



United States  
Department of  
Agriculture

Forest  
Service

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File Code: 1570 (215)

Date: August 28, 2000

Route To:

Subject: Vermilion River Suction Dredging DN, Appeal #00-01-00-0103, Kootenai NF

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Jeff Juel on behalf of The Ecology Center, Inc.; Alliance for the Wild Rockies; and The Lands Council protesting the Vermilion River Suction Dredging Decision Notice (DN) signed by the Kootenai National Forest Supervisor.

The Forest Supervisor's decision authorizes a Plan of Operations, with agreed upon mitigation measures, to suction dredge in the Vermilion River. The authorization would be for operations on a yearly basis from June 1 to August 15 through the year 2002.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision are in compliance with applicable laws, regulations, policy, and orders. The appeal record, including the Appellants' objections and recommended changes, has been thoroughly reviewed. Although I may not have listed each specific issue, I have considered all the issues raised in the appeal and believe they are adequately addressed below.

The Appellants allege violations of the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the National Forest Management Act (NFMA) and the 1872 Mining Act. The Appellants request that the decision be rescinded. The Ecology Center declined the opportunity for informal resolution.

## **ISSUE REVIEW**

### **Issue 1 – Inappropriate Analysis**

**Issue 1.1: No serious consideration was given to the cumulative water quality impacts of logging, mining, hydropower development, agricultural run-off, competition from non-native species, or road-building in the EA.**

**Response:** Pages 15-19 of the Environmental Assessment (EA) discuss the cumulative effects to fisheries, flood plains and water quality. The document and the Project File specifically address past, present and reasonably foreseeable actions within the cumulative effects analysis area. Plum Creek lands in the Vermilion area are identified in the Project File, Document L-9.

**Issue 1.2: The range of alternatives considered did not give substantive consideration to the No Action alternative, showing an obvious bias for the suction dredging operation.**



**Response:** Alternative 3, the no action alternative, was considered in detail and given full consideration throughout the EA and DN.

**Issue 1.3: FS Decision Notice and FWS Biological Opinion depend upon untrained operators to monitor their own actions and make scientific assessments of habitat alteration, water quality and streambed grade. Rather than rely on Forest Service hydrologists, the Decision Notice requires the untrained operator(s) to provide subjective monitoring data important to the continued health of the Vermillion River Bull Trout subpopulation, which could shut down their “recreational suction dredging” activities.**

**Response:** Throughout the EA and DN, it is identified that the Forest Service will monitor various aspects of the operation to ensure that the operators are complying with the terms and conditions of the permit, including the required mitigation, and are providing appropriate monitoring data.

**Issue 1.4: The USFWS only rendered an opinion about the continued existence of the “Columbia River distinct population segment” rather than the population living in the Vermillion River. Utilizing such a large population scale is inappropriate, as it doesn’t recognize that the species may be extirpated in the Vermillion River due to incremental habitat disturbances such as those that would occur from the authorized suction dredging.**

**Response:** As page 3 of the DN states: “Through consultation with the FWS, it was determined that while there is a potential to have a slight impact on Bull Trout, the operation, using measures identified in Alternative 2 and the terms and conditions of the biological opinion, is not likely to jeopardize the continued existence of bull trout.”

## **Issue 2 - NEPA Violations**

**Issue 2.1: The FS had failed to comply with the requirements of NEPA, 40 CFR 1502.22. Important information has been omitted from the EA. The agency has failed to review, consider and collect significant information that directly or indirectly affects the ultimate decision parameters, viability of alternatives, nature and extent of environmental impacts, mitigation and other relevant NEPA and agency considerations.**

**Response:** The EA, Project File and DN document that the appropriate information was considered in making a decision. The mitigation measures, attached to the DN in Appendix B, provide adequate information regarding how the mitigation measures and overall operation will be implemented and monitored.

**Issue 2.3: The DN fails to require the involvement of personnel trained to adequately assure prevention of pool habitat degradation, and fails to assure effective mitigation following disturbance in the shallow area. The Forest service should commit to regular inspections during the dredging season in the interest of preserving threatened bull trout populations and habitat.**

**Response:** Throughout the EA and DN, it is identified that the Forest Service will monitor the operation to ensure that the operators are complying with the Plan of Operations, including the required mitigation, and are providing appropriate monitoring data.

### Issue 3 - Cumulative Effects

**Issue 3.1: The cumulative effects analysis includes only the local site to be affected by the approved suction dredging activities. It does not include a sufficiently thorough analysis of impacts of past, present, and reasonably foreseeable actions on the entire Vermillion River watershed (such as those stated under “General” on p. 9). The Vermillion River contains extensive tracts of checkerboard land controlled by Plum Creek Timber Company...The NEPA documents don’t even provide a list of such activities!**

**Response:** See Issue 1.1 above.

### Issue 4 – NFMA

**Issue 4.1: This fails to take into account important Forest Service duties under the NFMA and its implementing regulations that deal with maintaining well-distributed populations.**

**Response:** The Biological Opinion says that this project should not jeopardize the continued existence of bull trout. The biological assessments and evaluations determined that no other species would be affected by the activity.

### Issue 5 - Bonding/Financial Assurance

**Issue 5.1: The Forest Service should detail the amount, scope, and form of the financial assurance in the NEPA process to make certain that such a critical issue is subjected to public review and comment. There is no reclamation plan in the EA.**

**Response:** As stated on page 12 of Response to Comments, “Bonding is a discretionary action by the approving official. It is anticipated that a small bond would be required which would cover redistribution of dredged tailings if the operator did not meet this requirement.”

### Issue 6 - Mining Claim Validity

**Issue 6.1: In order for this mining claim to be authorized by the 1872 Mining Law it must be shown that the claim is valid. An economic analysis must be included in the EA as stated in 36 CFR 228.5.**

**Response:** There is no direction in the regulations that require a mining claim to be economical or “valid”. As page 15 of the Response to Comments states, “While the operator has located a placer mining claim that covers the stretch of the Vermilion River that is proposed to be dredged, neither the mining law, The Organic Act, nor 228 regulations require that the operator locate a claim prior to conducting mineral activities. Further, a claim need not be found “valid” under the mining laws prior to operations... While the government may at any time question a claim’s validity, there is no need to do so because these surface use activities are consistent with the KNF Forest Plan direction, Forest Service policy, regulations, and the mining law.”

**RECOMMENDATION**

I recommend the Forest Supervisor's decision be affirmed and the Appellants' requested relief be denied.

Thomas Pettigrew, Jr.

THOMAS PETTIGREW, JR.  
Reviewing Officer  
Director, Engineering