ADVOCATES for the WEST
PO BOX 1612 | BOISE, ID 83701
www.advocateswest.org | 208.342.7024

May 21, 2019

Via Certified Mail, Return Receipt Requested

David Hembree
16170 Hollow Rd.
Caldwell, ID 83607

Re: Sixty-Day Notice of Intent to Sue For Violations of Clean Water Act for Suction Dredge Mining In Idaho Without an NPDES Permit

Dear Mr. Hembree:

I write on behalf of my client, the Idaho Conservation League (ICL), to provide you with notice of ICL's intent to initiate a federal court lawsuit against you to enforce provisions of the federal Clean Water Act (CWA), 33 U.S.C. §§ 1311 & 1342, for discharging pollutants from a suction dredge(s) to the South Fork Clearwater River and/or Leggett Creek in Idaho without a required National Pollutant Discharge Elimination System ("NPDES") permit, in violation of the CWA.

Unless you take the steps necessary to remedy your ongoing CWA violations (including by obtaining any required NPDES permit(s) before engaging in any further suction dredge mining in Idaho and by complying with the terms of the permit(s)), ICL intends to file suit in U.S. District Court following the expiration of the 60-day statutory notice period, seeking injunctive relief, civil penalties, and other relief for your past and ongoing CWA violations, and for any additional similar violations on any river or stream in Idaho identified subsequently.

ICL's Commitment to Improving Water Quality

Since 1973, the Idaho Conservation League has been Idaho's voice for clean water, clean air, and wilderness—values that are the foundation of Idaho's extraordinary quality of life. ICL works to protect these values through public education, outreach, advocacy, and policy development. As Idaho's largest state-based conservation organization, it represents over 30,000 supporters, many of whom have a deep personal interest in protecting and restoring water quality throughout the rivers and streams of Idaho, including the Clearwater River watershed.

ICL has staff, members and supporters who live, recreate, and/or work in and around the Clearwater and other Idaho watersheds, including near and downstream of your suction dredge mining operations and pollutant discharges in Idaho, addressed below. ICL staff, members, and supporters frequently visit, recreate, and engage in activities in this area and in areas downstream which are impacted by your suction dredge mining and discharges.

IDAHO OPERATIONS OFFICE
MAY 23 2019
US EPA

Clean Water Act Permitting for Suction Dredges in Idaho

The CWA prohibits the discharge of any pollutant by any person from a point source to a water of the United States unless authorized by a NPDES permit. 33 U.S.C. § 1311(a); 33 U.S.C. § 1342. A suction dredge is a CWA point source. Operating a suction dredge discharges sediment and other materials CWA-regulated pollutants to waters of the United States and, thus, requires obtaining and complying with the terms of a valid NPDES permit.

To facilitate NPDES permitting for suction dredge mining in Idaho, the U.S. Environmental Protection Agency (EPA) adopted a "general" NPDES permit in 2013 and reissued the general permit in 2018. The general permit is available to dredge miners if they meet specified conditions, including using an intake nozzles of five inches in diameter or less, using an engine rated at 15 horsepower or less, and operating only in Idaho's "open or allowed" streams. The general NPDES permit places conditions on the discharge of rock and sand from each mining operation to protect water quality and aquatic resources, including best management practices and prohibited areas. To obtain coverage under the general NPDES permit, a person must submit a Notice of Intent to EPA seeking coverage for eligible mining operations.[1]

For suction dredge mining not eligible for coverage under the general permit, a person must submit an application for, and obtain from EPA, an "individual" NPDES permit.[2,3]

Clean Water Act Violations

Based on reasonable investigation to date and publicly available information, ICL is informed and believes that you have violated, and are continuing to violate, the CWA, 33 U.S.C. §§ 1311 & 1342, by conducting suction dredge mining and discharging sediment and other pollutants to rivers and streams in Idaho without a valid NPDES permit.

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[1] EPA provides information about the general NPDES permit, including how to apply at: https://www.epa.gov/npdes-permits/npdes-general-permit-small-suction-dredge-placer-miners-idaho (visited April 18, 2019).

[2] Information about individual NPDES permits and how to apply is available from EPA at: https://www.epa.gov/npdes/npdes-permit-basics (visited April 18, 2020). You can contact Mike Lidgard at the EPA Region 10 office by phone at (206) 553-1755 or by email at lidgard.michael@epa.gov with questions about NPDES permitting or to apply.

[3] Currently, the CWA permit program for discharges from suction dredge mining in Idaho is administered by EPA. The permitting program is, however, in the process of being transferred to the State of Idaho's Department of Environmental Quality (DEQ) in phases. EPA will continue administering the general NPDES permit program for suction dredge discharges until July 1, 2020, when general permitting authority will be transferred to Idaho.[3] EPA will continue administering the individual NPDES permit program for suction dredge discharges until July 1, 2019. Information about Idaho's permitting program ("IPDES") is available at: http://www.deq.idaho.gov/water-quality/ipdes/ (visited April 18, 2019). You can contact Mary Anne Nelson (IPDES Program Manager at DEQ) by phone at (208) 373-0291 or by email at mary.anne.nelson@deq.idaho.gov.

You applied for and received a Recreational Mining Permit from the Idaho Department of Water Resources ("IDWR") for suction dredging in Idaho in 2018, 2017, and 2016. ICL is informed and reasonably believes that you operated one or more suction dredges and unlawfully discharged pollutants to the South Fork Clearwater River and/or Leggett Creek without a required NPDES permit on one or more days during the July 15 to August 15 dredging season in 2018.

ICL is also informed and reasonably believes that your CWA violations are likely to continue. ICL believes that you will continue to suction dredge mine in Leggett Creek, the South Fork of the Clearwater River, and/or other Idaho rivers and streams and will discharge pollutants without a valid NPDES permit, in violation of the CWA.

ICL further notes that your past and ongoing violations of the CWA are willful, knowing, and deliberate. You have been notified multiple times of your legal obligation to obtain a NPDES permit to suction dredge mine in Idaho, including by IDWR in the state Recreational Mining Permits issued to you in 2018, 2017, and 2016. Yet you never obtained a general or individual NPDES permit to authorize your suction dredge mining on Leggett Creek, the South Fork Clearwater River, or anywhere else in Idaho in 2018.

Penalties and Injunctive Relief

Your actions violate the Clean Water Act, 33 U.S.C. § 1311(a), and subject you to imposition of statutory penalties as well as other liability. The CWA, 33 U.S.C. § 1319(d), adjusted by 40 C.F.R. § 19.4, provides for imposition of civil penalties of up to $51,570 per violation per day. For each day you have discharged pollutants from a suction dredge to the South Fork Clearwater River and/or other Idaho rivers and streams without a valid NPDES permit, and for each day that you do this again, you are liable for penalties under 33 U.S.C. § 1319(d).

As provided under the CWA's citizen suit enforcement provision, 33 U.S.C. § 1365, ICL is authorized to file federal court litigation against you for these violations of the CWA, and any similar violations ICL later discovers, following expiration of the 60 day notice period. 33 U.S.C. § 1365(b). The court may award injunctive relief as well as the statutory penalties noted above. In addition, ICL may recover its reasonable attorney fees and litigation costs incurred in prosecuting the action against you. *See* 33 U.S.C. §§ 1319(d) & 1365(a), (b) & (d).

We are providing this letter not only to comply with the CWA statutory notice requirement, 33 U.S.C. §1365(b), but also in the hope of preventing your future violations of the CWA. In addition, one of the principal purposes of the CWA notice requirement is to allow the parties to discuss resolution of claims short of litigation. ICL sends this notice letter, in part, to encourage settlement negotiations, which could avoid the need for litigation. During the 60-day notice period, ICL and I (contact information below) will be available to discuss alternative remedies and actions that might be taken to assure compliance in the future with the CWA. If any information in this letter is inaccurate, you should inform us immediately.

Party & Attorney Giving Notice

The full name, address, and telephone numbers of the party giving notice is:

Idaho Conservation League
Att'n: Jonathan Oppenheimer
P.O. Box 844
Boise, ID 83701
208.345.6933

The full name, address, and telephone number of the attorney representing ICL is:

Bryan Hurlbutt, Staff Attorney
Advocates for the West
P.O. Box 1612
Boise, ID 83701
208.342.7024 x206

Respectfully,

Bryan Hurlbutt

Cc Via Certified Mail, Return Receipt Requested:

Andrew Wheeler, Acting Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Chris Hladick, Regional Admin.
Environmental Protection Agency
Regional Admin.'s Office, RA-140
1200 Sixth Avenue
Seattle, WA 98101

Jim Werntz, Director
Idaho Operations
Environmental Protection Agency
950 W Bannock Suite 900
Boise, ID 83702

John Tippets, Director
Idaho Dep't of Environmental Quality
1410 Hilton
Boise, ID 83706