

Frequently Asked Questions - Existing Suction Dredge Permits

(Updated November 9, 2009)

Q: Why is suction dredging now illegal in California?

A: SB 670 (Wiggins) was enacted on August 6, placing a temporary prohibition on the use of vacuum or suction dredge equipment for instream mining in any California river, stream or lake, regardless of whether the operator has an existing permit issued by the Department of Fish and Game (DFG). The temporary moratorium does not apply to suction dredging operations performed for the regular maintenance of energy or water supply management infrastructure, flood control, or navigational purposes.

Q: When does the moratorium go into effect?

A: The temporary moratorium went into effect on August 6, 2009, as an urgency measure, putting it into effect immediately upon enactment.

Q: Who is affected by the moratorium?

A: The temporary moratorium affects both individuals and companies that use vacuums or other suction dredging equipment for instream mining in any California river, stream or lake. The ban does not affect suction dredging operations performed for the regular maintenance of energy or water supply management infrastructure, flood control, or navigational purposes are not included in the ban.

Q: What if I already have a suction dredge permit issued by DFG?

A: SB 670 prohibits all instream suction dredging mining, even if the operator has a permit previously issued by DFG.

Q: Can I get a refund of fees paid for my suction dredge permit?

A: DFG can only issue refunds if authorized to do so by law. SB 670 does not provide this authority, nor does any other provision of law. DFG is therefore prohibited from providing refunds for 2009 suction dredge permit fees.

Q: When will the ban be lifted?

A: The ban will remain in effect under SB 670 until three things occur:

1. DFG completes court-ordered environmental review of its permitting program;
2. DFG updates the existing regulations governing the program as necessary; and
3. The updated regulations take effect.

The court-ordered environmental review required by the California Environmental Quality Act (CEQA) is currently underway and DFG expects to complete the effort, including any updates to the existing regulations, by late summer 2011.

Q: When will the EIR be completed?

A: DFG is preparing a Subsequent Environmental Impact Report (EIR) to conduct the court-ordered review. DFG estimates at this point that it will complete and certify the Subsequent EIR (and updates to the existing regulations, if necessary) after a series of public meetings and other opportunities for

public comment and review by late summer 2011. The environmental review and regulation processes are governed by the California Environmental Quality Act and the Administrative Procedure Act, respectively. The time line is driven by the requirements of these laws.

Q: Why is this process going to take so long?

A: DFG has already begun the court-ordered environmental review of the existing permitting program; this was last done in 1994. The review process will be complex and lengthy given the required statewide scope of the analysis and the time that has passed since the last review. In addition to the detailed written analysis prepared by DFG in coordination with the State Water Board, the review process will also include several opportunities for public involvement, both via public meetings and through solicitation of written comments and suggestions. Initial public meetings to discuss the scope of the environmental analysis are currently being planned for November 2009 in Fresno, Sacramento and Redding. Additional details, including time and place of the meetings, will be posted on the DFG Web site, www.dfg.ca.gov, as they become available.

Q: What is DFG doing to notify suction dredge permit holders about the ban?

A: DFG staff is notifying current permit holders by mail and will contact suction dredge operators in the field as opportunities arise. Information about the moratorium is available at DFG license counters and at the DFG Web site, www.dfg.ca.gov. DFG has also issued a press release and is working with the media to make information about the new law widely available.

Q: Is there a “grace period”?

A: SB 670 was enacted as an urgency measure, putting the temporary moratorium into effect immediately. DFG wardens are authorized to issue citations to anyone found violating the law.

Q: What are the legal consequences of suction dredging now that the moratorium is in effect?

A: A violation of the law is a misdemeanor, punishable by up to \$1,000 in fines and/or six months in jail.

Q: Why has DFG stopped selling suction dredge permits?

A: Consistent with the temporary moratorium established by SB 670 DFG has ceased issuing suction dredge permits. DFG is also currently subject to a court order prohibiting the issuance of suction dredge permits. (*Leeon Hillman et al. v. California Dept. of Fish and Game et al.*, Super. Ct. Alameda County, 2009, Case No. RG09-434444.) The court order prohibits DFG from spending any money from the California State General Fund to issue suction dredge permits.

Q: Will permits be sold again in the future?

A: Permits may be sold again in the future if:

1. The temporary moratorium established by SB 670 is lifted; and
2. The *Hillman* lawsuit is no longer pending or until a further order is issued by the court.

Q: If I already have a permit, is it still valid?

A: SB 670 prohibits all instream suction dredging mining, even if the operator has a permit previously issued by DFG.

Q: Can I legally use suction dredge equipment on private property?

A: SB 670 prohibits instream suction dredge mining in any river, stream, or lake within California. The prohibition applies regardless of whether the river, stream, or lake is on private property.

Q: Can I leave my equipment in the water, as long as I'm not using it?

A: No. Vacuum or suction dredge equipment must be removed from the water pursuant to Fish and Game Code section 5653, subdivision (d). This provision of the Fish and Game Code makes it illegal to possess a vacuum or suction dredge in areas, or in or within 100 yards of waters that are closed to the use of vacuum or suction dredges. Because SB 670 prohibits instream suction dredge mining in any river, stream, or lake in California, suction dredge equipment must be removed from the water even if the equipment is not in use.

Q: How soon do I need to get my equipment out of the water?

A: SB 670 took effect on August 6, 2009, and the related legal obligation to remove vacuum or suction dredge equipment from the water took effect the same day. It is currently unlawful under the Fish and Game Code to possess any vacuum or suction dredge equipment in or within 100 yards of any river, stream, or lake in California. Any person in possession of such equipment in or within 100 yards of any river, stream, or lake must remove that equipment from the water immediately.

Q: What can I do if I see prohibited instream suction dredge mining?

A: Call Cal-Tip at 1-888-334-2258.

Q: Is high banking also prohibited?

A. There are several different methods of high banking. If you propose to use a suction dredge for high banking, pursuant to Fish and Game Code section 5653(d), you must be more than 100 yards away from the active channel. Otherwise, high banking is not prohibited by SB 670. However, activities which substantially modify the bed, bank or channel of a river or stream are subject to the Notification requirements of Fish and Game Code section 1602. High banking may meet this criteria and you are advised to contact the appropriate DFG regional office for more information.

Q: Where can I find more information about this in the future?

A: Additional information can be found at www.dfg.ca.gov.