Quality Standards
- Clean Water Act (CWA) (33 U.S.C. 1251 et seq.)
- Endangered Species Act (ESA) (16 U.S.C. 1531-1544)
- Clearwater National Forest (CNF) Plan (USFS, 1987) and Nez Perce National Forest (NPNF) Plan (USFS, 1987)
- Clearwater Forest Plan Lawsuit Stipulation of Dismissal (1993)
- National Historic Preservation Act (NHPA) (16 U.S.C. 470)
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority and Low Income Populations
- Tribal Treaty Rights

VI. Public Involvement

Scoping

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 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.

Objection Period

A legal notice advertising the start of a 45-day objection period was published in the *Lewiston Tribune* on 29 February 2016. The Forest received objections from ten objectors accepted by the Region 1 Regional Forester. An Objectors Meeting, which was open to the public, was held between Region 1, the Nez Perce-Clearwater National Forests, and the objectors on 2 June 2016. As instructed by the Regional Forester, the Forest updated the Decision Notice and the EA analysis. The updated EA was posted on the Forest website in June 2016.

VII. Finding of No Significant Impact

After considering the environmental effects described in the EA, I have determined that these actions will **not** have a significant effect on the quality of the human environment considering the context and intensity of impacts (40 CFR 1508.27). Thus, an environmental impact statement will not be prepared. I base my finding on the following:

Context

The resources affected by the proposal are described in the EA. The Selected Alternative is consistent with the management direction, standards and guidelines outlined in the Nez Perce Forest Plan, as amended. Local issues were identified through the scoping process and considered in alternative development and analysis. The activities will be limited in duration. Effects are local in nature and not likely to affect regional or national resources.

Intensity

I have determined the following with regard to the intensity of this project as identified in 40 CFR 1508.27.

- 1) The analysis considered both beneficial and adverse effects of the actions.** The environmental analysis (EA and Project Record) considered resources that could be adversely impacted through implementation of the selected alternative. As described in Chapter 3 of the EA, impacts from this project are both beneficial and adverse. The effects have been addressed through development of specific design and mitigation criteria (EA, Chapter 2). The beneficial and adverse impacts of this decision are addressed in Chapter 3 of the EA. The project will be within standards set forth by the Nez Perce Forest Plan and Clearwater Forest Plan, as well as applicable environmental laws (EA, Chapter 3 and Project Record specialist's reports).

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- 2) **There will be no significant effects on public health or safety.** The selected alternative will comply with the Clean Water Act and Idaho State Water Quality Laws by following all federal, state, interstate and local requirements, administrative authority and process and sanctions, with respect to control and abatement of water pollution.
 - 3) **There will be no significant effects on unique characteristics of the area,** such as historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic river, or ecologically critical areas because protection measures integrated into the design of the project and based on the discussion of effects found in the EA, Chapter 3. There are no park lands or prime farmlands within the affected area. The effects to wetlands (streams), wild and scenic river areas and ecologically critical areas are minor over the short-term and long-term. No historic or cultural resources will be affected by the activities. The project archeologist surveyed the project area for potential effects and determined, with concurrence from the Idaho State Historic Preservation Office, there will be No Adverse Effect to any cultural resource with the application of design measures (EA, Section 3.5). There will be no significant effects on unique characteristics of this geographic area.
 - 4) **The effects on the quality of the human environment are not likely to be highly controversial.** The effects of the project will be localized to the miners' activity areas. While some people have disagreed with certain parts of the project, no person has provided evidence that the environmental effects of the project have been wrongly predicted; therefore, the effects are not controversial. I believe we have addressed the known biological, social, and economic issues sufficiently to avoid scientific controversy over the scope and intensity of effects. There is agreement about the effects and conclusions identified in the analysis by my staff, other resource professionals, and other agencies consulted. I conclude that the effects of this project do not represent a controversial impact upon the quality of the human environment, provided the design criteria and mitigation measures outlined in the EA are implemented.
 - 5) **The degree to which the possible effects on the human environment are not highly uncertain or involve unique unknown risks.** The actions described in this Decision are not new. The Forest Service has a long history of implementing these activities across the Nez Perce-Clearwater National Forests. The effects analysis shows the effects are not uncertain, and do not involve unique or unknown risk. Chapter 3 of the EA discloses the direct, indirect and cumulative effects of the selected actions. Pertinent scientific literature has been reviewed and incorporated into the analysis process and the technical analyses conducted for determinations on the impacts to the resources are supportable with use of accepted techniques, reliable data, and professional judgment. The Selected Alternative was developed through field surveys and reconnaissance, and past experience.
 - 6) **The actions are not likely to establish a precedent for future action with significant effects,** because it conforms to all existing Forest Plan direction and is applicable only to the project area. The proposed activities are similar in nature and effects to previous programmatic suction dredging project (Small-Scale Suction Dredging in Lolo Creek and

Moose Creek) and are consistent with the Nez Perce National Forest Plan and the Clearwater Forest Plan. This action does not represent a decision in principle about a future consideration. Any future proposals for this area will be subject to NEPA requirements and will require a new decision.

- 7) **These actions are not related to other actions, that when combined, will have significant effects.** Cumulative effects are documented in Chapter 3 by resource area. The effects are described in detail in the EA, Chapter 3, threatened, endangered, or sensitive fish, plant, or wildlife species (Sections 3.1 and 3.2 and Project Record). The effects are generally minor when considered with other activities in the general area.
- 8) **The actions will have no significant adverse effect on districts, sites, highways, structures, or objects listed in the National Register of Historic Places.** Suction dredging will not affect locations on the National Register of Historic Places following design criteria. The action will not cause loss or destruction of significant scientific, cultural, or historical resources. The alternative will not affect Nez Perce Tribe Treaty rights or Nez Perce Tribal members' abilities to exercise those rights (EA, Section 3.6). The Design criteria as outlined in this decision will be applied to mitigate effects to cultural resources. The Small-Scale Suction Dredging project is in compliance with Section 106 of the National Historic Preservation Act and consistent with state and federal archaeological statutes (EA Section 3.5.1.2). I conclude that the design criteria and mitigation measures outlined in the EA will prevent effects of this project on heritage resources.
- 9) **The actions will not adversely affect any endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.** In compliance with the Endangered Species Act, formal consultation with the U.S. Fish and Wildlife Service and NOAA-Fisheries is currently on-going. Alternative 2 will comply with recommendations provided in the U.S. Fish and Wildlife Service and NOAA-Fisheries' once consultation is completed.
- 10) **The action will not violate federal, state, or local laws or requirements for the protection of the environment.** Applicable laws and regulations were considered in the EA. The actions are also consistent with the Nez Perce Forest Plan and the Clearwater Forest Plan. To the best of my knowledge, my decision will be consistent with federal, state, and local laws, regulations, and agency policies. The discussion in the EA is not an all-inclusive listing, but is intended to provide information on areas raised as issues or comments by the public or other agencies.

Conclusion

After considering the environmental effects described in the EA and specialist reports, I have determined that Alternative 2 will not have significant effects on the quality of the human environment considering the context and intensity of impacts (40 CFR 1508.27). Thus, an environmental impact statement will not be required.

VIII. Findings Required by Other Laws and Regulations

I have determined that my decision is consistent with the laws, regulations, and agency policies related to this project. The following summarizes findings required by major environmental laws. This is not a major federal action. It will have limited context and intensity (40 CFR 1508.27), individually or cumulatively, to the biological, physical, social or economic components of the human environment. It will have no adverse effect upon public health or safety, consumers, civil rights, minority groups and women, prime farm land, rangeland and forestland, air quality, roadless areas, or to old growth forest options. Compliance with other laws, regulations, and policies are listed in various sections of the EA, the Project Record, and the Forest Plan, as amended.

Delegation of Authority

Consistent with Forest Service Manual 1230, I have been delegated authority as Forest Supervisor of the Nez Perce-Clearwater National Forests, effective 16 November 2014. I am responsible to the Region One Regional Forester for the management, development, and administration of the Nez Perce-Clearwater National Forests.

Mining Law of 1872

The major Federal law governing the disposition of locatable minerals¹ on Federal lands is the *Mining Law of 1872*, as amended. This law provides citizens of the United States the opportunity to prospect, explore, develop and extract certain valuable mineral deposits on Federal lands that remain open for that purpose. The lands within the Lolo Creek and Moose Creek study areas are examples of lands open to prospecting, exploration and location under the 1872 law. The 1872 Mining Law sets general standards and guidelines for mining claim location and provides for possessory right to valuable minerals within the lines of location. The selected alternative, Alternative 3, once implemented, will be in compliance with the Mining Law of 1872.

“Locatable” minerals are one of three categories into which minerals on federal lands are classified: locatable, leasable, salable. In general, locatable minerals include both metallic minerals (gold, silver, lead, etc.) and nonmetallic minerals (fluorspar, asbestos, mica, etc.), although several factors influence the category into which a mineral falls under various circumstances. The locatable mineral being sought in the Lolo Creek and Moose Creek study areas is gold.

Forest Service compliance with the 1872 Mining Law is nondiscretionary, however, while miners have rights under the 1872 Mining Law, they are legally required to comply with the rules and regulations covering National Forests. They are also required to comply with applicable laws passed since 1872 that have placed additional requirements upon miners.

Organic Administration Act of 1897

This act affirms the public’s right to enter, search for, and develop mineral resources on lands open for mineral entry, and authorizes the Forest Service to approve and regulate all activities related to prospecting, exploring, and developing mineral resources. Once implemented, the selected alternative, Alternative 2, will be in compliance with the Organic Administration Act of 1897.

National Forest Management Act

On April 9, 2012, the Department of Agriculture issued a final planning rule for National Forest system land management planning (2012 Rule) 77 FR 68 [21162-21276]). None of the requirements of the 2012 Rule apply to projects and activities on the Nez Perce-Clearwater National Forests as the Nez Perce Forest Plan was developed under a prior planning rule (36 CFR 219.17(c)). Furthermore, the 2012 Rule explains, “[The 2012 Rule] supersedes any prior planning regulation. No obligations remain under any prior planning regulation, except those that are specifically included in a unit’s existing plan. Existing plans will remain in effect until revised” (36 CFR 219.17).

The Clearwater National Forest Plan (USFS, 1987) and Nez Perce National Forest Plan (USFS, 1987), as amended, guide all natural resource management activities by providing a foundation and framework of standards and guidelines for National Forest System lands administered by the Forests. The proposed project analysis was guided by the goals, objectives, standards, guidelines, and management area direction within the Clearwater and Nez Perce Forest Plans. These goals, objectives and standards discuss the need to facilitate the orderly development of mineral commodities and provide for timely, reasonable, effective and economically feasible environmental protections. In 1995 the Forest Plans were amended by the Interim Strategies for Managing Anadromous fish-producing Watersheds on Federal Lands in Eastern Oregon and Washington, Idaho, and Portions of California (PACFISH) and the Interim Strategies for Managing Fish-producing Watersheds on Federal Lands in Eastern Oregon and Washington, Idaho, Western Montana and Portions of Nevada (INFISH). PACFISH and INFISH provide guidance and monitoring requirements for minimizing impacts to surface resources, especially in relationship to Riparian Habitat Conservation Areas (RHCA’s).

National Environmental Policy Act

National Environmental Policy Act (NEPA) provisions have been followed as required in 40 CFR 1500. The proposed activities comply with the intent and requirements of NEPA. The EA analyzes a reasonable range of alternatives. It also discloses the expected effects of each alternative and discusses the identified issues and concerns. This Decision Notice described the actions I have selected and my rationale for making these Decisions.

Multiple Use Mining Act of 1955

This law (16 U.S.C. 612) is also known as the *Multiple Use Mining Act*, the *Surface Resources and Multiple Use Act*, the *Multiple Use Surface Act*, and the *Multiple Surface Use Mining Act*. The law specifies that unpatented mining claims located after July 23, 1955, may not be used for any purposes other than prospecting, mining or processing operations and uses reasonable incident thereto. That such claims shall be subject to the right of the United States to manage and dispose of vegetative surface resources and to manage other surface resources, and the right of the United States, its permittees, and licensees, to use so much of the surface as may be necessary for such purposes or for access to adjacent land. Once implemented, the selected alternative, Alternative 2, will comply with the Multiple Use Mining Act of 1955.

Mining and Mineral Policy Act of 1970

The *Mining and Mineral Policy Act* (30 U.S.C. 21a) states that it is the continuing policy of the Federal government to foster and encourage private enterprise in the development of economically sound mining and minerals industries and the orderly and economic development of domestic mineral resources to help satisfy industrial, security, and environmental needs. Once implemented, the selected alternative, Alternative 2, will comply with the Mining and Mineral Policy Act of 1970.

The Agencies Surface Use Regulations

Surface use regulations (36 CFR Part 228 Subpart A and 43 CFR 3809) set forth rules and procedures for use of the surface of public lands in connection with mineral operations both on and off mining claims. The regulations direct the Agencies to prepare the appropriate level of environmental analysis and documentation when proposed operations may significantly affect surface resources. These regulations do not allow the Agencies 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 the Agencies to develop mitigation measures to minimize adverse effects on public resources. The Forest Service Part 228 regulations and the BLM Manual 3809 – Surface Management include requirements for reclamation.

Forest Service Manual (FSM) 2800 and BLM Regulations 43 CFR 3809

The Manual discussed specific responsibilities and considerations for dealing with a POO. They state that the Agencies should minimize or prevent adverse effects related or incidental to mining by imposing reasonable conditions that do not materially interfere with operations.

National Wild and Scenic River Act

Project design activities have been developed to be consistent with the National Wild and Scenic Rivers Act. Mining at any scale within the identified claims will not affect eligibility of the entire South Fork Clearwater River. The Nez Perce Plan states that eligible rivers are subject to mineral exploration and claim location. Mitigation and reclamation measures will be included in approved plans to minimize surface disturbance, sedimentation, and visual impairment to the extent possible under 36 CFR 228.

Idaho Stream Channel Protection Act

Idaho regulates recreational dredge mining under this Act (Idaho Code Section 42-3803(a)). "Recreational" dredging is defined as those mining activities in which miners use power sluices, small recreational suction dredges with a nozzle 5 inches in diameter or less, and equipment rated at a maximum of 15 horsepower. This is also the size cutoff for the FEIS, and suction dredges not qualifying as "recreational" under this statute will also not qualify for approval under the selected Alternative.

The statute requires dredge operators to obtain a Section 404 permit from the Idaho Department of Water Resources before any suction dredge mining can be done. To be authorized to operate under the permit, operators must adhere to a number of conditions intended to protect water quality,

habitat, and fish. The Forest Service has included these conditions in the conditions of approval under the selected alternative (FEIS, Chapter 2, p. 2-2 through p. 2-6). One of the approval conditions is that operators be authorized under a stream alteration permit from the State.

Clean Water Act and Idaho State Water Quality Laws

The selected alternative will comply with the Clean Water Act and Idaho State Water Quality Laws by following all federal, state, interstate and local requirements, administrative authority and process and sanctions, with respect to control and abatement of water pollution. The Clean Water Act sets goals to eliminate discharges of pollutants into navigable water, protect fish and wildlife, and prohibit the discharge of toxic pollutants in quantities that could adversely affect the environment. Executive Order (EO) 12088 requires the Forest Service meet the requirements of the Act. Sections 303(d), 313, 401, 402, and 404 of the Clean Water Act, are potentially applicable to suction dredging operations. In particular, the U.S. Environmental Protection Agency (EPA) has determined that suction dredging constitutes a point source discharge of water pollution and requires suction dredge operators to possess a National Pollutant Discharge Elimination System (NPDES) permit.

Endangered Species Act

As required by the Endangered Species Act, specific habitat needs for Threatened and Endangered species of wildlife and fish have been analyzed. The Forests are in consultation with NMFS and USFWS. My decision will comply with the Endangered Species Act.

Clearwater Forest Plan Lawsuit Stipulation of Dismissal (1993)

The Forest Service signed a settlement agreement with all parties (Sierra Club and the Wilderness Society representing nine co-plaintiffs) agreeing to several points, including that the Forest Service will only proceed with projects which will result in "no measurable increase" in sediment production in drainages currently not meeting Forest Plan standards. These agreements remain in effect until a Forest Plan revision is completed. The proposed project will not increase sediment production.

Executive Order 12898

Alternative 2 was assessed to determine whether it will disproportionately impact minority or low-income populations, in accordance with Executive Order 12898. There will be no effect from the proposed activities on the treaty rights of the Nez Perce Tribe and local communities. No impacts to minority or low income populations were identified during scoping or effects assessment.

National Historic Preservation Act

This project complies with the regulations implementing the National Historic Preservation Act of 1966, as amended. The Forest Service has completed cultural resource surveys in areas potentially affected by proposed actions. In accordance with the Act, the findings of the inventory were submitted to the Idaho State Historic Preservation Officer and the Nez Perce Tribal Historic Preservation Officer for review and comment and concurrence with cultural resource findings was

obtained. If heritage values are identified during project implementation, they will be protected according to provisions of state and federal law. All eligible sites will be avoided. Design criteria and mitigation measures are included to assure project activities do not adversely affect sites.

IX. Best Available Science

I am confident that the analysis of this project was conducted using the best available science. My conclusion is based on consideration of the record that shows my staff conducted a thorough review of relevant scientific information, considered responsible opposing views, and acknowledged incomplete or unavailable information, scientific uncertainty, and risk. Please refer to the specialist reports in the Project Record for specific discussions of the science and methods used for analysis and for literature reviewed and referenced.

X. Administrative Review Opportunity

The Small-Scale Suction Dredging project was subject to the objection process pursuant to 36 CFR 218, subparts A and B. This decision was not subject to appeal pursuant to 36 CFR 215.129(i).

As the Deciding Official, of the Nez Perce-Clearwater National Forests, I prepared an Environmental Assessment (EA) and Decision Notice and Finding of No Significant Impact (Decision Notice/FONSI) for the Small-Scale Suction Dredging Project as described in this document.

The EA and Decision Notice/FONSI are available on-line at: <http://www.fs.fed.us/nepa/fs-usda-pop.php/?project=46844>. These documents are also available at the Nez Perce-Clearwater National Forests office, at 12730 Highway 12, Orofino, Idaho 83544.

Objections and Timeframe

The objection filing time period was from February 29, 2016 to April 14, 2016. Objections were accepted only from those who had previously submitted written comments specific to the proposed project during scoping or other opportunity for public comment (36 CFR 218.5).

The Small-scale Suction Dredging project was originally scoped under the provisions of 36 CFR 215. It is now subject to the objection process pursuant to 36 CFR 218. The 45-day objection period for the draft DN began on 29 February 2016.

On 2 June 2016, an objection meeting was held in Grangeville, Idaho. Most of the objectors questioned the authority of the Forest Service to require a POO. Federal law gives the Forest Service authority to regulate locatable mineral operations and their effects on National Forest System lands and waters, including stream beds. The Forest Service administers the activity of suction dredging under the regulations at 36 CFR 228. Under 36 CFR 228, a NOI is required from any person proposing to conduct operations which might cause significant disturbance of surface resources, including water quality and fisheries habitat (36 CFR 228.8). However, because operators may not have the same perception of the impacts their proposed activities may have on National Forest System resources, the District Ranger retains final authority to decide whether a POO is required, whether or not the operator first submits a NOI (36 CFR 228.4(a)(4)). In 2015, District

Rangers Shinn and Nevius made this determination. In addition, a POO is required to insure compliance with ESA, CWA, WSR and other laws.

The county administrators and others were concerned with economic impacts to the area. This decision will provide an opportunity for suction dredging to occur legally on these streams, which does not exist without this decision.

There were also many objectors concerned with the fifteen operation limit on the South Fork of the Clearwater River. It is important to note that this decision covers fifteen dredging operations but does not preclude more operations. Additional operations would need to be covered under a separate NEPA analysis and decision.

Several objectors stated the rules and mitigations were too complicated. Those are the minimum necessary to protect the resources and follow ESA, CWA and other laws. In 2010 a Record of Decision was signed for an EIS on Moose Creek and Lolo Creek, the mitigation measures that were included in that ROD are very similar to the mitigation measures included in this proposed action. For the past two seasons there have been suction dredgers operating on Moose and Lolo creeks, following the mitigation measures and complying with all permits and laws.

The Reviewing Officer has responded in writing to all objections, and all concerns and instructions identified by the Reviewing Officer in the objection process have been addressed. All requirements under 36 CFR 218 have been met, and the objection process is complete. This decision may be implemented immediately.

XI. Implementation Date

Implementation of the decision may occur immediately after the Decision Notice/FONSI is signed.

XII. Contact

For further information concerning the Small-Scale Suction Dredging Project, contact Rebecca Anderson, Project Team Leader at the Nez Perce-Clearwater Forests office, at 12730 Highway 12, Orofino, Idaho 83544 or at the following phone number: 208-476-8351, during normal business hours.

XIII. Signature of Responsible Official



Cheryl F. Probert
Forest Supervisor
Nez Perce-Clearwater National Forests

Date

7-6-10

APPENDIX A

CONSULTATION TERMS AND CONDITIONS

Reasonable and Prudent Measures

“Reasonable and prudent measures” are nondiscretionary measures to minimize the amount or extent of incidental take (50 CFR 402.02).

The FS/BLM shall:

1. Minimize incidental take from suction dredging program activities through implementation of all precautionary measures.
2. Ensure completion of a monitoring and reporting program to confirm that the terms and conditions in this ITS are effective in avoiding and minimizing incidental take from permitted activities and that the extent of take is not exceeded.

Terms and Conditions

The terms and conditions described below are nondiscretionary, and the USFS, BLM, or any applicant must comply with them in order to implement the reasonable and prudent measures (50 CFR 402.14). The USFS, BLM, or any applicant has a continuing duty to monitor the impacts of incidental take and must report the progress of the action and its impact on the species as specified in this ITS (50 CFR 402.14). If the entity to whom a term and condition is directed does not comply with the following terms and conditions, protective coverage for the proposed action would likely lapse.

1. The following terms and conditions implement reasonable and prudent measure 1:
 - a. Ensure that proposed protective measures are followed, including reclamation and compliance, monitoring and adaptive management, and any applicable seasons or permit conditions that may be more restrictive.
 - b. Minor spawning areas of ESA-listed steelhead in Meadow, Mill, and Peasley Creeks may result in adult returns that tend to congregate and spawn in the SFCR near these smaller tributary mouths. Pay special attention in POO delineations to avoid spawning habitats and areas where fish concentrate near the mouths of these creeks.
2. The following terms and conditions implement reasonable and prudent measure 2:
 - a. Monitor (via miner reports and weekly spot checks) the downstream extent and duration of visible turbidity plumes created by the action.
 - b. Monitor to ensure no more than 0.4% of project area is disturbed in any year, and that disturbance rates average less than 0.2% over 10 years.
 - c. Monitor to ensure that average dredging effort does not exceed 8 hours per day. Average dredging effort is specified as the total number of hours observed or reported

each day divided by the maximum number of dredging operations possible (15). Daily effort will be summarized and reported weekly.

- d. Monitor and report weekly injured or dead salmonids and salmonid forage fish found where death or injury was likely caused by the action.
- e. Submit annual reports by May 1st of each year following program activities to:

National Marine Fisheries Service
Attn: Kenneth Troyer
800 E. Park Blvd.
Plaza IV, Suite 220
Boise, Idaho 83712-7768

Conservation Recommendations

Section 7(a)(1) of the ESA directs Federal agencies to use their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of the threatened and endangered species. Specifically, conservation recommendations are suggestions regarding discretionary measures to minimize or avoid adverse effects of a proposed action on listed species or critical habitat or regarding the development of information (50 CFR 402.02).

The following recommendations are discretionary measures that NMFS believes are consistent with this obligation and therefore should be carried out by the FS/BLM:

- Seek opportunities to further restore channel function and riparian vegetation in tributaries of the SFCR.
- Further reduce fine and coarse sediment from uplands and riparian areas caused by timber harvest, roads, and grazing to reduce long-term sedimentation in the SFCR.

Implement increased monitoring and enforcement of unpermitted mining activities in the SFCR and its tributaries.

