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14 January 2010

Bree Duffy
Montana DEQ
Permitting and Compliance Division
Water Quality Protection Bureau
P.O. Box 200901
Helena, MT 59620-0901

Re: comments on general discharge permit for suction dredge mining

Dear Ms. Duffy:

These comments from Montana Trout Unlimited (Montana TU) on DEQ's proposed general discharge permit for suction dredge mining are in addition to comments our attorney, Matt Clifford, submitted September 23, 2009, on behalf of us, Clark Fork Coalition and Earth Works. We believe the fundamental arguments we raised earlier still hold.

First, we appreciate DEQ's attempts in the revised proposed general permit to include a monitoring component and a description of "best management practices." However, both are problematic. Several key practices are so general in nature to be essentially of no value. For instance, Practice #5 says that dredging of concentrated clay and concentrated silt "should be avoided." We recommend that the dredging of any substrate that comprises silt or clay fractions be **prohibited**. The reason is simple. Suction dredging readily mobilizes particle of this nature and size, and ends up depositing them in areas where they can damage important elements of fishery habitat, such as reaches with larger gravels that produce macroinvertebrates, or which are utilized for spawning and foraging. Mobilization of fine sediment, when measured in total load instead of in NTUs, can fill pools, which are essential to salmonids and other fishes for security, or for overwintering habitats. If DEQ would like specific scientific citations on the importance of certain habitat components, as well as some of the recommended numerical thresholds for determining harmful levels of embedded sediment, we'd be happy to provide them. The information is widely available, and easily found with Montana FWP. In fact, they have been identified in conservation plans and MOUs that DEQ has been party to for conservation of cutthroat trout and bull trout.

Practice #6 says that "care must be taken" to prevent spilling fuel into surface water. We recommend the practice be included as a permit condition, and that it be modified so that operators are **required to fuel dredges outside the live-channel and immediate flood prone area**. Spills next to streams, even if not immediately affecting surface water, means that pollutants will be available to leach into surface water over time.

The list of BMPs and permit conditions should include a prohibition on dredging in reaches where spawning occurs.

Further, the general permit should require that operators with both previously existing and new operations file a plan with their application that includes:

- A description of the stream's fishery, with information that includes at least basic presence-absence data and a general description and map of habitat conditions in the area to be affected, including riffles, runs, pools, known spawning areas, and other important features. If population data or other information are available – and they can be obtained readily from Montana FWP – they should be included in the plan.
- A description with a map of how and where dredges machinery will be fueled.
- The plan with the application should require identification of all spawning areas. Dredging should be prohibited from any reach that where a spawning site is located within a distance that is equal to 20 stream-widths of the active channel. Dredging should be prohibited during spawning and incubation periods on any reach.
- Suction dredging should be prohibited in any stream reach where pollutants embedded in sediments, including metals or VOCs, have been identified as being available in potentially harmful concentrations and which can be mobilized. The operator's application should include information demonstrating that he or she has evaluated the site for the potential release of toxic substances. DEQ and other agencies have data bases that are available for making these determinations.
- Suction dredging should not commence until the operator has provided evidence to DEQ that demonstrates all other permits have been approved, including Montana 310 permits, Army Corps of Engineer dredge and fill permits, Montana DNRC water-use permits, special-use permits from land management agencies, etc.

General permit conditions should include:

- A requirement that water quality standards be met within the shortest distance possible from the point of discharge, once all management practices and operation-specific conditions have been met. The point of compliance for meeting water quality standards should be clear in the application. There should be no general mixing zone distance for all operations, as DEQ has suggested irrespective of local conditions or specific operations. DEQ's suggested mixing zone requirement, which essentially authorizes violations of water quality standards irrespective of available management practices and technologies, does not ensure that water quality impacts will be kept to a minimum. It is unclear whether the "notification levels" for certain pollutants apply to inside or outside the mixing zone. We recommend this requirement apply to a monitoring point downstream that is a distance equal to four times the stream width. It is important to determine in the shortest distance possible whether water quality conditions are changing such that new practices or a cessation of operations are necessary.
- In addition to the records DEQ requires be kept, operators should submit a monitoring plan for approval with each application for new permits and for all existing permits. In the least it should include a description of sampling points, frequency and parameters to be analyzed. The plan should include description of the qualifications of the individuals doing the sampling, and it should include a quality assurance/quality-control plan. All data points and sampling methods should be standardized and easily repeatable for compliance monitoring purposes.

Though it is outside the scope of this permit notice, DEQ should describe how it will maintain records of suction dredge operations, and how it will perform compliance monitoring. We understand that “self-monitoring” is sometimes desirable, given the agency’s resources. However, this practice is of little comfort to the public if compliance monitoring does not occur. We look forward to DEQ’s description of its compliance monitoring program, as well as its response to our comments.

Sincerely,

Bruce Farling
Executive Director