



Tom Kitchar - President
Waldo Mining District
P.O. Box 1574
Cave Junction, OR 97523

04/16/13

House Agriculture and Natural Resources Committee

RE: HB 2841

Dear Chairman Witt and Committee Members;

I am submitting the below documents to show the types and levels of issues Oregon miners face when dealing with such agencies as DEQ; and why consultation with the mining community is necessary in order to protect our congressionally granted statutory rights.

- ❖ "Issues & Concerns Regarding Proposed 700PM Permit "Final Draft"",
dated May 5, 2010.(14 pages)
- ❖ Rep. Gordon Anderson Ltr (to DEQ), dated April 12, 2010 (3 pages)
- ❖ Beth Deposition, dated Sept. 10, 2012 (3 pages)
- ❖ NEDC 1899; Executed Settlement Agreement (7 pages)

NOTE: In the drafting and issuing the 2010 700PM permit, and even after numerous formal requests for consultation were submitted to DEQ, DEQ ultimately refused to meet with the miners in consultation claiming there was no requirement to consult as the 2010 permit was issued as an order, not as a rule.

And by refusing to meet in consultation with the miners, the miners were stuck with what we believe to still be an illegal permit being issued under the wrong authority.

The documents will also show how, even when DEQ did consult with the miners, how the miners were ultimately lied to by DEQ, who reneged on a mutually agreed upon agreement.

The documents will also show how DEQ ignored a recent U.S. Supreme Court Case that had a direct bearing on the correctness of the 700PM permit; and how DEQ ignored one of the best and most powerful studies done on the effects on fish from placer mining.

The final document is a copy of a Settlement Agreement made between DEQ and the Northwest Environmental Defense Center (NEDC) without the knowledge or participation of the miners involved in the same litigation. The Settlement calls for DEQ recognition and consideration of a laundry wish-list of prohibitory restrictions on mining by NEDC, who are also granted special stakeholder status even though they never proved they had standing.

In this litigation, all three parties were made parties to each other's case (EOMA & WMD vs DEQ vs NEDC). EOMA intervened in NEDC's challenge, and then challenged NEDC's standing to challenge an order. After wasting 1-1/2 years withholding discovery documents to prove they had standing, DEQ & NEDC announced they had met in secret and reached a Settlement where DEQ paid NEDC \$7,500.00 and agreed to consider the wish list while drafting the upcoming 2014 permit. (In agreeing to the Settlement, DEQ denied the miners rights to have settled whether NEDC had standing in the first place).

Put bluntly, the miners MUST be consulted, as it is the only option open to the miners to protect their very real and unique statutory rights under the U.S. Mining Law from ignorance, stubbornness, mis-interpretations, and a possible green agenda by agencies of the state.

Thank you for considering my comments.

Please vote yes on HB 2841.

Submitted by;

Tom Kitchar - President
Waldo Mining District
P.O. Box 1574
Cave Junction, OR 97523

mythicalmining@cavenet.com

ISSUES & CONCERNS REGARDING
PROPOSED 700PM PERMIT "FINAL DRAFT"

T. Kitchar May 5, 2010

Dear DEQ;

The below is a list of concerns or issues I (and others) have identified with DEQ's Final Draft; along with a short comment or discussion as to why there is a concern.

PAGE 1:

A. CONCERN: Permit is issued partially pursuant to **Sec. 402 of the Clean Water Act (CWA)**.

COMMENT: Sec. 402 does not apply to the discharges from instream small-scale placer mining such as from a suction dredge, hand sluice, rocker, or pan. Sec. 404 under Army Corps applies. Because of this, it is our belief that this permit, as proposed, is invalid and everything in this permit is moot. I would also point out that recently, the State of Idaho and or the EPA while drafting a new suction dredge mining permit proposed a NPDES permit. It appears the State of Idaho has now backed away from NPDES permitting because of the recent court decision in Couré Alaska.

Be that as it may, DEQ may find the below concerns with the proposed 700PM useful.

B. CONCERN: Under "**Sources Covered**":

1) small suction dredges having an intake nozzle with an inside diameter not exceeding four inches and a motor no larger than 16 horsepower,

COMMENT: This mirrors DSL's Essential Salmon Habitat (ESH) rules and has no reason to be in this permit. Providing the operation meets the turbidity limit (whatever it ends up being), there is no logical reason to restrict dredge size (and I believe DSL's rules in "non" ESH stream place no limit on dredge size or hp.... but instead call for a permit if you move over 50 cu/ydrds).

Also, although Army Corp has exempted 4" dredges and under (as de minimus), they do, if you

ask, require a permit or letter of authorization for dredges over 4" hose.

Lowered allowable engine hp eliminates or restricts the use of extra long suction hoses or "high-lift" dredges, or large air compressor, etc.. It also says "...and a motor...", which could be used to prohibit dredges with more than one motor.

Restricting dredge size is solely based on a potential to cause turbidity beyond the limit, not based on any real science. Restricting dredge size & hp could easily make mining uneconomic; possibly to the point a claim could not be worked at a profit, possibly causing a claim to be declared invalid.

2) in-water nonmotorized mining equipment used for recovering precious metals or minerals from stream bottom sediments, and

COMMENT: These methods date back to the 1850's and earlier. They are accepted "historical methods" that have been in practice since before Oregon was a state. DSL does NOT automatically require a permit for non-motorized hand placer mining methods. In ESH streams, you can move up to 1 cu/yrd per site, or up to 5 cu/ydrds cumulatively per stream, per year; before needing a permit. In in a "non" ESH stream (or segment), I believe you can move up to 50 cu/ydrds without a permit. Generally speaking, even a 2" suction dredge will out-perform the typical 48 inch handbox. Rockers and pan do even less.

"in-water nonmotorized mining equipment..." could be taken to mean sluices, rockers, gold pans (see #3 below), and even metal detectors used "in-water" (and makes one wonder where a battery-operated device (such as a gold wheel) falls into the equation). A SHOVEL falls into this category!

With the built-in restrictions of the "In Water Work Period" (IWWP), this new permit used in SW Oregon will prohibit even panning on a mining claim, or on federal lands open to locatable mineral mining under the U.S. Mining Laws for nine (9) months of the year unless you obtain a waiver from ODFW. By regulating mining all the way down to and including panning & sluicing, there is no form of in-stream placer prospecting or mining that does not require a permit from DEQ. In otherwords, by prohibiting even panning nine months out of the year, DEQ is imposing a de facto mineral withdrawal with no authority.

3) recreational hand panning is not required to obtain a permit.

COMMENT: By definition (ORS 517.120(4), "recreational" hand panning (or any other form of "recreational" prospecting or mining) can only occur on lands closed or withdrawn from locatable mineral mining under the U.S. Mining Law. These lands include Forest Service or BLM lands withdrawn from mining, state and county lands, etc.. Under the U.S. Mining Laws, even "gold panning" is considered "mining". With this exemption, it means that gold panning on federal lands open to locatable mineral mining will or could require a DEQ permit.

We need to get all non-motorized methods exempted!

C. CONCERN: Under “**Scope of Permitted Activities**”, DEQ states: “...*persons registered under this permit must also comply with all other applicable local, state, and federal requirements to include but not limited to:...*” and lists 10 other governmental agencies. Violations of any of these other agency restrictions would be an automatic violation of the 700PM permit, subject to all the ridiculous fines in Schedule D.

(NOTE: The 2005 700PM permit does not mention compliance with other agency restrictions except for DSL Fill & Remove.)

Does anyone know if item “f.” (Oregon Department of Water Resources) claims any jurisdiction over in-stream mining?

PAGE 2:

CONCERN: Under “**Definitions**”, item #2 defines “**Daylight hours**”.

COMMENT: This was in the 2005 700PM, and should have been challenged. DEQ does not want us mining when we can’t see the turbidity due to low light levels. Under “Monitoring Conditions” DEQ states that monitoring must be done at least “daily”, or anytime conditions change.

IF, after working all day and seeing that what you are doing isn’t even coming close to reaching the max. limit of turbidity, and nothing else changes, there is no reason to force the mining to stop just because it’s getting dark. Carried to the extreme, it could prohibit panning your cons down at the end of the day!

PAGE 4:

CONCERNS Under “**Coverage and Eligibility**”:

1. Activities covered by this permit may not discharge pollutants to waters of the state except in compliance with this permit.

COMMENT: These methods of in-stream mining do not discharge “pollutants”.

3. This permit does not authorize mining of stream banks or upland areas outside the wet perimeter of the stream. Processing placer ore obtained from outside the wet perimeter (upland) is prohibited under this permit.

COMMENT: Needs to include item 12 of Schedule C: *“Except as restricted in Oregon Scenic Waterways or Essential Salmon Habitat, dredging is allowed into gravel bars up to 10 feet outside the wet perimeter of the stream. In no case is dredging of stream banks allowed.”*

4. *Any person not wishing to be covered or limited by this permit may apply for an individual permit in accordance with the procedures in OAR 340-045-0030.*

COMMENT: I haven't checked OAR 340-045-0030 (yet), however, for the last 2 years at least, DEQ has been saying that because there was no “general permit” available for in-stream non-motorized hand sluicing operators would need to apply for a Individual Permit which costs about \$11,000.00. This was mentioned in the Background Sheet DEQ put out for the Town Hall meeting on 4/13.

However, on Page 5 of the DEQ “Fact Sheet” accompanying the Final Draft it states: *“A suction dredge having a hose greater than 6 inches but more than 8 inches will be required to obtain a low cost (\$300) individual NPDES permit.”* So which is it? \$11,000, or \$300? And if it's \$300, why has DEQ been telling us for years it would be \$11,000?

It would also be nice to see what's involved in obtaining one of these IPs..... and if it is even possible..... and what, if anything, would it allow that the GP doesn't allow.

Will an Individual Permit allow visible turbidity beyond 300 ft.?

PAGE 5:

SCHEDULE A

DISCHARGE LIMITATIONS

1. *Suction dredges and in-water nonmotorized equipment as authorized by this permit must not create visible turbidity beyond 300 feet downstream or downcurrent. No pollutants or wastes may be discharged and no activities may be conducted that will violate Water Quality Standards as adopted in OAR Chapter 340, Division 41.*

CONCERN: Why “300 feet”? What science proves, or even hints that the low levels of turbidity (maybe 5-6 NTUs) even 1-200 feet below a dredge hurts anything?

COMMENT: On Page 8 of the DEQ “Fact sheet”, DEQ states:

“In the Canyon Creek (1986) report, the background turbidities were less than 1 NTU with one or two readings of 3 NTU. In the field data for the 4 inch aperture dredge the background turbidity reading was 0.88 NTU, the turbidity 13 feet from the dredge was 5.6 NTU and at the end of the measured distance of 164 feet the turbidity was 2.85 NTU. Since at the distance of 164 feet the turbidity was reduced by half, ***it is assumed*** that the turbidity level would reach background levels or 10% above background (1.0 NTU) at a distance of 300 feet from the dredge. Certainly, the DEQ's requirement for no visible turbidity would be met at the 164 feet distance and the 300

feet distance for the dredges studied." (emphasis added)

Probably because Canyon Creek was a fairly large creek? No data is given on size of Canyon creek, or water flow. Further down on Page 5 of the DEQ "Fact Sheet" DEQ discusses the two dredge demonstrations given DEQ staff in late summer of 2004. The results from these two demos were given as:

ALTHOUSE CREEK: 4 inch dredge — BACKGROUND: 0.6 NTU
DIRECTLY BELOW DREDGE: 30 NTU
100 FEET BELOW DREDGE: 6.5 NTU
APPROXIMATELY 300 FEET BELOW DREDGE: 5.5 NTU (approx.)

Given these figure, no size dredge could operate in Althouse Creek under similar conditions. Using the theory that a 2 inch dredge processes 25% of what a 4 inch dredge processes, and assuming corresponding turbidity levels at the same rate of reduction, even a 2 inch dredge in Althouse Creek would have produced 7.5 NTU directly below the dredge, 1.62 NTU at 100 feet, and 1.37 NTU at 300 feet, when the only allowable turbidity using 10% above background was 0.66 NTU.

The figures given for the dredge demonstration in the Applegate river are incomplete, no background (NTU) data is given, although DEQ states that turbidity returned to 10% above background in less than 300 feet. This is simply because 1) the Applegate River is much larger than Althouse Creek, and 2) the dredge only sucked up relatively clean sand (there was no existing dredge hole at the Applegate site so dredging started at the streambed surface and never reached underlying hardpack layers; whereas in Althouse Creek, the site was at an existing dredge hole that had been worked all summer (previously) and the hole was down to bedrock, exposing layers of siltier material under the top loose sand layer.

3. *Measures to prevent violations such as, but not limited to, ceasing operations, moving the location of the operation, reducing process flow or using a smaller machine must be recorded in the monitoring log.*
 - a. *Record the **date, time, location** (e.g., GPS latitude/longitude reading, claim description), **mining operation description** (for example, hand sluicing with shovel and bucket; suction dredging with 4-inch nozzle/5hp engine; etc.), **preventative measure** (for example, moved from clay/silt deposit to gravel in channel; switched from 4-inch nozzle/5hp to 2-inch/2.5hp suction dredge); **record of the distance in feet that turbidity existed after taking preventative measure** (for example, turbidity plume length is approximately 55 feet; no visible turbidity plume etc.), **measuring device** (for example tape measure, GPS, rangefinder), and the **printed name of the person making the record in the monitoring log.***
 - b. *The log must be legible and available to authorities upon request.*
 - c. *The permit holder must maintain the records for at least five years.*

CONCERN: The whole idea of maintaining a monitoring log violates the self-incrimination clause of the U.S. Constitution. Furthermore, the actual maintenance of keeping such a log, in conditions at are, at best, damp if not soaking wet is nearly impossible.

Also, in many streams, especially high mountain creeks & gulches where there are no trails or roads along the stream, the actual hiking of 300 feet down a stream may be a major undertaking or impossible without first clearing a trail, which is; on FS or BLM lands and in riparian reserves, prohibited without first obtaining an approved Plan of Operations and the posting of a reclamation bond – even though the actual mining itself is deemed unlikely to cause a significant surface disturbance and as such requires no notice to the FS or BLM.

This provision to at least daily hike down the stream 300 feet forces miners and prospectors to actually create significant surface disturbances in or along streams, which will in turn force the operation from “insignificant” to “significant”, requiring federal approval under FS or BLM mining regulations. This is against the will of Congress, who approved such regulations so that operations not likely to cause a significant disturbance (i.e.; the type of non-motorized or small suction dredge covered by this permit) need not seek federal approval before commencing (or maybe never).

And what happens if the log falls in the creek?
Or the place of storage burns to the ground during the 3rd year?

4. *Suction dredge and in-water nonmotorized mining operations are prohibited during non-daylight hours.*

CONCERN: See Page 2 comments.

5. *Mining must not cause any measurable increase in turbidity in the Diamond Peak, Kalmiopsis, Eagle Cap, Gearhart Mountain, Mount Hood, Mount Jefferson, Mount Washington, Mountain Lakes, Oregon Islands, Strawberry Mountain, Three Arch Rocks and Three Sisters wilderness areas.* (emphasis added)

CONCERN: This is prohibitive not merely restrictive. This provision bans or prohibits any and all in-stream mining or prospecting (including so-called “recreational mining or prospecting”) within the above named federal Wilderness Areas. This is in direct violation of the 1964 Wilderness Act:

DEFINITION OF WILDERNESS

(c) (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

USE OF WILDERNESS AREAS

Sec. 4. (a) The purposes of this Act are hereby declared to be within and supplemental to the purposes for which national forests and units of the national park and national wildlife refuge systems

are established and administered and --

(1) Nothing in this Act shall be deemed to be in interference with the purpose for which national forests are established as set forth in the Act of June 4, 1897 (30 Stat. 11), and the Multiple Use Sustained-Yield Act of June 12, 1960 (74 Stat. 215).

(3)(b) ...wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

PROHIBITION OF CERTAIN USES

(c) Except as specifically provided for in this Act, **and subject to existing private rights**, there shall be no commercial enterprise (emphasis added)

SPECIAL PROVISIONS

(d) The following special provisions are hereby made:

(2) **Nothing in this Act shall prevent** within national forest wilderness areas any activity, including **prospecting**, for the purpose of gathering information about mineral or other resources, if such activity is carried on in a manner compatible with the preservation of the wilderness environment. (emphasis added)

(3) Notwithstanding any other provisions of this Act, until midnight December 31, 1983...Mining locations lying within the boundaries of said wilderness areas **shall be held and used solely for mining or processing operations and uses reasonably incident thereto; and hereafter, subject to valid existing rights**, all patents issued under the mining laws of the United States affecting national forest lands designated by this Act as wilderness areas shall convey title to the mineral deposits within the claim, together with the right to cut and use so much of the mature timber therefrom as may be needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available, and if the timber is cut under sound principles of forest management as defined by the national forest rules and regulations, but each such patent shall reserve to the United States all title in or to the surface of the lands and products thereof, and no use of the surface of the claim or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as otherwise expressly provided in this Act: Provided, That, unless hereafter specifically authorized, no patent within wilderness areas designated by this Act shall issue after December 31, 1983, except for the valid claims existing on or before December 31, 1983. Mining claims located after September 3, 1964, within the boundaries of wilderness areas designated by this Act shall create no rights in excess of those rights which may be patented under the provisions of this subsection. (emphasis added)

STATE AND PRIVATE LANDS WITHIN WILDERNESS AREAS

Sec. 5. (b) In any case where valid mining claims or other valid occupancies are wholly within a designated national forest wilderness area, the Secretary of Agriculture shall, by reasonable regulations consistent with the preservation of the area as wilderness, permit ingress and egress to such surrounded areas by means which have been or are being customarily enjoyed with respect to other such areas similarly situated.

COMMENT: Clearly, prospecting for the collection of mineral samples is a recreational, scientific, educational, and historical use; and as such, is allowed within wilderness areas. The provision in the permit prohibits any such uses against the express will of Congress.

Furthermore, the Act clearly exempts commercial enterprise from prohibition subject to valid existing rights. Unpatented mining claims within wilderness areas have been tested by the

federal government for validity. As a "valid claim", the owner thereof has private property rights including the minerals and the right to mine them. The permit provision is a taking of all valuable minerals located within the bed of flowing streams as there is no method known to man to extract those minerals without creating some turbidity. Zero tolerance is prohibitive.

Furthermore, in California Coastal Commission v. Granite Rock,

[8] Mines and Minerals ↪ **92.8**
260k92.8 Most Cited Cases

Even if Federal Land Policy and Management Act and National Forest Management Act together preempted extension of state land use plans to unpatented mining claims in national forest lands, California Coastal Commission's assertion that it would use permit conditions to impose environmental regulation, **not land use planning**, and Commission's identification of possible set of permit conditions not preempted by federal law, was sufficient.... (emphasis added)

The designation of federal public domain lands as "wilderness" is "land use planning", and as such, the prohibition on any turbidity by this provision of the permit cannot be used on it's own by DEQ to restrict or prohibit permissible activities.

PAGE 6:

SCHEDULE B

MONITORING REQUIREMENTS

COMMENT: Schedule B places a totally unworkable burden on the operator (besides asking the operator to self-incriminate themselves). Provision 1 requires visual monitoring "when mining conditions change". Obviously, the writers of this permit know nothing of in-stream mining... as the conditions are always changing. This language is vague, and would require constant monitoring.

SCHEDULE C

SPECIAL CONDITIONS Best Management Practices

- 1. Suction dredges or in-water nonmotorized mining equipment must be operated to ensure that there is no overlap of turbidity plumes from equipment used in the same waters.*

CONCERN: The provision creates a safety concern for operators desiring to work close together, especially in smaller streams where multiple turbidity plumes can not be kept isolated from each other. Also, there is no need for this provision as long as the plume from the lowest (downstream/down current) operation, added to the plume from an upstream operation does not otherwise exceed the turbidity limit.

3. *The permit holder must provide a safe passage for fish around and through the active mining area if the stream was historically or is currently inhabited by native migratory fish.*

CONCERN: This provision could be used to prohibit operations on lands or claims where at the time of location the stream was not historically or currently inhabited by native migratory fish but are then stocked with such fish after the date of location.

PAGE 7:

6. *Moving boulders, logs, or other stream habitat structure within the stream channel is allowed. However, in no case may this habitat structure be removed entirely **from the wet perimeter**.* (emphasis added)

CONCERN: This provision changes wording from the 2005 700PM permit which read:

Moving boulders, logs, or other natural stream infrastructure within the stream channel as described in Schedule A3 is allowed. However, in no case may this infrastructure be removed entirely **from the stream channel**. (2005 700PM, Schedule C(4)) (emphasis added)

COMMENT: Restricting placement of large objects to only within the "wet perimeter" may be prohibitive, unsafe, or even impossible. The previous permit allowed placement within the "stream channel". Where is the science that supports this new restriction?

9. *Diversions are not authorized under this permit including but not limited to rerouting or constructing stream channels or using devices such as **long toms**.* (emphasis added)

CONCERN: This restriction makes nearly all activities associated with in-stream placer mining impossible as even the movement of one (1) rock "may" cause a diversion, rerouting, or some channelization. Even the use of a small hand sluice commonly requires the movement of a few rocks to make clearance for the sluice and to funnel water into it. When dredging, once a hole is opened up, stream flow tends to pass through the hole, which could possibly be considered a diversion or channeling.

What is, according to DEQ, a "long tom"?

11. *The suction dredge equipment must be properly maintained and petroleum products managed as follows:*

CONCERN: Many of these provisions are unfair as they are only applied to miners. Fishermen and boaters are not required to keep all fuel 25+ feet from water, or have absorbent pads, etc. on hand... or for that matter, make entry of daily inspections in the monitoring log. To date, there is no evidence that miners spill petroleum products, whereas every year, many motor boats (and cars, trains, etc.) spill hundreds if not thousands of gallons into Oregon waters, and none are required to follow such restrictions.

PAGE 8:

13. *Discharges... must not affect drinking water sources.*

Explain "drinking water sources" (is this with, or without a water right?)

14. *Wheeled or tracked equipment used in-water is prohibited. With the exception of the small suction dredge and any life support system (for example, breathing air supply) necessary to operate the small suction dredge nozzle under water, **mechanized equipment may not be used below the ordinary high water mark.*** (emphasis added)

CONCERN: This provision could be interpreted to mean the use of com-a-longs or other non-motorized winching gear and motorized winching gear can not be used anywhere below the ordinary high water mark. We are back to the provision in the preliminary draft allowing the movement of large materials "by hand only with no tools". How a miner moves large materials is not the cause of turbidity in itself. What difference does it make (on turbidity) if a large rock is moved by ten people working together with no tools compared to one person moving the rock with a small portable winch? None. The rock still gets moved.

This provision would also prohibit the use of a wheelbarrow or other cart to move equipment or materials out of the way, and would prohibit the use of small shovel-in trommels or other forms of recovery equipment if they are "wheeled".

Provision needs to specify the use of wheeled or tracked "earthmoving equipment", such as bull dozers or backhoes in water is prohibited... not all wheeled or tracked equipment. Or, require a permit for backing a boat trailer into the water.

15. *Operators must ensure suction dredging equipment and in-water nonmotorized mining equipment does not house invasive species. Equipment must be decontaminated prior to its placement in Oregon waters. Furthermore, **dredging equipment used in multiple streams should be decontaminated before each deployment.** ODFW provides information including decontamination steps on aquatic invasive species. Discharge of decontamination solutions to waters of the state is prohibited.* (emphasis added)

CONCERN: Are all boaters, rafters, or anyone else placing any form of floating device or craft in Oregon waters required to do this?

CONDITIONS TO PROTECT OREGON SCENIC WATERWAYS, ESSENTIAL SALMON HABITAT, AND WILDERNESS AREAS

1. *Suction dredging is prohibited in the portions of the Clackamas River, McKenzie River, and North Santiam River subbasins that have been designated as Oregon Scenic Waterways, as provided in OAR 340-041-0350.*

COMMENT: If any of the land or stream located in those portions of the Clackamas, McKenzie or N. Santiam Rivers are public domain lands of the United States and are thus open to locatable

mineral entry under the U.S. Mining Laws, then such a prohibition is in violation of federal laws, is prohibitive and not regulatory in nature.

2. *Suction dredging and in-water nonmotorized mining in other Oregon Scenic Waterways must follow the applicable requirements provided in ORS 390.835*

COMMENT: If any of the land or stream located in those "other Oregon Scenic Waterways" are public domain lands of the United States and are thus open to locatable mineral entry under the U.S. Mining Laws, then such a prohibition is in violation of federal laws, is prohibitive and not regulatory in nature.

Where does DEQ get the authority to enforce the rules or regulations of other government agencies, especially without disclosing what the restrictions in those rules or regulations actually are? Furthermore, who is to say an agencies rules or regulations are, in fact, valid or legal? A good case in point is the recent decision by the Oregon Court of Appeals invalidating DEQ's 2005 700-PM permit for lack of authority.

One can argue that the State Scenic Waterway rules, as applied to federal public domain lands (i.e.; lands open to the U.S. Mining Laws) constitute a taking (by prohibiting all mining). If DEQ enforces these rules, then if tested in court, and if the rules are declared to be invalid or illegal, then DEQ, and its personnel, along with the Parks and possibly DSL can all be held liable. Enforcing State Scenic Waterway rules has no direct connection on allowable turbidity.

If DEQ lacks authority to enforce Sec. 404 (CWA), and DSL Fill & Remove rules, then it is doubtful DEQ has authority to include State Scenic Waterway rules (which are under the authority of State Parks & Recreation).

PAGE 9:

3. *Except when allowed by the applicable federal land management agency, suction dredging and in-water nonmotorized mining on Oregon Scenic Waterways that are located on federal lands is prohibited as provided in ORS 390. 835.*

COMMENT: What about the issues raised in #1 above? Mining, including suction dredge and non-motorized methods is allowed on all federal public domain lands open to the U.S. Mining Laws. Between items 1, 2, and 3 of this section, it appears DEQ is picking and choosing "when" mining is allowed on federal lands... something they do not have authority to do.

4. *Recreational placer mining in essential salmon habitat is restricted to the wet perimeter of the stream.*

COMMENT: Fine, provided the definition for "recreational placer mining" is ORS 517.120(4):

"Recreational mining" means mining in a manner that is consistent with a hobby or casual use, including use on **public lands set aside or withdrawn from mineral entry** for the purpose of recreational mining, or using pans, sluices, rocker boxes, other nonmotorized equipment and dredges with motors of 16 horsepower or less and a suction nozzle of four inches or less in diameter. (emphasis added)

On all public domain lands (i.e.; federal lands open or not withdrawn from mineral entry) all mining, including simple gold panning, is considered "mining". There is no such thing as "recreational mining" on federal public domain lands. And "mining" on such lands is a congressionally granted right, not a mere privilege.

Just as with DEQ attempting to enforce Sec. 404 of the CWA and State Parks & Recreation Scenic Waterway rules, here we see DEQ attempting to adopt or enforce DSL ESH rules. Where is the agreement between DEQ and DSL, or for that matter DEQ and Parks, or DEQ and the Army Corp. that lets DEQ enforce something they have no authority over?

CONDITIONS FOR DREDGING ON WATER QUALITY LIMITED STREAMS

1. *Until a total maximum daily load (TMDL) has been completed, suction dredging is prohibited in streams that are both listed as water quality limited for sediments, turbidity or toxics on the State 303(d) list under OAR 340-041-0046, AND were not placer mined under the 700-J permit after May 3, 1999.*

COMMENT: Who is to say whether such a stream was placer mined under the 700-J after May 3, 1999? What proofs are needed?

And why just "after" May 3, 1999?

When is this TMDL going to be completed?

DETERMINING COMPLIANCE WITH THIS PERMIT

1. *As allowed by state law, DEQ may ask other agencies to act as an agent to determine compliance with the limits, terms, and conditions of this permit.*

QUESTION: What state law? Under what authority?

3. *This permit does not authorize the permit holder to prevent or restrict the legitimate use of the waterway by other persons.*

COMMENT: Subject to valid existing rights. Miners operating under the U.S. Mining Laws are able to prevent or restrict any other use that materially interferes with, or is otherwise harmful to the mining or a danger to the general public (30 USC sec. 612(b)).

PAGE 10:

SCHEDULE D

NPDES GENERAL CONDITIONS
SECTION A. STANDARD CONDITIONS

NOTE: As already explained above, Sec. 402 of the CWA (NPDES permitting) is not authorized for these types of discharges.

PENALTIES: Ridiculously high (what are penalties for illegally killing a fish?)

PERMIT FEES (#9): Need to cite the OAR.

Several of the below items do not apply to these methods of mining, or are confusing as the requirements are not mentioned in Schedules A-C of this permit; such as:

SECTION B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. Proper Operation and Maintenance
The permit holder must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permit holder to achieve compliance with the conditions of this permit.

COMMENT: There are no facilities or systems of treatment and control.

SECTION C. MONITORING AND RECORDS

1. Representative Sampling

COMMENT: There is no mention of "sampling" elsewhere in this permit.

2. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR part 136, or in the case of sludge use and disposal, under 40 CFR part 503, unless other test procedures have been specified in this permit.

PROBLEMS IN GENERAL:

1. DEQ, like other state agencies, fails to recognize any difference between "recreational mining" and "mining". To add to the confusion, DEQ apparently is using DSL's definition of "recreational mining" instead of the legislatures definition in ORS 517.120(4).

2. In the "Fact Sheet", DEQ fails to list "mining" as a beneficial use of water or a public necessity or as "granted". Nor does DEQ make this distinction (i.e.; that use of water for mining

is a beneficial use, a public necessity, and is granted) anywhere else in the permit or notices/sheets, etc..

3. DEQ fails to see the difference between a Congressionally granted right and a mere privilege.

4. DEQ treats mining/miners differently (more restrictive) than other members of the public using motorized or floating equipment (who are, for the most part, more likely to do things like spill petroleum products – let alone deliberately kill fish).

5. If DEQ requires a permit to use a non-motorized sluice box or even a non-recreational gold pan, then why doesn't the kid at the beach require a permit to build sand castles at the beach?

6. And most important is that Sec. 402 of the CWA does not apply. And under ORS 468B.050, because these activities are legitimate and otherwise authorized (by state and federal mining laws), and because there is no constant or continuous discharge to the level of being toxic, chronic, harmful, or even measurably detrimental to anything, DEQ can, if it so wishes, exempt these activities from any permitting altogether (assuming (and I do not) that DEQ has any authority other than 401 Certification.

Tom Kitchar – President
Waldo Mining District
P.O. Box 1574
Cave Junction, OR 97523

REPRESENTATIVE GORDON S. ANDERSON

(NOTE: All emphasis in original)

April 12, 2010

Oregon Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204

Dick Pedersen, Director
Neil Mullane, Administrator, Water Quality Division
Annette Liebe, Manager, Surface Water Section
James Billings, Compliance Specialist, Water Quality Program

RE: PROPOSED NEW INSTREAM/SUCTION DREDGE MINING GENERAL PERMIT AND DEQ'S FAILURE TO CONSULT WITH AFFECTED PARTIES.

Dear DEQ;

I have recently been contacted by a number of my former constituents whom I had the pleasure to serve as their Oregon State Representative from 2003 to 2007. In particular, during 2004-2005, I had the pleasure of assisting members of Oregon's small mining and suction dredge mining community through a rather lengthy consultation process between the staff at DEQ, members of the Oregon Legislature, and representatives from the mining community while DEQ drafted the new 700-PM Suction Dredge Mining Permit which was eventually adopted in July of 2005. In my official capacity, I helped arrange and was present at suction dredge demonstrations, and multiple meetings at the Capitol to help ensure Oregon's miners received fair treatment and the required permit. Sad to say, it appears as though the miners received neither.

I have recently been informed that the Department is currently putting finishing touches on a new mining permit to replace the 700-PM when it expires at the end of June, 2010. It is my understanding that DEQ is currently planning to release a Final Draft of the new in stream mining permit for public comment on or about April 22, 2010, and that DEQ is proposing several major, more restrictive changes to the existing permit.

And, I'm sorry to say, it is my understanding that the Department, to date, has not met in consultation with any of the affected parties pertaining to the new permit, as required by ORS 517.125. Not only that, but according to a "Town Hall Background Sheet" distributed by the Dept. via email on April 9, certain elements of the previous permit, which were originally proposed by the Department as a bargaining point and adopted through the consultation process, are now being removed from the permit without any consultation with the affected parties.

BACKGROUND: On March 10, 2005, a meeting was held at the request of the Department. at the Capitol to discuss elements of the proposed permit. Legislators at that meeting included Representative Tom Butler, Cheryll Adkins, an aide from Senator Jason Atkinson's office and myself. Department staff included Holly Schroeder – Water Quality Administrator, Mark Charles, and Scott Manzano. Representing approximately 1,500 individual Oregon miners were John Holleman and Nick Koepling of the Mineral Resources Legal Foundation, Tom Kitchar – Waldo Mining District, Tom Quintal – Willamette Valley Miners, Guy Michaels – Eastern Oregon Mining Association, Jim Foley and the Waldo Mining District's attorney, James Buchal.

The meeting opened by the Department's proposed compromise, which was that the Department was prepared to exempt (based on data taken at several suction dredge demonstrations in 2004) all suction dredges with intake hoses smaller than 4.0 inches interior diameter from any turbidity restrictions or monitoring. This exemption was offered to the mining community "if" the mining community agreed to not challenge new legislation the Department was introducing to amend the statutes so that the Department. could charge a \$25.00 per year fee for all 700-PM permits.

During more than an hour of discussion, when asked by the miners why larger dredges couldn't also be exempted, Holly Schroeder, Mark Charles and Scott Manzano repeatedly stated that they had the data and were prepared to defend the decision to exempt the smaller dredges, even in court; but could not defend an exemption for dredges with hoses 4.0" (I.D.) and larger. Before the close of that meeting, all parties involved agreed to the "deal" as proposed by the Department. New legislation was passed to allow the Department to charge for the permit, and the smaller dredges received the exemptions on turbidity.

In the current situation, I find it extremely disappointing that an agency of the State of Oregon is now apparently fully prepared to go back on its word to the mining community and members of the legislature, and renege on a duly bargained compromise adopted in full consultation with the affected parties and originally proposed by the of the current permit..... especially in light of the fact that the Department seemingly has no new data or evidence to support any change in the conditions. If there is new, valid, scientific evidence, please forward it to me for communication to present legislators. Please also forward to me a list of any meetings you may have had with the environmental community on this proposed permit.

After some investigation into the history of the current 700-PM permit, and the legal challenges against it, along with what I have seen of the proposed new permit; it strongly appears as though the Department is dismissing Oregon's miners and their strong basis in Federal mining rights in favor of hopes to appease the environmental community so that they do not issue a challenge to the new permit. **I find it deeply disturbing that an agency of the State of Oregon is prepared to restrict the statutory rights of miners under the U.S. Mining Laws, without any new data or information, simply because there might be a challenge to the permit**

Furthermore, in light of the outcome of the challenge to the 700-PM permit brought by the miners (in which the miners won and the permit was declared invalid), it seems prudent for the Department to be listening more to the mining community (who are after all experts at this type of mining), and less to an organized effort to restrict such mining to the point of a prohibition.

I would remind the Department that unlike any other group of citizens, those individuals operating under the U.S. Mining Laws have congressionally granted statutory rights (to mine and to the property) which may not be unreasonably infringed. If the end result is the protection of Oregon's environment, the Department needs the cooperation of the mining community. Breaking faith with the miners and renegeing on an agreed upon compromise, along with the other proposed restrictive conditions (especially with a total lack of new data or evidence to support such changes), is guaranteed to remove any trust or cooperation the Department may have enjoyed with the mining community in the past.

As a former legislator of the State of Oregon, I strongly urge the Dept. to meet in honest consultation with the representatives of the mining community as required by statute before releasing any Final Draft of the permit for public comment.

Thank you.

Respectfully;

GSA (signed copy to follow by regular mail)

Gordon S. Anderson
Oregon State Representative 2003-07 (Retired)

Gordon S. Anderson 425 SE M Street Grants Pass, OR 97526 541-476-3059

DEPOSITION OF E. M. (DEQ Permit writer)

Taken in behalf of Plaintiffs (Eastern Oregon Mining Association & Waldo Mining District)

Monday, September 10, 2012

Questions by attorney for the miners.

Answers by E. M., DEQ permit writer.

Q Did you ever hear any discussion of the United States Supreme Court case that was issued in the summer of 2009 called Coeur Alaska vs. Southeast Alaska Conservation Council?

A Yes.

Q And was that case discussed within DEQ?

A No.

Q Did anyone within DEQ ever express the opinion that the Court of Appeals' interpretation of the Coeur Alaska case made no sense?

A Not that I'm aware of.

Q Did you happen to read the Coeur Alaska case?

A No.

Q Do you know if anyone in DEQ did?

A No.

Q Do you understand what the Supreme Court's holding in the Coeur Alaska case was?

A Would you repeat the question?

Q Do you understand what the United States Supreme Court's holding in the Coeur Alaska case was?

A From reading what is in this August 4, 2010.

Q So you believed Mr. Knudsen when he said that the Coeur Alaska case held that 402 covered the discharges suspended in the water and 404 covered the heavier stuff?

A Yes.

Q Would it surprise you to learn that the entire point of the Coeur Alaska case was that a dual-permitting regime made no sense whatsoever and it had to be one agency or the other?

A I don't know.

NOTE: Because DEQ refused to meet in consultation with the miners in 2010, DEQ staff were unaware or misinformed regarding the Coeur Alaska case; which lead directly to the issuance of another improper or illegal permit for suction dredge mining in 2010.

Q Did you review the studies provided by the miners?

A In the response to comments, we referenced studies that we looked at that miners pointed us to. It was a 1939 study, I did not look at.

Q You didn't look at that one?

A No.

Q Why not?

A I was asked to look at more recent information.

Q Who told you to do that?

A It was a request of public comment by the miners.

Q Are you saying that the miners both submitted a 1939 study and told you not to look at it?

A No.

Q What are you saying then?

A That miners submitted a comment to look at the 1939 study, and DEQ responded we did not look at that study.

Q Why? Why didn't DEQ look at it?

A Because it was an older study.

Q Any other reason?

A Not that I know.

Q Would it surprise you to know that that study was conducted in the Rogue River under mining conditions that resulted in far greater impact than suction dredge mining and was able to identify no adverse effect on fish?

A Would it surprise me?

COMMENTS IN SUPPORT OF HB 2841 -- Submitted by Tom Kitchar, Waldo Mining District
P.O. Box 1574, Cave Junction, OR 97523

Q Yes.

A No.

Q Were there other studies that were provided by the miners that DEQ did not evaluate?

A Not that I know.

Settlement Agreement and Release of Claims

This SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS ("Agreement") is entered into by NORTHWEST ENVIRONMENTAL DEFENSE CENTER, KLAMATH-SISKIYOU WILDLANDS CENTER, ROGUE RIVERKEEPER, HELLS CANYON PRESERVATION COUNCIL, PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS, INSTITUTE FOR FISHERIES RESOURCES, OREGON COAST ALLIANCE, OREGON WILD, MARK RISKEDAHL, OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY, and DICK PEDERSEN, collectively referred to as the "Parties."

Definitions

- A. "Petitioners" means Northwest Environmental Defense Center, Klamath-Siskiyou Wildlands Center, Rogue Riverkeeper, Hells Canyon Preservation Council, Pacific Coast Federation of Fishermen's Associations, Institute for Fisheries Resources, Oregon Coast Alliance, Oregon Wild, and Mark Riskedahl collectively.
- B. "DEQ" means the Oregon Department of Environmental Quality and Dick Pedersen collectively.
- C. "*NEDC v. DEQ*" refers to the petition for review filed by Petitioners challenging DEQ's issuance of the 2010 700-PM Permit.
- D. "2010 700-PM Permit" means the NPDES general permit issued by DEQ on July 30, 2010, to cover small-scale suction dredge mining in Oregon waterways and the permit at issue in *NEDC v. DEQ*.
- E. "Revised Suction Dredge Permit" means the renewal NPDES general permit for suction dredge mining in Oregon that replaces the 700-PM permit, regardless of whether it is referred to as "700-PM."

Recitals

- A. On April 22, 2010, DEQ issued for public review and comment the draft 2010 700-PM Permit, to regulate small-scale suction dredge mining in Oregon waters pursuant to the Clean Water Act and Oregon law.
- B. Between April 22, 2010, and June 8, 2010, members of the public, including Petitioners, informed DEQ about their concerns regarding the legality of DEQ's proposed 2010 700-PM permit, and the sufficiency of the public process through which it was developed.
- C. On July 30, 2010, DEQ issued the final 2010 700-PM Permit.

- D. On September 28, 2010, Northwest Environmental Defense Center, Klamath-Siskiyou Wildlands Center, and Mark Riskedahl filed an initial petition for review before the Multnomah County Circuit Court, initiating *NEDC v. DEQ*, and challenging the legality of the 2010 700-PM Permit.
- E. On January 18, 2011, all Petitioners filed an amended petition for review with the Multnomah County Circuit Court, asserting substantially the same claims as the initial petition for review.
- F. On January 27, 2011, the Multnomah County Circuit Court entered an Order to change venue and transferred *NEDC v. DEQ* to the Marion County Circuit Court, where the petition was ultimately consolidated with separate petitions for review filed by the Eastern Oregon Mining Association, et al. and Waldo Mining District, et al.

Agreement

- 1. Within fourteen (14) days of execution of this Agreement, Petitioners agree to file a Notice of Dismissal Without Prejudice in *NEDC v. DEQ*.
- 2. Petitioners do not waive their right to challenge, in any court, the legality of any future versions of the 700-PM Permit, other permits regulating discharges from small-scale suction dredges, or any other permits that DEQ may issue in the future.
- 3. DEQ agrees to initiate (as detailed in Paragraph 4) the process for renewing the Revised Suction Dredge Permit in December 2012 in consultation with involved stakeholders, and agrees to finalize the Revised Suction Dredge Permit by July 30, 2014.
- 4. During the renewal period for the Revised Suction Dredge Permit, and prior to the mandated public comment period, DEQ agrees to undertake at least the following actions to facilitate stakeholder input:
 - a. December 2012:
 - i. Begin internal administrative procedures to initiate permit-renewal process;
 - ii. Decide which groups and individuals DEQ will invite to participate as stakeholders, including no fewer than two members of Petitioners' organizations or their legal representatives.
 - b. January 2013:
 - Send invitation to selected groups and individuals to attend facilitated meeting in February or March of 2013. Invitation will include the Terms, Issues, and Strategies identified in Sections 5-7 of this Settlement Agreement for consideration as well as any additional Terms, Issues, and Strategies that DEQ wants the groups and individuals to consider.

- c. February/March 2013: Convene and facilitate at least one general meeting of all the involved stakeholders, seeking initial feedback on the POTENTIAL PERMIT TERMS, ISSUES, and STRATEGIES detailed in the following paragraphs of this Agreement.
 - i. At the initial stakeholder meeting, DEQ will provide stakeholders with a briefing on the legal situation in California regarding the regulation of recreational suction dredge mining.
 - ii. As part of the briefing, DEQ will provide stakeholders with access to at least the following materials developed in the California process: Draft Subsequent Environmental Impact Report (DSEIR) (including Appendix D, Literature Review), Final Subsequent Environmental Impact Report (FSEIR).
 - iii. DEQ will also accept comments from stakeholders on how California's experience regarding the regulation of recreational suction dredge mining may be useful in the Oregon permitting process.

 - d. April through June 2013:
 - i. Consider feedback from involved stakeholders on the POTENTIAL PERMIT TERMS, ISSUES, and STRATEGIES received at or as a result of the general meeting;
 - ii. Divide the involved stakeholders into smaller stakeholder teams based on the nature of each stakeholder's interest in regulating suction dredge mining; and
 - iii. Re-circulate the POTENTIAL PERMIT TERMS, ISSUES, and STRATEGIES, as modified by DEQ after considering feedback from the first general stakeholder meeting, to the stakeholder teams.

 - e. July through December 2013: Meet at least twice with each stakeholder team individually to discuss the teams' reactions, proposed findings, and suggestions regarding the revised POTENTIAL PERMIT TERMS, ISSUES, and STRATEGIES.
5. DEQ agrees to ask the stakeholders to consider the following POTENTIAL PERMIT TERMS and to ask the stakeholders to propose findings as to the benefits and feasibility of each term:
- a. Suction dredge mining is prohibited in:
 - i. Stream segments that are water quality limited for sediment, turbidity, or toxics/metals;
 - ii. Recreational/special designation areas:
 - A. Waters in the National Wild and Scenic River system;
 - B. Waters within state parks or other recreational areas;
 - C. Waters within all Wilderness areas, National Monuments, and designated botanical areas; and

- iii. Segments with fish as designated beneficial use:
 - A. Essential Fish Habitat;
 - B. Essential Salmon Habitat;
 - C. Segments of waterways where salmonid spawning is known to occur; and
 - iv. Critical habitat for aquatic listed species under the federal Endangered Species Act.
- b. Monitoring, Record-Keeping and Reporting:
- i. Permit registrants must complete contemporaneous daily logs of suction dredge mining activity, recording the location (including stream segment and Township/Range/Section Number) and how many cubic yards were mined.
 - ii. After each mining season, each permit registrant must submit an annual report to DEQ, which summarizes where (including stream segment and Township/Range/Section Number), when (how many days, and on what dates), and how many cubic yards were mined. Annual report submissions must include all daily logs from the relevant mining season.
 - iii. Permit registrants must comply with any other applicable monitoring and reporting requirements in 40 C.F.R. §§ 122.41(j)(3); 122.44(i)(2); 122.48.
- c. To be covered under the Revised Suction Dredge Permit for each mining season, each applicant must submit the previous year's year-end report, and be current on fees.
- d. The suction dredge operator permit number must be stenciled on or affixed to all dredges being operated by persons registered under the permit at all times and in a manner that is clearly visible from both stream banks.
- e. Dredging within three feet of the lateral edge of the current water level, including the edge of in-stream gravel bars or under any overhanging bank, is prohibited.
- f. Dredging on substrates predominated by silt and clay materials, the disturbance of which would significantly increase turbidity, is prohibited.
- g. Movement of any material embedded in the banks of rivers or streams, or any cutting, movement, or destabilization of instream woody debris, such as root-wads, stumps or logs, is prohibited.
- h. Constructing dams, weirs, or any other in-water structures that concentrate or alter the natural course of current or streamflow, is prohibited.
- i. Importing any earthen or fill material into a stream, river, or lake is prohibited.
- j. No fuel, lubricants, or chemicals may be stored within 100 feet of the current water level and a containment system must be in place beneath the fuel,

lubricants, or chemicals. The containment system must be sufficient in size to completely accommodate the full volume of all fuel, lubricants, and chemicals without overtopping or leaking.

- k. Before relocating a suction dredge to another waterbody, water shall be drained from all equipment for at least two weeks or the suction dredge and associated equipment must be decontaminated. Decontamination must be consistent with the existing invasive species decontamination protocol established by the Oregon Marine Board.
6. DEQ agrees to ask the stakeholders for their input on the following ISSUES and agrees to ask stakeholders to propose findings regarding:
- a. The cost to DEQ to administer, regulate, and enforce suction dredge mining compliance with the CWA on a yearly basis;
 - b. The revenue received by DEQ from suction dredge mining permit fees on a yearly basis;
 - c. Whether DEQ should propose an amendment to the current statute governing permit fees for suction dredge mining;
 - d. If, and only if, the Oregon State Legislature amends the statutory permit fee structure for suction dredge permits, the stakeholders will be asked to consider the additional issue of whether permit registrants should be required to re-apply on an annual basis;
 - e. Whether suction dredge mining has the potential to negatively impact
 - i. Salmonid habitat;
 - ii. Lamprey habitat; and
 - iii. Freshwater mollusk habitat;
 - f. Whether or not suction dredge mining, through the re-suspension and discharge of mercury, has the potential to contribute to:
 - i. Mercury loading to downstream reaches/waterbodies;
 - ii. Methylmercury formation in downstream reaches/waterbodies; and
 - iii. Mercury bioaccumulation in aquatic organisms in downstream reaches/waterbodies;
 - g. Whether it is possible to substantially mitigate the environmental impacts of suction dredge mining;
 - h. The feasibility of developing and using an on-line system for permit holders to submit annual reports;

- i. The feasibility of requiring discharge monitoring reports and the content of any discharge monitoring report submitted;
- j. The feasibility of requiring permit registrants to submit photographic documentation of dredging activities; and
- k. Whether a suction dredge applicant who is seeking to conduct operations in a new area (i.e. one that is allowed under the terms of the permit but where the applicant has not previously conducted suction dredge mining operations under a previous NDPEs permit) is a new discharger, and the feasibility of implementing any resulting requirements.

While DEQ will ask stakeholders for their input on the issues above, nothing in this settlement agreement commits the agency to providing stakeholders with information on these issues that is not in its possession at the time the stakeholders consider these issues.

7. DEQ agrees to ask the stakeholders to consider the following STRATEGIES for reducing the environmental impacts of suction dredge mining on Oregon waterways, and agrees to ask stakeholders to propose findings as to the benefits and feasibility of each strategy:
 - a. Whether to place limits on the amount of dredging that can occur under the permit and, if so, how to establish any such limits;
 - b. Whether to prohibit suction dredge mining in segments of waterways with less than a certain average summer flow;
 - c. Whether to prohibit suction dredge mining under the permit in segments of waterways where the substrate is more than a specified percent silt or clay;
 - d. Whether to limit the amount of mining to be conducted under the 700-PM based on a consideration of ecosystem impacts;
 - e. Other strategies that would include reasonable restrictions on the time, location and amount of dredging that should be allowed on any particular waterbody or allowed under the general permit.
8. The Parties recognize that circumstances outside the reasonable control of the Parties could delay compliance with the obligations imposed by this Agreement. Such circumstances include, but are not limited to, significant and unforeseen funding shortfalls for DEQ or unforeseeable environmental catastrophes placing immediate demands on DEQ's time or resources. The Parties' obligations under this Agreement are expressly subject to change if an intervening alteration in the underlying law would make any party's performance illegal.

9. If any party fails to meet its obligation(s) or deadline(s) as set forth in this Agreement for any other reason other than those provided in Paragraph 9, either party may seek to enforce this Agreement in court, and Petitioners may re-file *NEDC v. DEQ*.
10. Fees and Costs. DEQ agrees to pay Petitioners \$7,500 in attorneys' fees and for costs. DEQ agrees to send payment to the Pacific Environmental Advocacy Center within thirty (30) days of execution of this Agreement.
11. Waiver. Waiver by a party of any breach of any provision of this Agreement, or failure of a party to insist on strict performance of any provision of this Agreement, shall not constitute waiver of any subsequent breach.
12. Severability. If any portion of this Agreement is void or unenforceable, the Parties agree that such portion shall be considered severable from the remainder, and the remainder of the Agreement shall remain valid.
13. Entire Agreement. This Agreement represents the entire Agreement between the Parties and may be modified only by a writing signed by all Parties.

Respondents **DICK PEDERSEN, and
OREGON DEPARTMENT OF
ENVIRONMENTAL QUALITY**

By: *Jon Hammond for Dick Pedersen*

Name: JONI HAMMOND

Title: Deputy Director

Date: 5-7-12

Petitioners **NORTHWEST
ENVIRONMENTAL DEFENSE
CENTER, KLAMATH-SISKIYOU
WILDLANDS CENTER, ROGUE
RIVERKEEPER, HELLS CANYON
PRESERVATION COUNCIL, PACIFIC
COAST FEDERATION OF
FISHERMEN'S ASSOCIATIONS,
INSTITUTE FOR FISHERIES
RESOURCES, OREGON COAST
ALLIANCE, OREGON WILD, and
MARK RISKEDAHL**

By: *Allison LaPlante*

Name: Allison LaPlante

Title: Attorney for Petitioners

Date: 5/8/12