Ron Miller
[redacted]

July 18, 2016

Via Certified Mail, RRR#_____

Idaho Dept. of Water Resources
State Coordinator, Stream Protection Program
Attn. Aaron Golart
322 E. Front St.
P.O. Box 83720
Boise, Idaho 83720-0098

Notice of Appeal and Request for Administrative Hearing

Dear Mr. Golart,

I have received a processed permit from your office of the Idaho Dept. of Water Resources (IDWR) in the last two weeks and hereby give Notice of Appeal and request for administrative hearing. The terms and conditions of the permit are unacceptable and would make it impossible to comply with Federal law and would unduly materially interfere with my commercial operations. The permit terms and conditions as written are incompatible to the federal claim for which I own and exercise. The joint commercial application for which I applied has been unlawfully converted to a "recreational permit" by your office and does violence to my federal mining claim, as I cannot lawfully use a federal mining claim for recreational purposes. See: *U.S. v. Bagwell 961 F. 2d 1450.*

I also object to the public use of my federal mining claim for uses as a wildlife habitat and a fisheries hatchery to such a degree that I cannot perform the most basic assessment work required by federal law (30 U.S.C. § 28(b)). Your office is approaching this issue as if I must yield to the public needs, rather than the public needs yielding to the mine development needs. The former is not consistent with federal law in contrast to the latter mine development needs. I am certainly agreeable to some level of mitigation so long as I can reasonably agree and still comply with federal law.

Congress gave miners such as I a solution to conflicts that may arise in the event of competing use of the lands in the 1955 Multiple – Surface Use Act. It was best said in *U.S. v. Shoemaker 110 IBLA 39* in 1989 (attached) where the court said: "*Federal management must yield to mining as the dominant and primary use. The terms 'endanger' and 'materially interfere' used in subsec. 4(b) of the Surface Resources Act, 30 U.S.C. § 612(b) (1982), set forth the standard to be applied to determine whether a specific surface management action must yield to a conflicting legitimate use by a mining claimant. Where there is no evidence that such action endangers the claimant's operations, the question is whether the surface management activity will substantially hinder, impede, or clash with mining operations or a reasonably related use. Like 'other surface resources,' the terms 'endanger' and 'materially interfere' are general. Although the terms are not precise, the legislative history is clear as to their intended effect. In reference to the portion of the statute containing the terms, the House and Senate reports both state:*

This language, carefully developed, emphasizes the committee's insistence that this legislation not have the effect of modifying longstanding essential rights springing from location of a mining claim. Dominant and primary use of the locations hereafter made, as in the past, would be vested first in the locator; the United States would be authorized to manage and dispose of surface resources, or to use the surface for access to adjacent lands, so long as and to the extent that these activities do not endanger or

materially interfere with mining, or related operations or activities on the mining claim". Emphasis added
H.R.Rep. No. 730, 84th Cong., 1st Sess. 10, reprinted in 1955 U.S.Code Cong. & Admin.News 2474, 2483; S.Rep. No. 554, 84th Cong., 1st Sess. 8-9.
The court went on to say:
*"The change made by the Surface Resources Act was to create in the United States explicit authority 'to manage and dispose of the vegetative surface resources * * * and to manage other surface resources.' 30 U.S.C. § 612(b) (1982). Previously, Governmental agencies had been unable to do so once a mining claim had been located, even though the locator had only a limited right to use the same resources. See Bruce W. Crawford, supra at 365-66, 92 I.D. at 216-17. Congress recognized that there would be instances in which Federal management of the surface resources found on a mining claim would conflict with legitimate use of the surface and surface resources by the claimant. The balance it struck in order to resolve such conflicts was to specify that the authority the statute granted would apply only so long as and to the extent that Federal use of the surface did not "endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto." 30 U.S.C. § 612(b) (1982); see United States v. Curtis-Nevada Mines, Inc., 611 F.2d at 1283, 1285. When it does, Federal surface management activities must yield to mining as the 'dominant and primary use,' the mineral locator having a first and full right to use the surface and surface resources."*
See also U.S. v. Lex, 300 F. Supp. 2d 951 (2003): *"As a result of the Multiple Use Act, owners of unpatented mining claims must comply with government regulation of the surface of their claims, so long as that regulation does not materially interfere with prospecting or mining operations."*
Pursuant to 30 U.S.C § 612(b): Uses by the United States, it's permittees or licensees (such as the IWR), shall be such as to not hinder, delay, or materially interfere with my mineral-related operations.

The following are specific terms and conditions within your offices permit that are unreasonably interfering in violation of 30 U.S.C. § 612(b) and my ability to comply with mining laws prudent assessment work required under 30 U.S.C. § 28(b):

1) Limiting area of prospecting and testing (2-150 ft. areas)
2) Limits on date and time of dredging
3) Limits fueling to use of funnel - can't monitor amount of fuel in tank while filling
4) Replacing boulders in location where they came out - would need to photograph river bed to remember location of rocks
5) Checking turbidity 150 ft. downstream while dredging is an impossibility as I can't be in two places at once
6) Forcing us to use a fisheries biologist to determine mining assessment work where and when we can dredge - where I have not consented to the delegation of assessment to another person
7) I never consented to have my federal mining claim to be used as a fishery - restricting me to seasonal mining in limiting dredge size to a recreational 5" and 15 hp. operation
8) Use of a state issued (Recreational) ID card on a Joint Commercial Application – bait and switch
9) Requiring us on how close we can operate to each other defying safety concerns and federal mine safety regulations (MSHA) found at 30 CFR parts 56/57/58)
10) Requiring us to secure dredge in an unsafe manner so as to not interfere with recreational usage
11) Enabling IDWR to cancel permit at any time to stop dredge and assessment work without due process of law in the form of a pre or post deprivation hearing
12) The rules and regulations are taken from "recreational" permits and as such are not compatible my commercial request
13) No dredging within 2 ft. of a gravel bar or bank where I cannot follow a pay streak - again telling us where to dredge and perform assessment work

14) No use of highbankers below high water mark and banning power sluices
15) A buffer zone of 300 ft. below perennial stream courses entering the South Fork – taking of property without compensation in violation of the 5th Amendment of the U.S. Constitution
16) A 100 ft. buffer above these streams entering the South Fork – taking of property without compensation in violation of the 5th Amendment of the U.S. Constitution
17) No dredging is allowed in the lower half of holes (tail waters) – taking of property without compensation in violation of the 5th Amendment of the U.S. Constitution
18) In holes designated as "holding areas" no dredging is permitted – taking of property without compensation in violation of the 5th Amendment of the U.S. Constitution
19) On adjoining claims it restricts the dredging area to a 800 ft. spacing between dredges if both claim holders have permits.
20) The IDWR permit system has not received the written approval and performed the coordination with the Elk City Mining District in accordance with 30 U.S.C. § 22.

I am willing to make a good faith effort to comply with your permitting authority. As stated previously, the terms and conditions of the permit are unacceptable and would make it impossible to comply with Federal law and would unduly materially interfere with my commercial operations. The permit terms and conditions, as your office has written, are incompatible to the federal claim for which I own and exercise. The joint commercial application for which I applied has been unlawfully converted to a "recreational permit" by your office and does violence to my federal mining claim, as I cannot lawfully use a federal mining claim for recreational purposes.
If your office does not grant my appeal relief within 30 days I will have no other choice but to withdraw the joint application and commence operations to timely comply with federal law until such time your office's new permit system does not frustrate federal law.

Respectfully submitted.

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Ron Miller

Cc: Elk City Mining District