

United States Environmental Protection Agency  
Region 10  
1200 Sixth Avenue  
Seattle, Washington 98101

Statement of Basis

A Draft National Pollutant Discharge Elimination System (NPDES) Permit  
has been prepared to address the missing requirements of the  
Mores Creek TMDL  
from the  
SMALL SUCTION DREDGE PLACER MINERS IN IDAHO.

NPDES Permit: IDG-37-0000

## I. SUMMARY OF PREVIOUS ACTION

On January 22, 2010, the EPA published the first notice in the Federal Register announcing the comment period for a draft NPDES general permit (GP) for discharges from Small Suction Dredge Mining and held four public workshops around the state of Idaho. A second public notice of the proposed permit was issued on May 1, 2012 and public comments were collected through June 1, 2012. The final permit was issued on April 4, 2013, and went into effect on May 6, 2013.

The GP received a certification under the Clean Water Act (CWA) § 401 from the State of Idaho but the Coeur d'Alene Tribe and the Shoshone Bannock Tribe denied certification. As a result of Tribal government-to-government consultation and coordination, the GP does not cover any of the five Reservations with land within the boundaries of the State of Idaho.

EPA prepared a Biological Evaluation (BE) to aid informal consultation with the U.S. Fish & Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) under the Endangered Species Act. By limiting coverage in certain waterbodies, NMFS and USFWS concurred with EPA's determination that the permit would not likely adversely affect endangered species.

During the 2013 mining season, EPA received Notices of Intent (NOIs) from 162 applicants requesting to operate in 370 specific locations. Many NOIs asked for coverage within areas that require additional steps (e.g., Endangered Species Act designated critical habitat, not meeting specific application deadlines for Grimes, Mores, and Elk Creek) or that are not covered by the GP (e.g., waterbodies impaired for sediment and/or mercury, Tribal reservations). Some NOIs were incomplete and the additional information has not yet been provided. EPA issued coverage for 81 locations.

## II. DESCRIPTION OF THIS ACTION

When the 2013 GP was issued the language of the GP contained a discrepancy with the total maximum daily load (TMDL) that was issued for Mores Creek. The GP did not include any reference to the tributaries of Mores, Elk or Grimes creeks that were included in the loading restrictions of the TMDL.

In particular, the TMDL states “[t]his is an industry-wide WLA that applies to dredges of all sizes. The WLA will be established for each designated stream section in the Boise-Mores watershed, ***including tributaries***” (emphasis added). Section 5.1 Sediment page 137

40 CFR 122.44(d)(1)(vii)(B) requires that “Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7” (Total maximum daily loads (TMDL) and individual water quality-based effluent limitations).

This modification proposes to rectify the discrepancy by including a reference to the tributaries in the GP in the requirements for Mores, Grimes and Elk creeks and listing the tributaries in Appendix F to the GP. This means that an NOI will be required during the timing previously required for just Mores, Grimes and Elk creeks and that EPA will include activities in the tributaries when considering the allocation of hours from the TMDL. Also, the wasteload allocations were determined based on Mores Creek being open below Boulder Creek and Elk Creek being open above Eldorado Gulch and these closures are now incorporated into the GP.

EPA is also proposing to change the timing of Notice of Intent (NOI) submittals for these waterbodies. The 2013 GP says NOIs have to be submitted between January 1 and February 14 with notification by EPA in March. The change would allow the submittal of NOIs between January 1 and April 1 with EPA notification by May 1. EPA is proposing to remove the language on the 2013 submittal of NOIs because it is no longer pertinent to the GP.

**EPA is requesting comment only on the inclusions of the tributaries and NOI timing proposed in this action. Comments on any other permit condition will not be considered.**

### III. MINOR CHANGES TO THE PERMIT

There are several changes to the GP that EPA is enacting through the minor modification process outlined in 40 CFR 122.63(a). EPA determined that the following changes and/or clarifications fall under the allowance for typographical errors.

- A. Page 5: Permit Part I.D.4.a. contains a reference to Appendix G (see below) and Permit Part I.D.4.b. has been clarified to say that coverage could be granted if the requirements of I.D.4.a. are met.
- B. Page 6: Bureau Creek should be Bruneau River
- C. Page 9, Permit Part I.G.1. Appendix A contains the information required for a complete Notice of Intent (NOI). There was some confusion as to whether the table in Appendix A was a required form and it is not. The information now found in this permit part can be submitted in any format. Appendix A presents this same information in table form and may be used.
- D. Appendix A, page A-2: EPA was informed that the DEQ addresses were out of date. The GP currently lists the addresses from the website at <http://www.deq.idaho.gov/contact-deq.aspx>

E. Appendix B, page B-1

1. EPA added a line to include the number of hours dredged in Mores, Elk or Grimes creeks and their tributaries.
2. EPA added the submittal address for the Annual Report (AR) from Permit Part III.B.

F. Since permit issuance, EPA has received several requests for a list of waterbodies where critical habitat for endangered species can be found. Appendix G lists as many waterbodies that are specified in the listings prepared by the US Fish and Wildlife Service most notably for bull trout. Listings by National Marine Fisheries Service were done by evolutionary significant units (ESUs) which are designated as areas. A map showing the ESU for Chinook salmon (which encompass the area designated for steelhead) is included in the appendix.

G. State Protected/Withdrawn Rivers

1. Pursuant to the authorities specified in Section 42-1734A, Idaho code and adopted by the Idaho Water Resource Board, the certain waterways and/or stream segments are protected as either a State Natural River or as a State Recreational River with recreational dredge or placer mining prohibited. The tributaries of the SF Clearwater River are included in the State of Idaho list ([http://www.idwr.idaho.gov/RulesStatutesForms/StreamChannel/PDF/2013%20\\_StreamChannelAlterations\\_RecMiningInstructions.pdf](http://www.idwr.idaho.gov/RulesStatutesForms/StreamChannel/PDF/2013%20_StreamChannelAlterations_RecMiningInstructions.pdf)) but was omitted from Appendix D of the GP. This error has been rectified.
2. A portion of the SF Payette River from the Sawtooth Wilderness boundary to Banks is included in the list of Withdrawn Rivers but an exception allowing recreational suction dredging to occur is included (see: [http://www.idl.idaho.gov/bureau/Minerals/explor\\_loc/upd091709/Withdrawn-Rivers.pdf](http://www.idl.idaho.gov/bureau/Minerals/explor_loc/upd091709/Withdrawn-Rivers.pdf)). EPA erroneously omitted this exception from the GP (but removed another excepted area from the list for the Snake River from Township 11 South, Range 20 East, Section 5 to King Hill). This error has been rectified by indicating the exemption in Appendix D Part 2 and will be removed from the list during permit reissuance.
3. McCoy Creek and certain tributaries are listed as State Protected in Appendix D Part 3 but an exception allowing recreational suction dredging above the confluence with Fish Creek was included in the Comprehensive State Water Plan/South Fork Snake River Basin (see <http://www.idwr.idaho.gov/waterboardWaterPlanning/CompBasinPlanning/SF%20Snake/PDF/SF%20Snake%20Summary.pdf>).

The following language has been added to Appendix D Part 3 in the section on McCoy Creek: Stream channel alterations for recreational dredge mining may continue on McCoy Creek from the headwaters to Fish Creek confluence, and on the following perennial tributaries: City Creek, Camp Creek, Miners Delight Creek and Iowa Creek.

#### **IV. PUBLIC COMMENT PERIOD AND PROCEDURE FOR FINAL DECISION**

**EPA will consider comments only on the inclusions of the Mores, Grimes and Elk Creek tributaries and the NOI timing change proposed in this action.**

Persons wishing to comment on, or request a public hearing for, the draft permit action may do so in writing by the expiration date of the public notice period. A request for a public hearing must state the nature of the issues to be raised as well as the requester's name, address, and telephone number. All comments should include name, address, phone number, a concise statement of the basis for a comment and relevant facts upon which it is based. All written comments should be addressed to the Office of Water & Watersheds Director at U.S. EPA, Region 10, 1200 Sixth Avenue Suite 900, OWW-130, Seattle, WA 98101; submitted by facsimile to (206) 553-0165; or comments on the draft permit may be submitted via e-mail to [godsey.cindi@epa.gov](mailto:godsey.cindi@epa.gov)

After the Public Notice expires and all substantive comments have been considered, EPA's Regional Director for the Office of Water & Watersheds will make a final decision regarding the conditions of the GP. If no comments requesting a change in these limitations are received, the proposed limitations will be made final, and will become effective upon final issuance. If comments are received, EPA will address the comments and issue the limitations along with a response to comments. The GP will become effective 30 days after publication of the final notice in the Federal Register according to Section 553(d) of the Administrative Procedures Act.

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

In a letter dated, December 4, 2013, the Idaho Department of Environmental Quality stated that the only change made to the CWA §401 Certification was the update of the address for the Twin Falls office. They will not be taking comment on this change.

#### **Documents are Available for Review.**

The draft NPDES permit and related documents can be reviewed or obtained by visiting or contacting EPA's Regional Office in Seattle between 8:30 a.m. and 4:00 p.m., Monday through Friday.

United States Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900 OWW-130  
Seattle, Washington 98101  
(206) 553-0523 or  
1-800-424-4372 (within Alaska, Idaho, Oregon and Washington)

The draft permit, this Statement of Basis (SOB), and other information can also be found by visiting the Region 10 website at [www.epa.gov/r10earth/water.htm](http://www.epa.gov/r10earth/water.htm). The draft Administrative Record for this action contains the pertinent documents from the 2013 permit package and any documents listed in the References section of this SOB. The Administrative Record or documents from it are available upon request by contacting Cindi Godsey (contact information below).

The draft permit and SOB are also available at:

EPA Idaho Operations Office  
950 W Bannock Street, Suite 900  
Boise, ID 83702

Idaho Department of Environmental Quality  
1445 N. Orchard  
Boise, Idaho 83706

For technical questions regarding the SOB, contact Cindi Godsey at (907) 271-6561 or [godsey.cindi@epa.gov](mailto:godsey.cindi@epa.gov). Services can be made available to persons with disabilities by contacting Audrey Washington at (206) 553-0523.

## V. REFERENCES

Clean Water Act (Water Pollution Control Act), 33 U.S.C. §§ 1251-1274

40 CFR 122 – EPA administered permit programs: the National Pollutant Discharge Elimination System [<http://www.gpo.gov/fdsys/pkg/CFR-2013-title40-vol23/pdf/CFR-2013-title40-vol23-part122.pdf> accessed 11/13/13]

40 CFR 130.7 - Total maximum daily loads (TMDL) and individual water quality-based effluent limitations [<http://www.gpo.gov/fdsys/pkg/CFR-2013-title40-vol23/pdf/CFR-2013-title40-vol23-sec130-7.pdf> (accessed 11/13/13)]

Boise-Mores Creek Subbasin Assessment and TMDL. Idaho Department of Environmental Quality. June 2009, revised December 2009.

Idaho Department of Lands list of Withdrawn Rivers according to Section 58-104(a) and 47-702, Idaho Code [[http://www.idl.idaho.gov/bureau/Minerals/explor\\_loc/upd091709/Withdrawn-Rivers.pdf](http://www.idl.idaho.gov/bureau/Minerals/explor_loc/upd091709/Withdrawn-Rivers.pdf)] (accessed 10/30/13)].

Idaho Department of Water Resources list of Protected Waters according to Section 42-1734A, Idaho code [[http://www.idwr.idaho.gov/RulesStatutesForms/StreamChannel/PDF/2013%20\\_StreamChannelAlterations\\_RecMiningInstructions.pdf](http://www.idwr.idaho.gov/RulesStatutesForms/StreamChannel/PDF/2013%20_StreamChannelAlterations_RecMiningInstructions.pdf) (accessed 12/10/13)]

[http://www.idwr.idaho.gov/RulesStatutesForms/StreamChannel/PDF/2013%20\\_StreamChannelAlterations\\_RecMiningInstructions.pdf](http://www.idwr.idaho.gov/RulesStatutesForms/StreamChannel/PDF/2013%20_StreamChannelAlterations_RecMiningInstructions.pdf)

Comprehensive State Water Plan - South Fork Snake River Basin [<http://www.idwr.idaho.gov/waterboard/WaterPlanning/CompBasinPlanning/SF%20Snake/PDF/SF%20Snake%20Summary.pdf> (accessed on 10/30/13)].