

## **TITLE 14. CALIFORNIA DEPARTMENT OF FISH AND GAME**

### **NOTICE OF PROPOSED RULEMAKING**

The California Department of Fish and Game (CDFG) proposes to adopt amended regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

#### **PUBLIC HEARINGS**

CDFG will hold six public hearings as follows:

**Santa Clarita:**

Wednesday, March 23, 2011 at 5 p.m.  
Residence Inn by Marriott  
25320 The Old Road  
Santa Clarita, CA 91381

**Fresno:**

Thursday, March 24, 2011 at 5 p.m.  
CA Retired Teachers Association  
3930 East Saginaw Way  
Fresno, CA 93726

**Sacramento:**

Tuesday, March 29, 2011 at 5 p.m.  
Byron Sher Auditorium  
1001 – I Street  
Sacramento, CA 95812

**Yreka:**

Wednesday, March 30, 2011 at 5 p.m.  
Yreka Community Center  
810 N. Oregon  
Yreka, CA 96097

**Redding:**

Thursday, March 31, 2011 at 5 p.m.  
Shasta Senior Nutrition Program  
100 Mercy Oaks Drive  
Redding, CA 96003

**Sacramento:**

Tuesday, May 10, 2011 at 9:00 a.m.  
Natural Resources Agency Building Auditorium  
1416 Ninth Street  
Sacramento, CA 95814

At the hearing, any person may present statements, arguments, or contentions orally or in writing relevant to the proposed action described in the Informative Digest. CDFG requests but does not require that persons who make oral comments at a hearing also submit a written copy of their testimony at the hearing.

**PUBLIC COMMENT PERIOD**

Any interested person, or his or her representative, may submit written comments relevant to the proposed regulatory action to CDFG. Comments may also be submitted by facsimile (FAX) at 530.225.2391 or by email to [dfgsuctiondredge@dfg.ca.gov](mailto:dfgsuctiondredge@dfg.ca.gov). The written comment period closes at 5:00 P.M. on May 10, 2011. CDFG will consider only comments received by that time. Submit comments to:

Mark Stopher  
California Department of Fish and Game  
601 Locust Street  
Redding, CA 96001

**AUTHORITY AND REFERENCE**

Fish and Game Code sections 5653.1 and 5653.9 authorize CDFG to adopt the proposed regulation. The proposed regulations implement, interpret and make specific sections 5653, 5653.1 and 5653.9 of the Fish and Game Code.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The use of vacuum or suction dredge equipment for instream mining is currently prohibited in California by Fish and Game Code section 5653.1 (Section 5653.1), which became effective August 6, 2009. Section 5653.1 establishes a temporary moratorium on instream suction dredge mining in California, prohibiting persons with existing permits previously issued by CDFG to engage in instream suction dredge mining and prohibiting CDFG from issuing any new permits. The statewide moratorium on instream suction dredge mining and the related prohibition on the issuance of new permits will remain in place until CDFG completes the environmental review required by a December 2006 Court Order; CDFG adopts, as necessary, updates to the previous regulations; and any such updates become effective. (Fish & G. Code, § 5653.1.) Fish and Game Code section 5653 (Section 5653) requires that persons obtain CDFG-issued permits before using any vacuum suction or dredge equipment in any river, stream or lake and imposes certain

conditions to protect fish populations. Fish and Game Code section 5653.9 directs CDFG to adopt regulations to carry out Section 5653.

The regulations (14 CCR 228 et seq.) proposed in this rulemaking action consider the best information currently available regarding the condition of fish populations in California and the reasonably foreseeable effects of suction dredging on fish. The proposed regulations would authorize CDFG to issue permits to persons allowing them to engage in motorized suction dredging, with specific restrictions intended to avoid effects which would be deleterious to fish. The proposed regulations are more restrictive than those that were in place prior to establishment of the moratorium. Additional restrictions include specific equipment and operational requirements and shorter operating seasons or closures for various rivers, lakes and streams.

#### DISCLOSURES REGARDING THE PROPOSED ACTION

CDFG has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: CDFG will incur administrative, environmental review and enforcement costs which may exceed revenues available from statutorily established permit fees. Although a precise estimate is not feasible prior to implementation, these costs are likely to be greater than \$300,000 annually and less than \$500,000 annually.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None

Cost impacts on representative private person or businesses: Individual persons or businesses will be required to pay permit fees already established by Fish and Game sections 5653(c) and 713. Additional costs will apply to individuals and businesses proposing to conduct suction dredging using dredges with intake nozzles greater than 4" in diameter and related activities, including power winching, dredging in lakes or reservoirs and dredging related activities which substantially divert or obstruct the natural flow of streams or rivers.

Adoption of these regulations will not:

(1) create or eliminate jobs within California;

- (2) eliminate existing businesses within California; or
- (3) adversely affect the expansion of businesses currently within California

Adoption of these regulations will:

- (1) cause the expansion of existing business and create new businesses in California

Significant effect on housing costs: None.

Small Business Determination:

The CDFG has determined that the proposed regulations will not adversely affect small businesses. Existing State law prohibits all motorized suction dredge mining and any related economic activity which could benefit small businesses. The proposed regulations would allow suction dredging to resume, under amended regulations, thereby increasing economic activity for small businesses relative to existing conditions.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), CDFG must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CDFG invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Mark Stopher  
California Department of Fish and Game  
601 Locust Street  
Redding, CA 96001  
Telephone: 530.225.2275  
e-mail: [mstopher@dfg.ca.gov](mailto:mstopher@dfg.ca.gov)

In the event the contact person is not available, inquiries should be directed to the following back-up person:

Randy Kelly  
California Department of Fish and Game  
Telephone: 559.243.4014 extension 246

Email: [RKelly@dfg.ca.gov](mailto:RKelly@dfg.ca.gov)

Please direct requests for copies of the proposed regulations, the initial statement of reasons, the modified text of the regulations, or other information upon which the rulemaking is based to Mr. Stopher at the above address.

#### AVAILABILITY OF THE STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

CDFG will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published, the rulemaking file consists of this notice, the proposed text of the regulations and the initial statement of reasons. Copies may be obtained by contacting Mr. Stopher.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearings and considering all timely and relevant comments received, CDFG may adopt the proposed regulations substantially as described in this notice. If CDFG makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Mr. Stopher at the address indicated above. CDFG will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Mr. Stopher at the above address.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at [www.dfg.ca.gov](http://www.dfg.ca.gov).