

THOMAS M. SCHULTZ, JR.  
Director  
Idaho Department of Lands  
300 N. 6<sup>th</sup> St., STE 103  
P.O. Box 83720  
Boise, Idaho 83720-0050

BEFORE THE STATE BOARD OF LAND COMMISSIONERS  
STATE OF IDAHO

In the Matter of; )  
)  
Riverbed Mineral Lease E03013 ) **FINAL ORDER**  
Kaschmitter Enterprises, Inc )  
)  
Applicant )  
\_\_\_\_\_ )

**I. NATURE OF PROCEEDINGS/ISSUES**

A public hearing was held on February 21, 2012 at 6:00 pm PST at the Grangeville Senior Center in Grangeville, Idaho. Eric Wilson served as Hearing Coordinator. The Hearing Coordinator issued his Recommendations on March 7th, 2012.

My responsibility is to render a decision on the behalf of the State Board of Land Commissioners (Land Board) based on the record reviewed in the context of my personal expertise gained through education, training, and experience. In making this determination I have relied on the record provided. Specifically;

- I have read the transcript of the public hearing conducted in Grangeville, Idaho on February 21, 2012.
- I have reviewed the record including all documents and exhibits.
- I have examined the Hearing Coordinator’s Recommendations in light of the entire record.

Gravel mining on navigable rivers requires a riverbed mineral lease issued by the Idaho Department of Lands pursuant to the requirements of Title 47, Chapter 7, Idaho Code, and the Rules Governing Riverbed Mineral Leasing, IDAPA 20.03.05, as promulgated by the Land Board.

## II. FINDINGS OF FACT

I concur with the Findings of Fact presented by the Hearing Coordinator.

## III. CONCLUSIONS OF LAW

I concur with the Conclusions of Law presented by the Hearing Coordinator.

## IV. FINAL ORDER

On the basis of the record, it is my order that Mineral Lease E03013 be Approved pending approval by the Land Board. The lease will be conditioned upon obtaining a new Stream Channel Alteration Permit approved by the Idaho Department of Water Resources.

This is a final order of the agency pending final approval of the Land Board. If the Applicant, or a party who appeared at the hearing, is aggrieved by the Land Board's final decision, they shall have the right to appeal to district court pursuant to Idaho Code § 67-5273(2) within twenty-eight (28) days of the final Land Board approval.

DATED this 20<sup>th</sup> day of March, 2012.



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THOMAS M. SCHULTZ, JR.  
Director

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of March, 2012, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

Tucker Lindsey  
PO Box 313  
Lucile, ID 83542-0313

U.S. Mail, postage prepaid  
 Hand Delivery  
 Federal Express  
 Facsimile: \_\_\_\_\_  
 Statehouse Mail

Lester Lowe  
PO Box 368  
Riggins, ID 83549-0368

U.S. Mail, postage prepaid  
 Hand Delivery  
 Federal Express  
 Facsimile: \_\_\_\_\_  
 Statehouse Mail

Lyne Cook  
Cook and Sons Construction  
726 Deer Creek Road  
White Bird, ID 83554

U.S. Mail, postage prepaid  
 Hand Delivery  
 Federal Express  
 Facsimile: \_\_\_\_\_  
 Statehouse Mail

Jonathan Oppenheimer  
Idaho Conservation League  
PO Box 844  
Boise, Idaho 83701

U.S. Mail, postage prepaid  
 Hand Delivery  
 Federal Express  
 Facsimile: \_\_\_\_\_  
 Statehouse Mail

James Rockwell  
Idaho County Commission  
320 W. Main  
Grangeville, ID 83530

U.S. Mail, postage prepaid  
 Hand Delivery  
 Federal Express  
 Facsimile: \_\_\_\_\_  
 Statehouse Mail

Bernie Kaschmitter  
1305 Crooks St.  
Grangeville, ID 83530-2176

U.S. Mail, postage prepaid  
 Hand Delivery  
 Federal Express  
 Facsimile: \_\_\_\_\_  
 Statehouse Mail

Bob Abbott  
16189 Highway 95 S.  
Grangeville, ID 83530-5179

U.S. Mail, postage prepaid  
 Hand Delivery  
 Federal Express  
 Facsimile: \_\_\_\_\_  
 Statehouse Mail

Joaquin Lowe  
124 White Bird Road  
White Bird, ID 83554-5009

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: \_\_\_\_\_
- Statehouse Mail

Steve Dalgliesh  
PO Box 68  
White Bird, ID 83554

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: \_\_\_\_\_
- Statehouse Mail

Jerry Holes  
213 West Main St  
Grangeville, ID 83530-1985

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: \_\_\_\_\_
- Statehouse Mail

John Lamb  
1164 Highway 64  
Grangeville, ID 83530

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: \_\_\_\_\_
- Statehouse Mail

Bruce Walker  
620 S. E St.  
Grangeville, ID 83530-1533

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: \_\_\_\_\_
- Statehouse Mail

Margaret Riener  
PO Box 84  
Ferdinand, ID 83526-0084

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: \_\_\_\_\_
- Statehouse Mail

Anna Holden  
3154 Salmon River Court  
White Bird, ID 83554

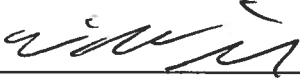
- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: \_\_\_\_\_
- Statehouse Mail

Jay Sila  
Idaho Department of Lands  
PO Box 68  
Craigmont, ID 83523

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: \_\_\_\_\_
- Statehouse Mail

Tom Schultz  
Idaho Department of Lands  
300 N. 6<sup>th</sup> St. Ste. 103  
PO Box 83720  
Boise, ID 83720-0050

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: \_\_\_\_\_
- Statehouse Mail



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ERIC WILSON  
IDL Minerals Program Manager

**BUREAU OF SURFACE AND  
MINERAL RESOURCES**  
300 N. 6<sup>th</sup> St. Ste 103  
PO Box 83720  
Boise ID 83720-0050  
Phone (208) 334-0200  
Fax (208) 334-3698



**TOM SCHULTZ, DIRECTOR**  
EQUAL OPPORTUNITY EMPLOYER

**STATE BOARD OF LAND COMMISSIONERS**  
*C. L. "Butch" Otter, Governor*  
*Ben Ysursa, Secretary of State*  
*Lawrence G. Wasden, Attorney General*  
*Donna M. Jones, State Controller*  
*Tom Luna, Sup't of Public Instruction*

March 11, 2012

## **MEMORANDUM**

**TO:** Tom Schultz, Director

**FROM:** Eric Wilson, Minerals Program Manager

**SUBJECT:** Public Hearing – Riverbed Mineral Lease Application E03013, Kaschmitter Enterprises, Inc.

### **I. INTRODUCTION**

The following document, which includes a recommendation for your consideration, was prepared following a public hearing conducted by the Idaho Department of Lands (IDL). The public hearing was conducted in conjunction with the processing of a riverbed mineral lease application (E03013) on a portion of the Salmon River, a navigable river in Idaho. The application proposes to continue mining for sand and gravel and metallic minerals below the ordinary high water mark (OHWM). Jurisdiction in this matter rests with IDL pursuant to Idaho Code § 58-104(9) and 47-714, which empower the State Board of Land Commissioners to regulate, control, and permit mineral leasing on navigable rivers in Idaho.

### **II. FINDINGS OF FACT**

1. On December 9<sup>th</sup>, 2011, Kaschmitter Enterprises, Inc. (Applicant) submitted to IDL a mineral lease application (E03013) requesting approval to continue mining in the Salmon River. A lease was first approved in 1955 at this site, and it has been active since that time. The current lease expired on February 29, 2012.
2. E03013 covers the bed of the Salmon River for a distance of approximately one (1) mile between the centerline of the river and the OHWM along the westerly six hundred (600) feet of Gov't Lot 1 and all of Gov't Lots 5 and 8, Section 15, Township 27 North, Range 1 East, Boise Meridian, Idaho County. The lease area is approximately sixty (60) acres. It is generally located north, and downstream, of the Twin Bridges. Exhibit 1 is a map showing the lease area.

3. Compliance with the Stream Channel Alteration Act, Idaho Code § 42-38, was required by the terms of the prior lease. A valid stream channel alteration permit issued by the Idaho Department of Water Resources (IDWR) has previously satisfied this requirement. The last permit expired on February 29, 2012.

4. Submittal of an operation and reclamation plan was required by the terms of the prior lease. The IDWR permit has previously fulfilled this requirement. Any future IDWR permit could be used as the basis of a new lease operation and reclamation plan.

5. IDL initiated the processing of the riverbed mineral lease application E03013 pursuant to the Rules Governing Riverbed Mineral Leasing (IDAPA 20.03.05). On December 14<sup>th</sup>, 2011 and December 21<sup>st</sup>, 2011, IDL published the required Notification in the Idaho County Free Press newspaper.

6. In a letter dated December 13<sup>th</sup>, 2011, IDL notified several agencies of the riverbed mineral lease application submitted by Applicant and requested that the parties provide comments to IDL. Those notified included:

- Idaho Department of Fish and Game
- Idaho Department of Environmental Quality
- Idaho Department of Water Resources
- Bureau of Land Management

7. Based on a request by more than 10 persons, and in accordance with IDAPA 20.03.05.025, IDL initiated a public hearing process for the proposed riverbed mineral lease. The public hearing was scheduled for 6:00 pm on February 21<sup>st</sup>, 2012 at the Grangeville Senior Center in Grangeville, Idaho. On February 8<sup>th</sup> and 15<sup>th</sup>, 2012 IDL published the required Notice of Hearing in the Idaho County Free Press.

8. In a letter dated February 6<sup>th</sup>, 2012 IDL notified the Applicant and the following entities and individuals of the scheduled hearing:

- Idaho Department of Fish and Game
- Idaho Department of Environmental Quality
- Idaho Department of Water Resources
- Nez Perce Tribe
- Idaho County Commissioners
- Environmental Protection Agency
- Friends of the Clearwater
- Idaho Conservation League
- Ronald Mahurin
- Paul J. Gravelle

8. Dozens of unsigned and mostly undated written comments were received from individuals prior to the scheduled public hearing. Most of these are two different form letters that state the same points, and many of the same people apparently submitted

one of each form letter. Most were opposed to the application, but some were in favor. The comments include:

- a. The Salmon River is a state designated Special Resource Water, and is eligible as a wild and scenic river.
- b. Gravel mining is proposed on public trust lands, which should be managed for the public benefit.
- c. The public trust lands should be managed for the protection of fish, wildlife, water quality, and recreation instead of promoting gravel mining.
- d. Gravel mining has lasting impacts on water quality, riparian vegetation, and aquatic habitat, so the Streambed Mineral Lease and Steam (sp.) Channel Alteration Permit should be rejected.
- e. Alternative gravel sources on adjacent uplands should be used for construction purposes.
- f. Millions have been spent to restore aquatic species in the Salmon River. Approving a gravel mine is fiscally irresponsible since it only returns a couple thousand dollars per year to the state.
- g. Consultation with the US Fish and Wildlife Services and NOAA Fisheries is needed to evaluate impacts and implement conservation measures for ESA-listed species.
- h. Fishing has no future if this lease is approved.
- i. Just gold panning makes small streams silty, so this will be much worse.
- j. The Salmon River is the longest undammed river, and the longest river contained entirely within one state, in the lower 48 states. This makes it unique among the many other western rivers, as it is gives an example of how rivers used to be. As a result, gravel mining should not be allowed as it will only degrade the river.
- k. Mining laws are a dinosaur and need to change.
- l. More sources of water degradation are not needed.
- m. Fish habitat will be destroyed so companies can make profits.
- n. Although this stretch of the river is downstream of the wild and scenic protected section, it is eligible for similar protection.



- o. The gravel bar is a renewable source of gravel that should be used.
  - p. The income generated by selling the gravel is needed.
9. A letter dated January 17<sup>th</sup>, 2012 was received from the Idaho Department of Environmental Quality. Points raised in this letter include:
- a. This portion of the Salmon River is now listed as impaired due to the presence of mercury, and the operating plan should include measures to cease operations and notify DEQ if mercury is discovered.
  - b. Special Best Management Practices may be needed to control non-point source pollution.
10. A letter dated January 19<sup>th</sup>, 2012 was received from the Idaho Conservation League (ICL), who do not support approval of the lease application. Points raised in this letter include:
- a. Mining will have negative impacts on salmonid fish species within the project area and downstream of the project. The project area is in designated critical habitat for several of these species listed under the Endangered Species Act. Spawning areas have been documented in close proximity both upstream and downstream of the project area. Fall Chinook in particular may be affected by the gravel mining.
  - b. Millions of dollars have been spent on restoration to support listed fish species, so mining that only returns \$500 per year to the state should be curtailed.
  - c. Excavation from the river will increase erosion and increase sediment loading, which could reach spawning beds and reduce the survival of fish eggs and fry.
  - d. Channel morphology outside the excavated area could be affected during high water.
  - e. Impacts to other aquatic and riparian river species could result from gravel mining, affecting the entire food chain and productivity of the river.
  - f. Consultation with the Bureau of Land Management, US Army Corps of Engineers (Corps), NOAA Fisheries Service, US Fish and Wildlife Services, Shoshone-Bannock and Nez Perce Tribes, and state agencies is needed before this lease or permit is approved.
  - g. A cumulative impacts study is needed before the lease is issued and any further gravel removal is authorized.
  - h. The bed of the Salmon River is public land that should be managed for multiple use that benefits recreation, aesthetics, water quality, and fish and wildlife resources. The river is not endowment land to be managed for the maximum benefit of the endowments.
  - i. The previous determination by the Corps that a 404 permit is not needed for incidental fallback of material during excavation is in error. Photographs and site visits have indicated that discharge of materials has occurred. The Corps determined that bar scalping in Oregon does require a 404 permit for these reasons. Therefore, this operation will need a permit under Section 404 of the

Clean Water Act.

- j. Two references were given to scientific articles that reinforce some of the above points.
11. An email dated January 20<sup>th</sup>, 2012 from the Idaho Transportation Department (ITD) stated that only one other source in this area meets the state rock quality specifications. This other source is the Grangeville Transit Mix source at milepost 200.5.
  12. An email dated January 20<sup>th</sup>, 2012 from Glen Scott Swearingen stated that the mining should occur during low water and the gravel hauled to the upland. The site should be made tidy for spring runoff.
  13. A letter dated January 20<sup>th</sup>, 2012 was received from the U.S. Environmental Protection Agency (EPA). Points raised in this letter include:
    - a. Discharges below the OHWM could be caused by stockpiling gravel in the working area, excavating in the active channel, and using a bulldozer. A 404 permit is required for these discharges, and these permits are issued by the Corps.
    - b. The application may need an NPDES multi-sector general permit issued by the EPA.
    - c. The Salmon River is listed as critical habitat for several threatened and endangered fish species.
    - d. In stream gravel mining will contribute considerable risk of degrading upstream and downstream conditions while eliminating or changing valuable habitat.
    - e. Gravel removal will increase stream gradient, change width-to-depth ratios, and decrease sediment load, all of which will result in channel scour. This can lead to dewatering of riparian areas and wetlands.
    - f. Annual dredging destroys benthic communities and denudes riparian areas, both of which are valuable for fish habitat.
    - g. Suspended sediment load can increase below instream gravel mines. These sediments can smother spawning gravels.
    - h. Bar scalping can divert the river flow to the opposite side of the river.
    - i. Riverbed erosion from instream mining can lead to the undermining of bridge piers and other structures.
    - j. Several examples from Oregon and California were given to illustrate the above effects of instream gravel mining, and two references were given to scientific articles.
  14. A letter dated January 20<sup>th</sup>, 2012 was received from Ronald Mahurin, who supports approval of the lease application. Points raised in this letter include:
    - a. He operated this lease for over 30 years and produced material for bridges from New Meadows to Craigmont as well as many other construction projects in the same area.
    - b. Using upland sources instead of this source would be an environmental disaster.

- c. Spring runoff can erase any trace of mining.
  - d. Income to the state from royalties is important.
  - e. Using other gravel sources will increase the local construction costs.
  - f. Gravel removal reduces the material dredged out of the downstream reservoirs.
15. An email dated January 22<sup>nd</sup>, 2012 was received from Jerry and Rosalie Jessup, who support approval of the lease application. Points raised in this email include:
- a. They float by the lease area many times during the summer and are not offended by it.
  - b. They admire the yearly replenishment of the resource.
  - c. The operation is an important part of the economy.
16. An email dated January 23<sup>rd</sup>, 2012 was received from Brad Becker, who supports approval of the lease application. Points raised in this email include:
- a. Water and sediment from the mining operation does not escape the settling ponds.
  - b. The operation provides jobs and lower cost gravel for the surrounding community.
17. An email dated January 23<sup>rd</sup>, 2012 was received from Jennifer Pierce, who did not support approval of the lease application. Points raised in this letter include:
- a. In-stream mining has a large and irreversible impact on channel sediment loads, channel morphology, and aquatic habitat.
  - b. Sediment starved flows can create erosion from near homes or roads. Twin Bridges is just upstream, and costly repairs could result.
  - c. Pits formed during mining may capture flows and create new channels, as has happened on other rivers.
  - d. In-stream mining can destroy riparian habitat, increase stream temperatures, increase turbidity, and destroy or alter habitat for salmon and other species. Fall Chinook spawning areas are in the immediate vicinity of the proposed mine.
  - e. Gravel removal could reduce gravel needed for spawning redds, and thereby affect the future of salmon.
  - f. In-stream mining is unsightly, and could affect tourism and fishing.
  - g. The Salmon River is designated as a Special Resource Water by the State of Idaho.
  - h. Terraces adjacent to the river would be more suitable sources for aggregate.
18. A letter dated January 23<sup>rd</sup>, 2012 was received from the Nez Perce Tribe (Tribe), who do not support approval of the lease application. Points raised in this letter include:
- a. The mining has the potential to impact fall Chinook, which are listed as a threatened species under the Endangered Species Act.
  - b. 60 fall Chinook redds were observed in 2011 on the Salmon River, and only 34 in 2009.

- c. Gravel scalping removes riparian vegetation and destabilizes the riverbank, increasing erosion and sedimentation.
- d. Yearly gravel mining can remove gravels needed for redds and otherwise alter the river beds.
- e. The state should also work closely with the Tribe, NOAA Fisheries, and other federal agencies to review this project.

19. A letter dated February 17<sup>th</sup>, 2012 was received from the Grangeville Chamber of Commerce, who supports approval of the lease application. Points raised in this letter include:

- a. Taking gravel during low water and keeping their equipment out of the water does not appear to be harming the river, and they have been doing it since 1955.
- b. If the gravel is not removed from the river, it will go downstream and possibly change existing habitat or the stream channel.
- c. Concerns about the impact on rafting are misplaced because this section of the Salmon River is not a pristine rafting experience due to Highway 95 and the numerous houses along the bank. Also, the rafting season and the gravel removal occur at different times.
- d. Continued operation of this source will retain good paying jobs in Idaho County.

20. A letter dated February 17<sup>th</sup>, 2012 was received from Cook and Sons Construction, who supports approval of the lease application. Points raised in this letter include:

- a. The gravel source is vital for their business due to the gravel they supply and the concrete aggregate. Concrete made with this material has been used in many local recreation sites and boat ramps.
- b. Many other companies also use this source. The closest alternate sources are McCall or Grangeville, which are not cost effective.

21. Letters dated January 20<sup>th</sup> and February 21<sup>st</sup>, 2012 were received from Paul Gravelle, who supports approval of the lease application. Points raised in the letters include:

- a. Gravel extraction from the dry portion of the Salmon River is supported.
- b. The site currently looks fine.
- c. The operation has been active since about 1953 with no negative environmental or societal impacts.
- d. Gravel extraction has been a benefit to the local economy and provides needed construction materials. These materials must be provided locally to minimize transportation costs and make operations economically feasible.

22. A letter was received from Riener Concrete on February 21<sup>st</sup>, 2012. They support approval of the lease application. Points raised in this letter include:

- a. The operation has been active for about 50 years and produces an excellent

product for concrete. The Lawyers Canyon and Time Zone Bridges were constructed with this material.

- b. The Applicant has cleaned up the site over the last few years and keeps it looking nice from the river.

23. A letter dated February 21<sup>st</sup>, 2012 was received from the Idaho County Commissioners, who support approval of the lease application. Points raised in this letter include:

- a. The operation has been active since 1955 and has provided employment and tax support for the county since that time.
- b. This gravel source provides a competitive source for many projects from Riggins to Grangeville.
- c. County, state, and federal agencies have not been able to find a replacement source within reasonable transportation distance, especially for concrete.
- d. This is an environmentally perfect source. It is renewable, and has not had problems with sedimentation or impacts to fisheries.

24. A letter dated February 21<sup>st</sup>, 2012 was received from the Friends of the Clearwater, who expressed concerns with the proposed lease. Points raised in this letter include:

- a. The Salmon River is home to four fish species listed under the Endangered Species Act and is used by many people for floating, picnicking, and fishing.
- b. Common variety sand and gravel can be obtained elsewhere.
- c. Gravel mining in rivers has long standing impacts on water quality, fish habitat, and riparian vegetation. It will increase sediment, alter flows, and disturb the stream banks.
- d. Consultation with the Corps on a 404 permit, and with EPA on the Clean Water Act, is needed.
- e. Consultation with NOAA Fisheries and the US Fish and Wildlife Services is needed or the Endangered Species Act will be violated.
- f. The local economy relies on river recreation, so any harm to the river will impact the economy.

25. On February 21<sup>st</sup>, 2012 IDL held a public hearing at 6:00 pm in the Grangeville Senior Center in Grangeville, Idaho. Mr. Eric Wilson, Minerals Program Manager, served as hearing coordinator. In attendance were Mr. Jay Sila, IDL Area Manager; Mr. Francis Kaschmitter representing Applicant; and approximately thirty seven (37) members of the public. The public hearing was recorded and subsequently transcribed.

- a. The Applicant, through the testimony of Mr. Kaschmitter, provided a brief overview of the project. The application proposes to lease the same area that has been excavated since approximately 1947. The first lease was issued in 1955. This site has been continuously leased since that time by various operators. Kaschmitter Enterprises acquired the operation and the lease in 2005. The Idaho Department of Fish and Game has been consulted on this

project since the late 1960s. Their recommendations have helped to create the current operating plan used for gravel removal.

The gravel bar in the leased area is excavated only during low water periods between October and February. The actual excavation only takes approximately 10 days, and about 10,000 cubic yards are typically removed. Gravel is excavated in the dry between the flowing water and the OHWM. The permit specifies a five (5) foot undisturbed buffer between the flowing water and the excavation, but typically a twenty five (25) foot buffer is left in place. Willows in this buffer strip are left undisturbed. Riparian growth along the high water line is also left undisturbed. Excavation does not extend below the elevation of the river during low flow. Equipment used in the lease area includes a front end loader and an off-road haul truck. This equipment is well maintained and regularly inspected to prevent fluid leakage. Equipment is maintained on the adjacent uplands, and is not stored in the lease area overnight.

Because excavation is done in the dry, no sediment is produced during operations. No effluent discharges to the river. This leads to no effect on fish wintering in this area or migrating through. Only fall Chinook spawn in this part of the Salmon River, but since excavation is done in the dry they are not affected by it. Steelheads migrate through during this same time, but are also unaffected. Some sediment may be mobilized from the excavated area during later high water, but at that time the river is already carrying a high sediment load. All sediment moved from the site already existed in the river system. Only two access points are used, and the riparian vegetation is disturbed as little as possible. Additional vegetation of the high water mark is planned for this spring. Fish will use the excavated area during spring runoff, and several fishermen like to fish the excavated area when it is covered with water.

Aggregate from the lease area is used for transportation, recreation, habitat, public works, educational, agricultural, private, and industrial/commercial projects. Excavation and processing of the gravel creates almost enough work for two full time employees. In a rural county with an unemployment rate up to twice the national average, two jobs are important. Additional jobs are created transporting and placing the material in various construction projects, creating an economic ripple effect in addition to the royalties paid to the state.

This stretch of the river is not rafted very often because most boaters either pull out at Lucile upstream of the lease area or put in at Hammer Creek downstream of the lease area. The short duration and season of activity also minimize the potential for conflicts with other river uses. Fishermen use this stretch of the river all year, but no complaints have been heard from them.

The excavated gravel bar is replenished by bedload when flows exceed 60,000 cfs. Some spring seasons with low runoff do not replenish the gravel bar. The system is not gravel deficient, and no other gravel scalping operations are in the area even though many other gravel bars are present upstream and downstream

of the operation. A fisheries biologist with 48 years of experience on the Salmon River, Terry Holubetz, has determined that no evidence exists of the operation altering the river channel in the lease area or upstream or downstream of the lease area. Aerial photos spanning 44 years show little change to the channel over this period of time. A hydrologist with 24 years of experience on this river, Nick Gerhardt, stated that he had seen no significant change in river features within the lease area over that time period from 1985 to 2009. He also stated that a bedrock outcrop on the left bank makes the river bend to the right and causes the flow to concentrate on the left bank and form a deep pool. Below that pool, the river bends back to the left and the main flow concentrates on the right side of the river along Highway 95. Air photos of an area near White Bird Creek from 1968 and 2009 also show little change over time.

- b. Testimony in opposition to the project was presented by Jonathan Oppenheimer of the ICL. A CD with several scientific articles, written comments from ICL members, and some correspondence concerning the operation were entered into the record at the hearing. Mr. Oppenheimer stated that he did not have any issues with the applicant and ICL's general concerns about the river use were not a personal attack on the applicant. In addition to the comments covered in his January 19<sup>th</sup>, 2012 letter, he stated that the Applicant did not properly notify Digline and the IDWR prior to the last gravel removal on the lease area. These notifications are required by the IDWR Stream Channel Alteration Permit. Mr. Oppenheimer was not able to provide any evidence of actual impact to the river from the mining operations when asked. He also could not rationalize the increasing fall Chinook redd counts with his allegations of impacts from the mining operation. Lastly, Mr. Oppenheimer was not able to verify if the Salmon River in the lease area was in fact an alluvial channel as described in his submitted scientific articles.
  
- c. Public testimony in support of the project was presented by eleven (11) individuals. They provided the following points for consideration:
  - i. Tucker Lindsey, James Rockwell, Joaquin Lowe, and Lyne Cook stated that the location and quality of the material is unique. No reasonably close replacement for this source exists, especially for use in concrete. Joaquin Lowe stated that Lewiston or McCall were the closest alternatives for washed rock.
  - ii. Jerry Holes and Anna Holden stated that the operation is important to the local economy.
  - iii. James Rockwell and Margaret Riener stated that the operation is environmentally friendly.
  - iv. Jerry Holes and John Lamb stated that the operation has not damaged the river.
  - v. Bernie Kaschmitter stated that the rock from this source provides erosion control benefits in the area. John Lamb stated that the operation removes sediment from the river, which is a benefit.
  - vi. Joaquin Lowe stated that the current operation is self renewing, and does not

leave a big pit and associated impacts on the uplands. Steve Dalgiesh stated that the gravel mining is less impactful than upland mining, which has externalized costs.

- vii. Margaret Riener with Riener Concrete, Lyne Cook with Cook and Sons Construction, and Joaquin Lowe with the local highway district stated that they use aggregate from this source.
- viii. John Lamb stated that this section of the river is not floated very much because it does not have the bigger rapids.
- ix. Bruce Walker stated that he frequently fishes in this area, and has not seen any change in the fishery over the last 15 years either upstream or downstream of the operation.
- x. Bruce Walker stated that the highway and bridges are more of an aesthetic problem than the mining operation. Lester Lowe stated that he ran a rafting company for 10 years in this area, and the local history and heritage was the biggest draw for customers. He never received complaints about the mining operation on this stretch of the river.
- xi. Bob Abbot, retired Grangeville BLM Ranger, stated that the river fluctuates from 1,800 cfs to 134,000 cfs because it is the longest undammed river in the United States. Fall Chinook are the only spawners in the main channel.
- xii. Bob Abbot stated that this section of the river is not eligible for federal classification as Wild and Scenic, it is only eligible for classification as Recreational. The only activity precluded as a Recreational river is dam construction.

26. Three letters were received at the hearing on February 21<sup>st</sup>, 2012. These letters support approval of the lease application. Comments in the letters include:

- a. Larry Allen stated the Applicant was doing a good job.
- b. Carl Killgor and Margaret Riener stated that the operation had been supplying them gravel for many years, and their businesses depend on that gravel.
- c. Carl Killgor and Margaret Riener stated that the loss of this source would be devastating to their businesses. Mr. Killgor estimated at least a 30% increase in construction costs, as well as a loss of jobs.

27. Attachment 1 supplied by the ICL in their January 19<sup>th</sup>, 2012 letter (US Fish and Wildlife Service, National Marine Fisheries Service, US Army Corps of Engineers, and US Environmental Protection Agency, 2008. Sediment Removal from Active Stream Channels in Oregon: Considerations for Federal Agencies for the Evaluation of Sediment Removal Actions from Oregon Streams. Version 1.2) contains a lot of information concerning in-stream gravel mining. The following excerpts are pertinent to the Kaschmitter application:

- a. Page 6, "Under the Fish and Wildlife Coordination Act, FWS and NMFS reviews Section 10 and Section 404 permit applications for environmental impacts to all of their trust resources. Section 7 of the Endangered Species Act requires Federal action agencies, including USACE, to consult with NMFS and the FWS. If it is believed that a listed species may be affected by a project, ESA Section 7



requires consultation in order to ensure that such actions are not likely to jeopardize the continued existence of any endangered or threatened species, including harm to habitat of listed species.”

- b. Page 9, “Even though bar scalping is the most common method for in-stream gravel removal in Oregon, each operation is conducted differently and each stream reach has unique characteristics. It is important to evaluate potential effects and recommendations in light of site specific constraints and opportunities.”
- c. Page 12, “The thalweg switches from bank to bank as the flow meanders around accumulations of coarse bed material known as alternate bars.”
- d. Page 42, Recommendations to Minimize Degradation of Salmonid Habitat
  - Allow bar skimming gravel removal under restricted conditions;
  - The gravel bar is not an active spawning, rearing, or feeding area for salmonids;
  - Adequate recruitment exists so that the bar is typically replenished each year;
  - Berms and buffer strips be used to control stream flow away from the location of gravel removal;
  - Gravel is removed only during low flows and from above the low-flow water level; and
  - The final grading of the gravel bar does not significantly alter the flow characteristics of the river at high flows.
- e. Page 87, Definition of Alluvial Stream – “Self-formed channels composed of clays, silts, sand, gravel, or cobble. Characterized by the ability to alter their boundaries and their patterns in response to changes in discharge and sediment supply.”

28. An article supplied by the ICL at the February 21<sup>st</sup>, 2012 hearing, and listed as a reference in their Gravel Mining Bibliography included with their January 19<sup>th</sup>, 2012 letter, and referenced by the EPA in their letter dated January 20<sup>th</sup>, 2012 (Kondolf, G.M. 1997. Hungry water: effects of dams and gravel mining on river channels. *Environ. Manage.* 21(4): 533-551.) had the following statement on Page 548 in Conclusions: “The regional context of aggregate resources, market demand, and the environmental impacts of various alternatives must be understood before any site-specific proposal for aggregate extraction can be sensibly reviewed. In general, effects of aggregate mining should be evaluated on a river basin scale, so that the cumulative effects of extraction on the aquatic and riparian resources can be recognized. Evaluation of aggregate supply and demand should be undertaken on the basis of production–consumption regions, encompassing the market for aggregate and all potential sources of aggregate within an economical transport distance.”

29. Dated air photos supplied by Applicant indicate no significant change in the river channel morphology since 1968 in the immediate vicinity of the mining operation, and

several miles downstream. Testimony by several other people confirm that no discernable change in the river has occurred over the last several years at, and adjacent to, the mine site.

30. Photos, air photos, and expert testimony supplied by the Applicant reveal a bedrock obstruction on the opposite side of the river adjacent to the mined area. The Applicant also testified that the deep part of the river, or the thalweg, is adjacent to this bedrock area on the outside of the river's bend to the right.

31. The Salmon River adjacent to the mining area is not likely to change location, morphology, or depth due to the location of the thalweg and the bedrock along the left bank. This is supported by the Applicant's photos going back to 1968 and his expert testimony. The thalweg cannot change location at this point in the river, and the zone of deposition mined by the Applicant is therefore also fixed in place. Even flows of up to 134,000 cfs have not been able to change this configuration.

32. The numerous scientific articles supplied in testimony use the words "may" and "can" when discussing the impacts associated with in-stream gravel mining. For example, the Kondolf, 1997 article referenced above states on page 541 that "In addition to the direct alterations of the river environment, instream gravel mining may induce channel incision, bed coarsening, and lateral channel instability." The articles clearly state that negative impacts to a stream or river due to in-stream mining cannot be automatically assumed to have occurred. Each project must be evaluated independently using site specific information.

33. The scientific articles supplied in testimony cite many examples of problems with in-stream mining that have occurred in other states, especially Oregon and California. These examples appear to be from alluvial streams or rivers. Given the definition of alluvial stream from one of these articles, and the bedrock obstructions adjacent to the mining area, the Salmon River at this location cannot be accurately described as an entirely alluvial channel because it is not capable of altering the left bank in response to changes in discharge and sediment supply.

34. In addition to being alluvial streams, the example streams in the scientific articles are often highly altered with dams, levees, and other human influences. These human influences change the balance of erosion, sediment transport, and deposition. The Salmon River by the lease area is by no means pristine due to the extensive history of placer mining, road building, agriculture, and some levee building, but the lack of change in river morphology at the mining site over the last 40 years suggests that the Salmon River is balanced in terms of its sediment budget. This balance has been achieved even with 40 years of in-stream gravel mining. The lack of dams and other in-stream gravel mines likely contribute to the maintenance of this balance.

35. Photos and air photos of the river bank at the mining operation indicate the riparian area is vegetated, and is not visibly different than most unmined portions of the river. Two access points to the river are used by the Applicant, but they do not appear

to be causing bank instability.

36. When the mined area is covered by spring runoff at flows of over 60,000 cfs, the Salmon River is already carrying a substantial bedload. The Applicant's photo of the Salmon River at 94,000 cfs shows a very brown river carrying a lot of sediment. Sediment mobilized from the mined area at these flows is but a small percentage of the bedload created by the hundreds of miles of undammed river and tributaries upstream of the site.

37. The Applicant's mining operation does not appear to be causing erosion, down cutting, channel armoring, instability, or other changes to the Salmon River channel. The lack of any specific negative impacts to the Salmon River from the mining operation demonstrates the effectiveness of the IDWR stream channel alteration permit, and the dedication of the Applicant to operate responsibly. As stated in one of the scientific articles ICL, site specific circumstances must be examined when evaluating proposals for in-stream gravel mining. This appears to have been done. In addition, the recommendations for in-stream mining provided by a collaborative federal publication appear to have been implemented.

38. The Chinook redd counts supplied by the ICL indicate that 2011 had 60 documented redds, the highest recorded count given the records going back to 1991. The Nez Perce Tribe letter confirmed the number of redds in 2011.

39. The closest Chinook redds shown on the photo provided by the ICL are approximately five (5) miles downstream of the Applicant's mine area, and approximately three (3) miles upstream the mine area. The photo also shows other active gravel bars and beaches are present between the Applicant's mine area and both of these upstream and downstream Chinook redds.

40. No photos, monitoring data, or other evidence was submitted to support objections related to past, present, or future impacts on salmonid fish species, including fall Chinook. The river channel has been stable for over 40 years with mining at this location, and site specific conditions will keep it stable. Chinook spawning redds have increased in number, and mining operations are conducted in a manner to avoid impacts. Sedimentation from the mine area does not appear to be an issue as long as operations continue to be conducted in a responsible manner. Lastly, consultation with the Idaho Department of Fish and Game on this lease area has been ongoing since the late 1960s, so the needs of salmonid fish species are being addressed at this site.

41. As pointed out by the ICL in their January 19<sup>th</sup>, 2012 letter, the Corps has determined that a permit under Section 404 of the Clean Water Act is not required for this operation due to the excavation methods that do not result in a discharge of fill below the OHWM.

42. No evidence of actual harm to recreation caused by the Applicant's lease activities was presented in either written or oral testimony.

43. Excavation occurs after the summer tourist season, and testimony indicates that spring high water erases any evidence of mining prior to the following summer tourist season. Evidence of gravel mining is difficult to see in photos of the mined area immediately after gravel removal.

44. Excavation in the river generally takes less than two weeks. This is the only time an aesthetic impact occurs at the mining operation.

45. The Wild and Scenic Rivers Act was passed in 1968, at least 13 years after mining was started at this location. If this part of the Salmon River is eligible for classification as a Recreational river, then it is eligible in spite of in-stream gravel mining at this location.

46. As indicated by testimony and other evidence, only one alternative source of road aggregate is present in the New Meadows to Grangeville corridor. The size and longevity of this alternative source is unknown. No alternative sources of concrete aggregate, however, appear to be present in this same area.

47. Abundant testimony indicates that this gravel source is important to the local economy and is a critical source of concrete aggregate for many public and private construction projects. This source is also renewed approximately every year, ensuring an unending supply.

48. All documents referenced or mentioned in these Findings of Fact, or entered into the hearing record, are hereby incorporated into this document by reference.

### **III. CONCLUSIONS OF LAW**

1. The Idaho Board of Land Commissioners (Board) is required by Idaho Code § 58-104(9) to regulate and control the use or disposition of lands in the beds of navigable lakes, rivers and streams, to the natural or OHWM thereof, so as to provide for their commercial, navigational, recreational or other public use.

2. The Board is designated in Idaho Code § 47-714 to regulate, control, and permit mineral leasing on navigable rivers in Idaho.

3. IDL is the administrative agency of the Board, as per Idaho Code § 58-119.

4. The Salmon River is a navigable water as determined in Callahan v. Price, 26 Idaho 745, 146 P. 732 (1915), as confirmed in Heckman Ranches, Inc. v. State, 99 Idaho 793, 589 P.2d 540 (1979), and as defined by Idaho Code § 58-1202(3).

5. IDL shall make decisions on proposed riverbed mining operations in accordance

with the Public Trust Doctrine as set forth in Idaho Code § 58-1201 through 1203.

6. IDL shall also make decisions affecting public trust lands in accordance with the Public Trust Doctrine as explained by the Idaho Supreme Court in Kootenai Environmental Alliance, Inc. v. Panhandle Yacht Club, Inc., 105 Idaho 622, 671 P.2d 1085 (1983) (KEA) and subsequent cases. The Supreme Court in KEA determined that public trust uses include those of fish and wildlife habitat, recreation, aesthetic beauty, and water quality. The court in KEA also stated that mere compliance of IDL with its' legislative authority is not sufficient to determine if their actions comport with the requirements of the Public Trust Doctrine.

7. Compliance with the Stream Channel Alteration Act, Idaho Code § 42-38, should be required by all riverbed leases to ensure protection of public trust values.

8. IDAPA 20.03.02.001.05(c) states "Sand and gravel mining operations in state-owned beds of navigable lakes, rivers or streams shall constitute an approved surface mining plan for the purpose of these rules if they are covered by a valid lease granted by the Board in accordance with Title 47, Chapter 7, Idaho Code and IDAPA 20.03.05, "Rules Governing Riverbed Mineral Leasing," and a valid mineral lease bond; have a valid stream channel alteration permit issued by the Idaho Department of Water Resources; and have a plan of operation for the mineral lease approved by the Department."

9. Objections to the lease application are not supported by the factual written and oral testimony:

**Objection:** The Salmon River is eligible as a Wild and Scenic river.

**Response:** Bob Abbot, a retired BLM employee with experience in federal river management, stated that the Salmon River in the lease area is only eligible to be classified as a Recreational river, and not Wild or Scenic.

**Objection:** Public trust lands should be managed for the public benefit (fish, wildlife, water quality, recreation) and not mining.

**Response:** Public benefits can also include commercial activities, including gravel mining. This is supported by the language in Idaho Code § 58-104(9). Abundant testimony was given regarding the benefits provided to many members of the community, businesses, and the general public through the use of the mined aggregate in concrete and construction projects. The projects included both public and private improvements.

**Objection:** Alternate sources of aggregate should be used instead of mining from the river.

**Response:** Testimony clearly demonstrated that sufficient alternative sources do not exist in this area, and other aggregate sources could create other issues related to increased costs, depletion, overburden removal, water quality, etc.

**Objection:** Recreation will be negatively impacted by the mining operation.

**Response:** Mining does not occur during the normal summer recreation season. At that time of year, the mining area appears to be just another gravel bar. In addition, this stretch of the river does not receive as much river traffic as the section above Lucile and the section below Hammer Creek. The number of floaters and anglers that pass by the mining area during the brief period it is active, or between the time it is mined and spring high water, appears to be small. No evidence of substantial complaints from fall to winter floaters and anglers was presented. The impact on recreation, therefore, appears to be negligible.

**Objection:** Consultation with a variety of federal agencies is needed or required to evaluate this application.

**Response:** IDL must respect the determination by the Corps that the Corps have no jurisdiction over the lease activities as currently designed and implemented. Absent that permitting process, or any other federal permitting process, Section 7 consultation with NOAA Fisheries Service and US Fish and Wildlife Services is not required. That does not, however, authorize the Applicant to do any activity that constitutes a take of endangered species. Other portions of the Endangered Species Act may still apply to the Applicant's activities. IDL, however, does not administer this Act, and it is up to the Applicant to ensure compliance with this Act. The Applicant does, however, operate under the same written recommendations put forth by all these federal agencies, so the need for additional consultation or permitting has not been demonstrated.

#### **IV. HEARING COORDINATOR CONCLUSIONS AND RECOMMENDATIONS**

Based upon the information provided to me as the hearing coordinator, the fact that the current operation does not appear to have any substantial negative impacts on the Salmon River or its other uses, the fact that the river structure and form at this location is unlikely to be degraded by the operation, and the fact that the aggregate produced has a substantial positive effect on the local economy and the state, I recommend that the Director of IDL issue a Final Order stating that IDL should **approve** the riverbed mineral lease application submitted by the Applicant pending approval by the State Board of Land Commissioners and conditioned on obtaining a new Stream Channel Alteration Permit from IDWR.

DATED this 11th day of March, 2012.

  
\_\_\_\_\_  
ERIC WILSON  
Hearing Coordinator

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this \_\_\_\_\_ day of March, 2012, I caused to be served a true and correct copy of the foregoing document, by the method indicated:

- |  |  |
|--|--|
| Tucker Lindsey<br>PO Box 313<br>Lucile, ID 83542-0313                                  | <input type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Federal Express<br><input type="checkbox"/> Facsimile: _____<br><input type="checkbox"/> Statehouse Mail |
| Lester Lowe<br>PO Box 368<br>Riggins, ID 83549-0368                                    | <input type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Federal Express<br><input type="checkbox"/> Facsimile: _____<br><input type="checkbox"/> Statehouse Mail |
| Lyne Cook<br>Cook and Sons Construction<br>726 Deer Creek Road<br>White Bird, ID 83554 | <input type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Federal Express<br><input type="checkbox"/> Facsimile: _____<br><input type="checkbox"/> Statehouse Mail |
| Jonathan Oppenheimer<br>Idaho Conservation League<br>PO Box 844<br>Boise, Idaho 83701  | <input type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Federal Express<br><input type="checkbox"/> Facsimile: _____<br><input type="checkbox"/> Statehouse Mail |
| James Rockwell<br>Idaho County Commission<br>320 W. Main<br>Grangeville, ID 83530      | <input type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Federal Express<br><input type="checkbox"/> Facsimile: _____<br><input type="checkbox"/> Statehouse Mail |
| Bernie Kaschmitter<br>1305 Crooks St.<br>Grangeville, ID 83530-2176                    | <input type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Federal Express<br><input type="checkbox"/> Facsimile: _____<br><input type="checkbox"/> Statehouse Mail |
| Bob Abbott<br>16189 Highway 95 S.<br>Grangeville, ID 83530-5179                        | <input type="checkbox"/> U.S. Mail, postage prepaid<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Federal Express<br><input type="checkbox"/> Facsimile: _____<br><input type="checkbox"/> Statehouse Mail |

Joaquin Lowe  
124 White Bird Road  
White Bird, ID 83554-5009

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: \_\_\_\_\_
- Statehouse Mail

Steve Dalgliesh  
PO Box 68  
White Bird, ID 83554

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: \_\_\_\_\_
- Statehouse Mail

Jerry Holes  
213 West Main St  
Grangeville, ID 83530-1985

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: \_\_\_\_\_
- Statehouse Mail

John Lamb  
1164 Highway 64  
Grangeville, ID 83

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: \_\_\_\_\_
- Statehouse Mail

Bruce Walker  
620 S. E St.  
Grangeville, ID 83530-1533

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: \_\_\_\_\_
- Statehouse Mail

Margaret Riener  
PO Box 84  
Ferdinand, ID 83526-0084

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: \_\_\_\_\_
- Statehouse Mail

Anna Holden  
3154 Salmon River Court  
White Bird, ID 83554

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: \_\_\_\_\_
- Statehouse Mail

Jay Sila  
Idaho Department of Lands  
PO Box 68  
Craigmont, ID 83523

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: \_\_\_\_\_
- Statehouse Mail



Tom Schultz  
Idaho Department of Lands  
300 N. 6<sup>th</sup> St. Ste. 103  
PO Box 83720  
Boise, ID 83720-0050

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile: \_\_\_\_\_
- Statehouse Mail

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ERIC WILSON  
IDL Minerals Program Manager

**Exhibit 1**  
**Mineral Lease E03013**  
**Kaschmitter Enterprises, Inc.**

