

Constance E. Brooks connie@cebrooks.com (I
Danielle Bettencourt danielle@cebrooks.com (I
Cody Doig cody@cebrooks.com (Pro hac vice)
C.E. BROOKS & ASSOCIATES, P.C.
5445 DTC Parkway, Suite 940
Greenwood Village, CO 80211
Telephone: (303) 297-9100
Fax: (303) 297-9101

W. Alan Schroeder (ISB #4118)
SCHROEDER LAW
Tulip S Building, Suite 110
1449 South David Lane
Boise, Idaho 83705-3185
Telephone: (208) 914-6699
Fax: (208) 813-6478
alan@schroederlaw.com

Counsel for Defendant

* 40 CFR 232.2 (EPA) and 33 CFR
323.2 (army Corp) both define
"Discharge" of material as the
addition of such materials to
the waters of the U.S.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

IDAHO CONSERVATION LEAGUE,

Plaintiff,

v.

SHANNON POE,

Defendant.

)
)
) Case No. 1:18-cv-353-REB
)
)
) DEFENDANT SHANNON POE'S
) MOTION FOR SUMMARY
) JUDGMENT
)
)

Pursuant to Federal Rule of Civil Procedure 56 and the Scheduling Order entered in this matter, ECF No. 30, Defendant Shannon Poe hereby files this motion for summary judgment asking that this Court find that the Defendant did not violate Section 402 of the Clean Water Act, when he did not secure a National Pollution Discharge Elimination System ("NPDES") permit from the Environmental Protection Agency ("EPA"). Section 402 does not apply to suction dredge mining

because this type of mining is a discharge of dredged or fill material that can only be regulated under Section 404 of the Clean Water Act. A discharge regulated under Section 402 of the Clean Water Act requires that there be an addition of a pollutant and suction dredge mining does not add anything to the discharge. Thus, the EPA NPDES permit was not required. On these grounds and as established in the Statement of Facts and Memorandum in Support of this Motion, Defendant Poe is entitled to dismissal of this matter.

1. Plaintiff Idaho Conservation League seeks to enforce Section 402 of the Clean Water Act which governs discharges of additional pollutants into the waters of the United States. Plaintiff relies on the General Permit issued by Region 10 of the EPA to conclude that the failure of Mr. Poe to secure the NPDES permit violates the Clean Water Act.

* 2. Defendant Poe establishes that suction dredge mining in general and, certainly recreational suction dredge mining, is a “discharge of dredged or fill material” regulated solely under Section 404 of the Clean Water Act. The express language of Section 402 excludes “discharges of dredged and fill material” from Section 402 regulation, including the NPDES permit system.

3. The U.S. Supreme Court affirmed in *Coeur Alaska, Inc. v. S.E. Alaska Conservation Council*, 557 U.S. 261, 273 (2009) that discharges of dredged or fill material as defined by Section 404 regulations cannot be also regulated under Section 402.

4. Discharges under Section 402 are limited to activities that add a pollutant to the discharge into the waters of the United States. Suction dredge mining does not add a new pollutant to the dredged material that is dug up from the bottom of the South Fork Clearwater River, run through the suction dredge, and almost immediately returned to the river, minus gold, mercury, and