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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

IDAHO CONSERVATION LEAGUE,)	No. 1:18-cv-353-REB
)	
Plaintiff,)	
)	
v.)	DECLARATION OF JONATHAN D.
)	OPPENHEIMER
SHANNON POE,)	
)	
Defendant.)	
_____)	

I, JONATHAN D. OPPENHEIMER, state and declare as follows:

1. My name is Jonathan D. Oppenheimer, and I am resident of Boise, Idaho. I am employed by the Idaho Conservation League (“ICL”) as its government relations director. I have been employed in that capacity for 3 years, and in other similar capacities at ICL for nearly 17 years. I am also a member of ICL. I have been an ICL member since 2002.

2. Attached as exhibits to this declaration are true and correct copies of the following documents:

Exhibit A: Shannon Poe’s 2014 Idaho Department of Water Resources (“IDWR”) permit application, which I received from IDWR in response to a public records request.

Exhibit B: Poe’s 2015 IDWR permit application, which I received from IDWR in response to a public records request.

- Exhibit C:** A letter dated June 14, 2016, which I received from Shannon Poe in response to ICL's May 2016 notice of intent to sue.
- Exhibit D:** Poe's 2018 IDWR permit application, which I received from IDWR in response to a public records request.
- Exhibit E:** Consent Order And Agreement signed by Shannon Poe and IDWR on August 7, 2018, which I received from IDWR in response to a public records request.
- Exhibit F:** August 10, 2018, Violation Notice issued by the Forest Service to Shannon Poe, which I received from the Forest Service in response to a Freedom of Information Act request.
- Exhibit G:** July 22, 2015 Forest Service Mineral Inspection Form of South Fork Clearwater dredging, which I received from the Forest Service and National Oceanic and Atmospheric Administration in response to Freedom of Information requests.

3. I have a deep personal and professional connection to Idaho's Clearwater River basin ("the Clearwater") and the South Fork of the Clearwater River ("South Fork"). The Clearwater is a remarkable landscape made up of diverse forest ecosystems that provide habitat for robust populations of terrestrial and aquatic wildlife. Much of the Clearwater is made up of public lands where I have focused professional efforts for ICL on understanding and advocating for ecological health.

4. I also love to visit the Clearwater for personal reasons due to the many special and unique features found in the area, including its waters, forests, fish, and wildlife, and the diverse recreational, aesthetic, and spiritual experiences the area affords. For example, the Clearwater continues to harbor most of the native species that were originally present in the area when Lewis and Clark traversed the area in the early 1800's. I have personally seen many different wildlife species and their sign in the region and have a robust appreciation for the importance of protecting the natural values that are found within the Clearwater.

5. Because of my love of the region, I have spent a significant amount of time exploring the Clearwater.

6. My first introduction to the Clearwater was as a college student at the University of Montana while I was studying forestry and soils. We visited DeVoto Grove and the Lolo Pass area to study the unique disjunct coastal rainforests and ash-cap soils that resulted from the eruption of Mount Mazama thousands of years before. My introduction to this place triggered an appreciation for the unique plants, resources, and history of this landscape that inspired me to return on my own.

7. Over the course of my college career, I visited the area to hike, backpack, and camp and to enjoy the natural environment as well as to enjoy several geothermal springs found along the Lochsa River Corridor adjacent to, and within, the Selway-Bitterroot Wilderness Area.

8. Later, after I graduated from the University of Montana and moved to Moscow, Idaho, I continued to regularly visit the Clearwater. I still remember one of my first trips to the South Fork when I took my wife and young family to Elk City, Idaho, during the winter of 2002. Elk City is near where headwater streams come together to form the South Fork. In several feet of snow, a herd of elk gathered in the meadow just outside of town. Because of the deep snow, and because a road grader tumbled into the Crooked River, we were not able to stay at the Walker Cabin as planned. Nonetheless, we enjoyed snowshoeing and exploring the region, and I knew it was an area that I would return to.

9. After moving to Boise in 2004, I continued to plan, and go on, an annual backpacking and fishing trip in North-Central Idaho. These trips often bring me to the Clearwater.

10. Every summer I spend as much time in the Clearwater as my busy schedule allows. Most years, I make at least one personal trip to the area. For example, I've gone on weeklong trips to backpack and fish in the North Fork Clearwater in 2009, Cayuse Creek in 2010, Meadow Creek and the Selway in 2011, Trilby and Rattlesnake Lakes also in 2011, Kelly Creek in 2017, and Wind Lakes and Big Sand Lakes in the Selway-Bitterroot Wilderness in 2018. On other occasions I have camped and fished the Lochsa River and Selway River. I have also hiked and camped in and around Elk City and the South Fork corridor on multiple occasions in 2003, 2010, and 2018.

11. The South Fork is formed where the American River and Red Rivers converge, and I have spent time along each of these rivers on numerous occasions since moving to Idaho in 2002. I have hiked up and fished along Johns Creek, a key steelhead spawning tributary to the South Fork. I have also spent time in the Crooked River drainage which is another key tributary in the headwaters of the South Fork. I have stayed at the Walker Cabin, a historic Forest Service ranger cabin situated on the banks of the Crooked River. Most recently I camped near the small mountain hamlet of Orogrande, following several days of field trips in the South Fork basin. I also spent a night along the headwaters of the American River at the Limber Luke Campground.

12. Because of my appreciation for the natural values that are uniquely found in the Clearwater, I intend to continue making regular personal visits to the region, as I have in the past, to backpack, fish, identify unique plants, gather mushrooms, camp, and enjoy the area's rich historic and cultural resources. I have always wanted to backpack in the Gospel Hump Wilderness Area, float the Selway River, and camp along the upper Selway River. In September 2019, I have plans to visit the upper Selway River to enjoy backcountry fishing and to explore an

area that I have never visited. I would also like to go steelhead fishing on the South Fork, and I plan to do so in 2019 if steelhead returns are strong enough.

13. I also have a deep connection to the Clearwater and the South Fork through my work at ICL. ICL's mission is to protect Idaho's environment through public education, citizen empowerment, and professional advocacy. Protecting and restoring the Clearwater ecosystem, especially its roadless forests, free-flowing rivers, and native fish, is critical to carrying out ICL's mission. Many ICL staff and supporters care deeply about the Clearwater, and I regularly engage in communications with members and fellow staff with regards to the Clearwater.

14. Resource management and conservation in the Clearwater basin has long been a focus of ICL. Focus on management and protection of roadless forests in the Nez Perce and Clearwater National Forests has been a primary element of my work for 17 years. Conservation and protection of old growth forests and roadless areas was a primary goal of litigation that ICL resolved in a settlement agreement with the U.S. Forest Service in 1992, an agreement that continues to direct management and conservation of these unique resources.

15. For these reasons, ICL has devoted a significant amount of attention to the Clearwater. For example, for years now, ICL has reviewed and commented on all NEPA projects in the Clearwater and has filed several objections or administrative appeals to protect sensitive resources.

16. While many ICL staff have carried out our work in the Clearwater over the years, I served as the lead for issues on the Clearwater and Nez Perce National Forests from 2002 to 2016. To carry out ICL's mission, I reviewed and commented on dozens, if not hundreds of land management proposals. I attended field trips, met with Forest Supervisors, District Rangers, and other Forest Service staff, as well as staff with the Bureau of Land Management – Cottonwood

Filed Office, who manages portions of the South Fork. I have met with ICL members, coordinated letter writing campaigns, issued press releases, coordinated with partner groups, and otherwise carried out advocacy efforts to protect natural resources and represent our members who care about the Clearwater.

17. From 2008 to 2016, I served as ICL's representative on the Clearwater Basin Collaborative, an initiative of U.S. Senator Mike Crapo to bring together stakeholders in the Clearwater to find common ground and advance solutions to protect sensitive resources, create jobs, and restore public lands and waters. I regularly visit the Clearwater for work to attend stakeholder meetings, meet with local government officials, conduct site visits, investigate reports of unauthorized use or occupancy of public lands.

18. Given the importance of the Clearwater to ICL, and the significant amount of work that remains to be done to maintain and restore the basin, I intend to continue regularly visiting the Clearwater, including the South Fork, as I have in the past for work purposes. I already have plans to visit the site of the Orogrande Community Fuels Reduction Project in 2019 or 2020, following the completion of road decommissioning associated with the wildfire risk reduction project that ICL supported.

19. A major threat to the Clearwater, and the values ICL and supporters cherish in the Clearwater, is suction dredge mining. Suction dredge mining is a form of gold mining that relies upon a motorized contraption to suck up and capture small particles of gold from the river bottom. Sediment, gravels, and other stream bottom materials are spewed out the back of the dredge and deposited into the water column. The holes created by suction dredges and the dredge spoils deposited by the dredges can change water flow, rates of erosion, hydrological forces and can smother fish redds (nests). Research I have read have found that dredge spoils

can be attractive to spawning fish, but that the loose and unstable gravels are more readily distributed during high flows, leading to reduced egg survival. Dredging can also disrupt insects, zooplankton, and mollusks that live in, or seek cover in, river sediments, cobbles, and stream bottoms.

20. While suction dredge mining has been a problem since I started at ICL in 2002, I started to see more suction dredge mining in Idaho, including in the Clearwater, after gold prices rose around 2005. ICL began receiving frequent reports of unauthorized and unpermitted mining in Idaho. Because of this increase in dredging, and the impacts it has, ICL began devoting more staff time to monitoring dredgers and working with regulatory agencies to ensure dredging was being carried out lawfully and only in areas that could avoid negative impacts to sensitive resources.

21. ICL raised concerns with local land managers, the Idaho Department of Water Resources (“IDWR”), and other local, state, and federal officials to encourage monitoring and enforcement of illegal dredge mining activity. ICL advocated for years that a National Pollutant Discharge Elimination System (“NPDES”) permit was required to lawfully discharge suction dredge spoils, and in 2013 the Environmental Protection Agency finalized the “NPDES General Permit” for suction dredge mining in Idaho. Following implementation of the General Permit, several dredge mining activists organized “dredge-ins” to bring attention to their concerns over the new requirements associated with the General permit.

22. Among other things, the NPDES General Permit restricted dredge mining in habitat for listed endangered species, in wild and scenic rivers, and in rivers listed for sediment impairment (303(d) listed under the Clean Water Act). The General Permit also imposed

important effluent limits, best management practices, and monitoring, reporting, and miner identification requirements.

23. Since about 2012, every year I submit public records requests to IDWR and review dredge records so ICL can keep tabs on trends in state dredge mining permits, and identify when and where in Idaho dredging is occurring and under what state permits. I have reviewed and commented IDWR annual dredge mining instructions and provided feedback on the alignment of the IDWR permitting with the 2013 EPA General NPDES permit.

24. In 2004, the Idaho Department of Environmental Quality (“DEQ”), working together with the Nez Perce Tribe and the EPA, finalized the South Fork Clearwater Total Maximum Daily Load (“TMDL”), which is essentially a pollution budget for sediment. The TMDL, developed under the direction of the Clean Water Act because the South Fork is “impaired” for having too much sediment pollution and other pollution, establishes a threshold for suction dredge mining in the South Fork Clearwater River, as well as other limits for other sources of sediment and other pollutants. ICL was involved in, and provided comments during the development of the South Fork Clearwater TMDL.

25. In 2004, IDWR finalized the South Fork Clearwater River State Water Plan. Among other things, the plan designates state natural and recreational rivers in the subbasin, with varying levels of protection and management considerations. Based on a review of the South Fork Clearwater State Water Plan, I identified certain elements that were required in order for IDWR to approve Stream Channel Alteration Permits and suction dredge permits in the South Fork Clearwater River. I communicated these requirements to IDWR and worked with the agency over several years to encourage compliance with the state water plan.

26. I have also conducted sites visits throughout Idaho, including in the Clearwater and on the South Fork, to observe and document dredging, as have other ICL staff, contractors, and volunteers. I have personally visited dredge sites, seen dredges operating, and monitored dredge mining events and activities each year since at least 2012. I also visited areas where dredge miners staged events or dredge-mined in the Salmon River, South Fork Payette River, South Fork, and Orogrande Creek.

27. ICL also regularly engaged with federal land management agencies, including the Forest Service and BLM regarding suction dredge mining. Pursuant to the General NPDES Permit, dredge mining on federally-administered public lands requires approval from the relevant land management agency (i.e. Forest Service or BLM). Few national forests or BLM offices have undertaken the required planning and review, with the exception of the Clearwater and Nez Perce National Forests. Where no permits are in place, ICL has encouraged monitoring and enforcement to protect clean water, endangered species, and other sensitive resources.

28. While ICL is concerned about the impacts of suction dredge mining on streams throughout Idaho, the organization is particularly concerned about impacts on the South Fork. Based on ICL's substantial work investigating dredging on the South Fork there is a history of repeat violations of state and federal dredging requirements, a relatively high level of use by suction dredge miners and numerous species of sensitive fish are present. Specifically, the South Fork provides important habitat for spring/summer Chinook salmon, Steelhead trout, Bull trout, Pacific Lamprey, gastropods (i.e. freshwater mussels), and other threatened, endangered, and sensitive species. As a result, ICL has invested more time, energy, and resources in monitoring and tracking suction dredge mining in the South Fork than on any other Idaho stream.

29. The South Fork Clearwater River basin covers over 750,000 acres, with over two-thirds falling under the administration of the U.S. Forest Service and Bureau of Land Management. Historically, the area was impacted by development of mines in the Buffalo Hump and Elk City areas with scattered development of homesteads and mining camps throughout the basin. During the post-World War II period, extensive areas of the Nez Perce National Forest and private lands were roaded and logged, leading to concerns over sedimentation, water quality, and fisheries habitat in the basin. As a result of these concerns, numerous efforts have been undertaken by state and federal agencies listed above, the Nez Perce Tribe, Bonneville Power Administration, ICL, and others to restore conditions in the river to promote habitat and native species. Some of these plans and projects include the approval and implementation of the TMDL, efforts to restore and recover salmon, bull trout, and steelhead habitat, through road decommissioning and maintenance efforts, culvert replacement, hatchery management, population supplementation efforts, and other measures.

30. The river retains its free-flowing nature and has been found eligible by the U.S. Forest Service – Nez Perce National Forest Land and Resources Management Plan – Record of Decision in 1987. In 2018, the Forest Plan revision process has again identified the river as eligible for listing as a recreational river pursuant to the Wild and Scenic Rivers Act. In particular, 34.5 miles of the South Fork Clearwater River were found to have “outstandingly remarkable values” (ORVs) for recreation, scenic, cultural, fish, and wildlife, including blue ribbon fishing, harlequin ducks, and endemic gastropods.

31. In recent years, I have been involved in the State’s regulation of dredging on the South Fork by engaging in discussions with IDWR over permitting and management on the South Fork and its tributaries, including Red River, Mare Creek and Leggett Creek.

32. I have been involved in Forest Service and BLM regulation of dredging on the South Fork through the development of the Small-Scale Suction Dredge Mining Environmental Assessment, Finding of No Significant Impact and Decision Record (2016) that considered the impacts and authorized regulated dredge mining on the South Fork Clearwater, as well as Orogrande and French Creeks, which are tributaries to the North Fork Clearwater River. The plan limited the number of dredge mines, established a one-month season consistent with the State of Idaho approved season on the South Fork, and provided a number of required measures to minimize the impacts of dredge mining on sensitive resources. As part of the approval of the plan, the Forest Service and BLM consulted with the U.S. Fish and Wildlife Service and NOAA Fisheries to address and mitigate effects to listed species of fish including steelhead trout and bull trout. I drafted and submitted comments for ICL, discussed the project with Forest Service, EPA, NOAA Fisheries, and US Fish and Wildlife Service staff. ICL filed an pre-decisional administrative objection with the Northern Region of the Forest Service and Protest with the Idaho State Office - BLM over the decision to authorize dredge mining in these areas. Finally, we engaged in an Objection Resolution meeting with the Forest Service, and also discussed our protest with the BLM.

33. The joint Forest Service and BLM plan for the South Fork was approved and finalized in 2016 and took effect during the summer of 2016. During the summers of 2016 and 2017, miners generally abided by the rules and regulations and dredge mined without any significant issues. ICL reviewed Forest Service monitoring reports from 2016 and 2017 relative to dredge mining in the South Fork Clearwater River.

34. I have been involved in EPA's regulation of dredging on the South Fork by tracking both permitted and unpermitted dredge mining. Every year since around 2012, I have

submitted requests to EPA to determine who has applied for and/or received NPDES permits for suction dredge mining in Idaho. I became aware of illegal dredge mining, we have notified appropriate authorities including the Forest Service, BLM, EPA, IDWR and others to make them aware of potential violations of state and/or federal law.

35. I have also been involved monitoring and investigating dredging on the South Fork. ICL hired an investigator each of the last three summers to carry out monitoring activities associated with unpermitted dredge mining activities in the Salmon and Clearwater river basins, including the South Fork Clearwater. I have been the primary contact for our investigator.

36. Through my and ICL's years of work with state and federal agencies, and ICL's and the agencies' work with dredge miners, I was pleased following implementation of the General Permit in 2013. Many dredgers were complying with the regulatory scheme for suction dredge mining. The level of unauthorized dredge mining on the Salmon River and elsewhere in the state was noticeably reduced after implementation of the EPA General NPDES Permit.

37. However, I was disappointed to see that there were still many individuals who were either unaware of the rules and regulations, or others who were unwilling to comply with them. There were still dredge mining advocates who were encouraging miners to mine without required permits, and to dredge in areas closed to dredging. What I saw through my tracking of dredging every year was that a small handful of dredgers who were unwilling to apply for and comply with both state and federal permitting regimes. While many obtained state permits, they refused to apply for and obtain Clean Water Act coverage, such as through the NPDES General Permit.

38. NPDES permits are important because they ensure consistency with federal laws, including the Clean Water Act, Endangered Species Act, and National Environmental Policy

Act, among others. Compliance with NPDES permit terms ensure that dredge mining is not occurring in areas that have been closed to protect endangered species, in areas that are closed to protect rivers and streams that are already listed as sediment-impaired, and in areas that are designated as wild, scenic or recreational, pursuant to the Wild and Scenic Rivers Act.

Compliance with the NPDES permit also ensures dredge discharges, and other sediment sources from dredging and fuel spills, are limited, monitored, and reported.

39. I have read and am very familiar with the 2018 NPDES General Permit (ECF No. 17-3, pp. 81–119) and IDWR’s 2018 permit for the South Fork (ECF No. 17-3, pp. 3–29). Compared to IDWR’s permit, the NPDES General Permit: imposes stricter limits on the number of dredge operations allowed on the South Fork each season; requires dredges to be spaced farther apart from each other; limits the amount of material a miner can process per day; and includes NTU-based turbidity effluent limits that apply to dredgers on the South Fork *in addition* to the effluent limit required by both EPA and IDWR (no visible plume beyond 500 feet). These additional or more stringent requirements in the NPDES General Permit help prevent environmental degradation caused suction dredge mining.

40. The General Permit also requires permittees to monitor their turbidity daily, keep records in logs, and submit results to EPA in an annual report; while IDWR does not require this. General Permit applications are due 60 days prior to dredging (whereas IDWR permits are due 30 days prior). While both permits require dredgers to display identification on their dredges, the General Permit also requires displaying identification on the dredgers parked vehicle. These unique requirements of the NPDES General Permit allow ICL to determine earlier in the season who intends to dredge, to identify dredgers in the field, and to review dredger monitoring reports for compliance.

41. Through my work, and ICL's work on dredging, it became clear that while some dredgers may have been aware of the need for NPDES permit, many were fully aware but chose not to get them. Several mining advocacy organizations began to actively encourage members to dredge mine in closed areas, or to dredge mine without required federal permits in an act of civil disobedience. These "dredge-in" events were held in the Salmon River at Island Bar in 2014, and on the South Fork Payette and the South Fork Clearwater in 2015. Despite the fact that the dredge miners intentions were known and that federal agencies, including the EPA, Forest Service and Bureau of Land Management were aware of these events, no enforcement actions were taken.

42. Based on my experience, Shannon Poe was and is among the most vocal dredgers advocating against complying with federal law. Mr. Poe is the President of the American Mining Rights Association ("AMRA"). According to its webpage, AMRA is "a 501 (c)(3) non-profit which advocates for use of public lands by the people and for the right to prospect and mine on those public lands. Our mission is to inform the public and its members on what is transpiring in America as it pertains to these rights and the ability to use our public lands through facts and information. We strive for integrity, honesty and clear and concise reporting of the facts."

43. Mr. Poe lives in California, but he comes to Idaho to suction dredge mine. According to statements on AMRA's website, as well as a search of BLM's mining rights database, AMRA and/or individuals affiliated with AMRA claim to hold certain mining rights in Idaho, including along and within the South Fork.

44. I first learned about Mr. Poe around the time of the dredge-in on the Salmon River in 2014. The dredge-in was organized by the South West Idaho Mining Association, and it

appears that AMRA was an affiliate group that attended the event and engaged in unpermitted mining on the Salmon River in July and/or August 2014. Based on his online reporting, after attending the dredge-in, Mr. Poe then went to the South Fork. And based on his Declaration submitted in this case, and other information ICL gathered, Mr. Poe engaged in dredging on the South Fork in 2014.

45. In 2015, Mr. Poe returned to the South Fork to dredge. During his time in Idaho, Mr. Poe posted videos and other updates (which I have watched and read) to social media platforms wherein he noted his refusal to apply for and a General NPDES Permit from EPA or any authorization from the Nez Perce-Clearwater National Forest. Mr. Poe and AMRA posted videos of his interactions and discussions with Clint Hughes, the Minerals Staff Officer on the Nez Perce-Clearwater National Forest (the two forests were administratively combined in 2012). Mr. Poe specifically noted his refusal and his belief that he is not required to obtain any permits or authorizations from either the EPA or the Forest Service to suction dredge on the South Fork. In one video, Mr. Poe noted his intent to file litigation against Mr. Hughes individually and in his official capacity as a representative of the U.S. Forest Service. Mr. Poe also noted the support from local legislators, the Idaho County Sheriff and local county commissioners who purportedly agreed with his position that he was not required to obtain permits from either the EPA or the U.S. Forest Service.

46. More recently, Mr. Poe returned to Idaho to dredge during summer 2018 where he continued to flout the law. Mr. Poe announced his plans to dredge mine on the South Fork Clearwater River without required permits via a video posted to social media accounts, which I have watched.

47. Based on my regular public records requests and FOIA requests to state and federal agencies, and based on information I gathered through Poe's postings to the internet (such as his online posts attached to the *Hurlbutt Declaration*), Mr. Poe obtained state permits from IDWR for dredging on the South Fork in 2014, 2015, and 2018, but he never applied for or received any NPDES permits from EPA or approvals from the Forest Service to mine on National Forest land.

48. Mr. Poe's unlawful dredging without an NPDES permit harms my personal interests and ICL's interests.

49. Operating a suction dredge discharges sediment and creates turbid plumes that disturbs and disrupts habitat for fish and for their prey. This is particularly concerning on the South Fork, because it is "impaired" due to having too much sediment pollution, which fills the interstitial spaces between rocks, gravels and cobbles. These small spaces in between rocks are important for hiding cover for fish and their prey and are also important as they provide the locations for spawning fish. Too much sediment in a stream impairs fish habitat and reduces fish populations and can lead to local extirpation and/or extinction.

50. Suction dredge mining also disturbs the riverbed, by sucking up riverbed material, moving larger river rocks, and leaving holes, these holes can alter hydrology of the river, can change erosion patterns downstream and can represent a direct threat to wading fisherman, swimmers, or boaters.

51. Suction dredge miners also impacts streambanks by trampling the riparian vegetation which is important for providing shade over the stream. Stream shade is important because it helps keep water cool and during the low flow summer months, cool water offers important refugia for fish. Trout and salmon rely upon cold water for survival and will not

survive in warmer water bodies. Trampling and impacts to streamside vegetation can also lead to increased sedimentation which is also bad for fish and other aquatic species. Despite the fact that fuel is not supposed to be stored along the riverbanks (per either the state, EPA or Forest Service rules), many dredge miners do store fuel on the riverbanks. In fact, IDWR cited Mr. Poe for storing gas cans along the riverbank on July 30, 2018 during a site inspection. Improper storage of fuel, oil and other toxic materials can threaten water quality because they can spill into the water and pollute otherwise clean water. Gasoline and other fuels are toxic to fish and other aquatic species. Mr. Poe was also cited by IDWR for dredging outside of his approved area, and for stringing ropes across the river in violation of his IDWR permit.

52. Sediment pollution, disturbing the riverbed, degrading streambanks, and creating risks of fuel spills each harm my and ICL's interests in the South Fork by killing or harming fish and their prey and disturbing the natural beauty of the river and its environment. I care deeply about protecting the South Fork from these impacts, and I have had numerous discussions with ICL members and supporters who also feel strongly that the South Fork and other rivers and streams in the state should be protected. Together, ICL, other conservation organizations, tribes, and government agencies have committed significant resources to the protection and restoration of fish habitat and populations in the South Fork, which are undermined by Poe's dredging.

53. I would like to fish for steelhead and salmon on the South Fork and its tributaries. However, I am concerned that Poe's unpermitted dredging has contributed to, and will continue contributing to, harm to fisheries habitat, limited the potential for successful spawning, and long-lasting impacts on the health of the river system, including the abundance of feed and forage for juvenile steelhead and salmon. Poe's dredging can disrupt movement and dispersal of fish,

which impacts their long-term survival prospects. Because of these impacts, I worry South Fork fisheries may not recover enough to support fishing I would like to do.

54. Further, the presence of dredges and active dredge mining reduces my ability to fish and enjoy these areas. Where dredges are present, I avoid fishing for fear that my line and hook would become entangled with the dredges and their ropes and lines that secure the dredges. Further, the noise and gasoline-powered motors are disturbing, and the discharge of dredge spoils, sediment and debris in the river disrupts and discourages fish movement. When I have attempted to fish in areas where dredges were operating, the disturbance reduced the quality of my enjoyment, and the holes created by dredging were a danger to me and I avoided them. I generally avoid fishing in dredged areas, because the current and water clarity can make it difficult to see the dredge holes until you fall in one. Because waders can quickly fill with water, and pull someone underwater, the area that I can fish is reduced.

55. The South Fork is a beautiful area, and I would like to spend more time camping, fishing, and recreating along the South Fork, enjoying the peaceful river, looking for fish, wildlife, and native plants. However, Poe's dredging degrades these experiences. This has been my experience visiting areas where unpermitted dredging occurs in Idaho, including the South Fork. I visited sites dredged by Poe during summer 2018. The turbid sediment trail and dredge spoils deposited behind lessened my aesthetic appreciation and enjoyment compared to when I visit Idaho rivers without dredging. When I visited the site dredged by Poe this summer, I observed areas where dredge spoils and discharges nearly reached the water line. This level of deposition likely alters the movement and migration of fish because of the relatively narrow "lanes" that remain available to fish.

56. My experiences are also degraded because the sediment plumes, and other disturbances to the riverbed and streambanks, from suction dredge mining that disrupt fish and other wildlife I would like to see when I visit. Further, discharges from dredges and other dredge-related impacts can harm riparian and instream resources. Some of these native impacts can last beyond dredge season. For instance, I enjoy identifying riparian vegetation and native plants that grow along rivers and streams, including the South Fork. I have seen streambanks that have been damaged by dredge-related activities, including longer term use of resting and camping areas adjacent to the river, trampling of vegetation, compacted and displaced soils as a result of putting in and taking out dredges, disturbance associated with maintaining and servicing dredges adjacent to the stream and other direct impacts. I am concerned that inappropriate storage of fuels and fuel spills during dredge refueling contaminate and pollute the water, further impacting fisheries, their prey, and the ecological health of the area. Finally, stable mercury trapped in the sediments and riverbed can be remobilized by dredge mining. This mercury can contaminate drinking water supplies, can harm fish and can pose health hazards to downstream communities. I regularly visit these areas and am concerned that mercury mobilized by dredge mining has impacted, and continues to impact my drinking water, and drinking water of members and supporters who reside in these downstream communities. I have also consumed fish from the South Fork and am concerned that elevated levels of mercury, caused by dredging, may be found in the fish tissue that I was exposed to.

57. For these reasons, my ability to engage in activities that I enjoy on the South Fork is directly impacted by Poe's unpermitted dredging. If Poe's unpermitted dredge mining continues in the South Fork, I may start avoiding or reducing the amount of time I would otherwise like to spend recreating on, fishing, and enjoying the South Fork.

58. A court decision ordering Mr. Poe not to dredge unless he obtains and complies with an NPDES permit will help redress these harms. If Mr. Poe remains unwilling to obtain and comply with an NPDES permit and prefers not to dredge in Idaho, then this will help to protect clean water, fish habitat, and other resources that I care about and that ICL and its members care about and which make my experiences on the South Fork enjoyable.

59. Or if Mr. Poe is willing to apply for, receive, and comply with an NPDES permit(s) before dredging again, then this would be an improvement as well. NPDES permits are designed to protect water quality by imposing pollution limits, monitoring, and reporting requirements, and other restrictions on activities that discharge pollutants to water. Adherence to the requirements of an NPDES permit will reduce or minimize the negative effects of his activities. It would reduce impacts to other recreational users of the river, would leave the river cleaner, and would better safeguard the environment, fisheries, and other sensitive resources.

60. Depending on when, where, and how Poe may wish to dredge in Idaho, he might be eligible for the NPDES General Permit or might need to apply for an individual NPDES permit. As described above, the General Permit imposes important requirements on suction dredge miners to protect the environment and monitor and report their activities, which helps ensure impacts are minimized and allows ICL to better monitor dredging activity than it can for miners without the General Permit.

61. If Poe wishes to dredge in Idaho in a location or manner not covered by the General Permit, then he would need to apply for and receive an individual NPDES permit. An individual permit would likely include stronger and/or additional restrictions and requirements, limitations on the amount of material that could be mobilized through dredging, restrictions on

the number of dredges, time of year, and other considerations to protect water quality and fish habitat.

62. Thus, by ordering Mr. Poe to obtain and comply with an NPDES permit, he either will not dredge, or will dredge by following more restrictions to protect water quality, stream beds, streambanks, and other sensitive resources, which protects the values I and ICL and its members care about. Further, Mr. Poe will have to monitor and report to EPA, which ICL uses to ensure compliance with permit requirements and environmental protection, and to consider in the development of future regulations, restrictions, or prohibitions relative to mining activities.

63. Ordering Poe to obtain and comply with an NPDES permit is also important to me and ICL because NPDES permits can be enforced by citizens, such as ICL. While Mr. Poe obtained state permits for dredging on the South Fork in 2014, 2015, and 2018, he did not have an NPDES permit. There is no citizen enforcement mechanism allowing ICL to ensure he complies with the conditions of his state permit. The CWA, however, does have a citizen suit provision, allowing ICL to pursue actions against Mr. Poe if he fails to comply with any terms or conditions of his NPDES permit.

64. Finally, the monitoring requirements of NPDES permits are important to ICL. The general NPDES permit requires dredgers to keep records and submit annual reports on their dredging activities, their discharges, and other information. As part of ICL's efforts to ensure dredge mining is properly regulated and carried out in Idaho, ICL would like to obtain these reports. But without an NPDES permit, Mr. Poe is dredging without any requirement to prepare and submit these reports.

65. Additionally, a Court order imposing CWA civil penalties on Mr. Poe for his unlawful past and ongoing dredging without an NPDES permit will redress my and ICL's

injuries. CWA penalties are intended to deter the violator and other would be violators from unlawful activity. Mr. Poe has a history of dredging without an NPDES permit and of encouraging others to do so. My interests, and ICL's interests, have been harmed and continued to be harmed by Mr. Poe's unlawful dredging, which he has continued despite warnings from EPA, ICL, and others that he needs an NPDES permit. Hopefully, by imposing financial penalties on Mr. Poe, he will be deterred from dredging without complying with the CWA, he might stop encouraging others to dredge in Idaho without complying with the CWA, and others might be deterred from dredging without complying with the CWA.

66. Finally, a Court order requiring Mr. Poe to comply with the CWA and imposing CWA penalties on him will redress the organizational harm ICL has suffered by spending many staff hours, organizational funds, and other resources documenting and combatting illegal suction dredge mining in Idaho, and will help ICL have access to information important to carrying out its goals.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of January, 2019, at Boise, Idaho.



Jonathan D. Oppenheimer