# The New 49'ers

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10 April 2011

**RE: Comments regarding SEIR and Proposed Regulations for suction dredge mining in California**

Dear Sir:

Thank you for allowing us the opportunity to comment on the California Department of Fish & Game's (DFG) Suction Dredge Permitting Program Subsequent Environmental Impact Report (SEIR) and Proposed Regulations.

My name is Dave McCracken. I personally have been operating dredges in California, mostly for financial gain, since 1980. I publish four books on the subject, along with three how-to video productions. My company maintains the most extensive and informative web site in the world on the subject of suction gold dredging. In addition to my work in California, I have consulted on dredge projects all over the world, and I have trained hundreds of people, perhaps over a thousand, on how to do serious underwater mining for the purpose of finding and developing high-grade (economically viable) gold deposits. The California courts have allowed me to testify as an expert in suction dredging. My experience over the past 25 years in helping thousands of New 49'er members become more successful provides me with a unique viewpoint. This is because I have likely devoted more time on more dredging programs than any other person alive. I was intimately involved with the development of the 1994 EIR that supported suction dredge regulations in California until the recent moratorium was imposed. I was also involved with the litigation in Alameda Superior Court which led to the Court's Order for DFG to update your analysis of the environmental consequences of the existing (1994) regulations. Therefore, I am very qualified to provide comments to help this Administrative Process along.

I am the founder and General Manager of The New 49'er Prospecting Association. Our organization has been operating along the gold bearing waterways of Siskiyou County since 1986. While I am the author, these comments are the result of the collaborative efforts of our staff and numerous responsible members that also have substantial experience in dredging matters. We presently have more than 2,000 active members that

depend upon our Association to provide the best small-scale mining opportunities available today, and to defend them against unreasonable regulation. More than half of our members were dredging in California before the recent moratorium was imposed. Therefore, our Association represents about one third of the people who possessed suction dredging permits in California during 2008 & 2009.

We have taken considerable time to review your SEIR, along with the appropriate sections of the California Fish & Game Code, the Resources Code and the Government Code; and I hope you will give careful consideration to my following comments.

The reason these comments are a bit long is that I have copied relevant portions of your SEIR and Code Sections in order to make my points. This is to save you from having to look up your own language. It is also for the benefit of others who have not reviewed the SEIR as closely as we have.

## Congratulations are in order!

Before we get into the SEIR and Proposed Regulations, we would like to take a moment and congratulate the Department upon a job well done by coming up with such a workable EIR and productive set of regulations which supported our industry so well during the 14 mining seasons which between 1994 and 2009 when we were stopped by the moratorium. The Department's own survey results project that our suction dredging (small business) industry recovered over 7 tons of gold and removed more than 4 tons of mercury from California's waterways during that time period, all without creating a deleterious impact upon California's fishery resources; or for that matter, harming a single fish!

Having been present as the 1994 regulations were developed, I am not sure anyone involved at the time was convinced that we found a reasonable balance between resource protection and regulation which was not too burdensome upon our industry. Now that the initial 14-year project is behind us, I believe most people can look back with admiration for how we all made an effort to come up with something that worked for everyone.

Having acknowledged the past, we can only hope to achieve the same results this time around:

## This SEIR has Adopted Too Narrow of a View Concerning Perceived Environmental Impacts, and has not Balanced those to the Actual Economic & Social Impacts

We find it disturbing that this SEIR has gone to such extensive lengths to address the potential negative impacts of suction dredging upon California's historical resources (which you consider "significant and unavoidable") in some part because suction dredging has the potential to disturb sites which may be present as a result of historical gold mining operations, or could perhaps disturb a small boat which may have been left

behind at the bottom of some "confidential" waterway by some unnamed ancient tribe. You have considered the potential negative disturbances upon others which the sound of our dredge motors might impose upon others. You have considered the feelings which other river-users might have when suction dredgers might occupy some of the limited parking along river roads. You even included a substantial discussion about the aesthetic viewpoints which might be affected when a passerby sees a suction dredge along the river.

But what is entirely missing from your SEIR is a discussion about the sociological impact that your proposed regulations are going to have upon suction dredgers, American property owners and other Americans as the California Department of Fish & Game grinds forward with the intent to disenfranchise them/us of the opportunity to make a living (liberty) and continue to have some control over their/our own private property.

The SEIR defined its objective as follows:

> ***6.2.1 Program Objectives***
>
> *The Program was developed to achieve the following objectives:*
> □ *Comply with the December 2006 Court Order;*
> □ *Promulgate amendments to CDFG's previous regulations as necessary to effectively implement Fish and Game Code sections 5653 and 5653.9 and other applicable legal authorities to ensure that suction dredge mining will not be deleterious to fish;*
> □ *Develop a Program that is implementable within the existing fee structure established by statute for the California Department of Fish and Game's suction dredge permitting program, as well as the existing fee structure established by the CDFG pursuant to Fish and Game Code section 1600 et seq.;*
> □ *Fulfill the CDFG's mission of managing California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public; and*
> □ *Ensure that the development of the regulations consider economic costs, practical considerations for implementation, and technological capabilities existing at the time of implementation.*
> □ *Fulfill the CDFG's obligation to conserve, protect, and manage fish, wildlife, native plants, and habitats necessary for biologically sustainable populations of those species and as a trustee agency for fish and wildlife resources pursuant to Fish and Game Code section 1802.*

Please recognize that there is no objective stated within the SEIR to also balance real concerns for environmental protection with the rights of property owners and existing business opportunities (especially small business) which exist within the areas that would be affected by the proposed regulatory changes.

Having read the entire SEIR, along with the appropriate Code Sections, we are convinced that DFG is attempting to complete the Administrative Process with too narrow of a view. Your approach appears to be to remove any and all risk to fish, no matter how

insubstantial or theoretical, **regardless of the costs which the affected small businesses and property owners will have to pay.**

The SEIR claims that the *"...purpose of promulgating the draft proposed regulations is to ensure that suction dredge mining consistent with the Proposed Program is not "deleterious to fish" (Fish & G. Code § 5653).* ***(2.1.2 Program Objectives)***

But F&G Section 5653's mandate must also be interpreted in light of all the other mandates the California Legislature has placed upon State agencies. For example, under the endangered species act you are to develop measures that protect species "while at the same time maintaining the project purpose [here suction dredging] **to the maximum extent possible"** (Fish and Game Code § 2053; emphasis added). As a general matter, mitigation *"measures or alternatives required shall be roughly proportional in extent to any impact on those [listed] species caused . . .".* (Id. § 2052.1). This legislation refutes the notion that you can restrict dredging operations because of mere ***"potential"*** for adverse impacts on fish. To be lawful, any restrictions must make tangible improvements in the community or species-level survival of fish. The SEIR does not present a record to support the restrictions you that you are proposing.

We ask you to recognize that the legislature has also acknowledged the importance of maintaining and encouraging a viable minerals industry:

> **Public Resources Code 2650:** (a) It is the continuing policy of the State of California, in the interest of the needs of society for the wise use of mineral resources and for other sound conservation practices, to foster and encourage private enterprise in all of the following activities:
> **(1) The development within the state of economically sound and beneficial mineral industries and metal and mineral product reclamation industries.**
> (2) The orderly and economic exploration, development, and utilization of the state's mineral resources and reclamation of metal and mineral products emphasis added).
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> **Public Resources Code 2711:** (a) **The Legislature hereby finds and declares that the extraction of minerals is essential to the continued economic well-being of the state and to the needs of the society,** and that the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety (emphasis added).

These Code Sections mandate respect for mining as an activity that cannot lawfully be singled out for significant restrictions. If mere ***"potential"*** for adverse interactions were the criterion for regulation, you should be forbidding all swimming, rafting, kayaking and fishing in the river -- and even camping near the river, all of which pose as much ***"potential"*** to injure fish as mining—and certainly more so in the case of fishing.

In going through the SEIR, it appears that DFG decided from the beginning to overlook the important negative economic and social benefits which your proposed regulations

will certainly have upon the gold mining community. One reason we say this is that while DFG has loaded the SEIR with scientific justification in an attempt to support its proposed regulatory changes, there little-to-no explanation about how the changes (from the 1994 regulations) are going to seriously harm the small businesses and property owners that will be negatively impacted.

> **Public Resources Code 21001:** The Legislature further finds and declares that it is the policy of the state to:
> **(e) Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations** (emphasis added).
> (g) Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.
>
> **Public Resources Code 21002:** The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects. **The Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof** (emphasis added).

We suggest that DFG is deliberately attempting to dismiss the real impacts the proposed regulations will have upon the social and economic wellbeing of the most-affected stakeholders (gold dredgers and property owners) because of the arbitrary baseline which DFG has adopted. Even though the SEIR has acknowledged multiple times that suction dredging has been active within California since the 1960's, DFG decided to compare impacts from the proposed regulations to the existing situation whereby the Alameda Superior Court has imposed a no dredging moratorium until DFG completes this CEQA process. Yet, the purpose of the CEQA process from the beginning was to determine if existing (1994) dredge regulations were creating a **deleterious** impact upon fish.

DFG submitted Declarations within the Alameda litigation stating that you had doubts that existing regulations were providing enough protection for fish. Therefore, you began this process with it in mind that you were going to impose more restrictive regulations over suction dredgers. Therefore, we are assuming that DFG is making an economic comparison to ***"no dredging"*** under the existing moratorium so you can avoid the required balancing act of also taking into consideration how the proposed regulations will burden the thousands of dredger miners and the thousands of property owners who have invested into the existing (1994) regulatory framework. Here is the way you positioned the SEIR:

***Impact MIN - 1: Availability of, or Access to, Placer Gold Deposits (Beneficial):*** *...Implementation of CDFG's Program would lift an existing ban on suction dredging* ***and would increase the potential access to placer gold deposits using this mining method*** (emphasis added).

*By permitting the use of suction dredges, the Program would provide another means for recovery of gold from placer deposits.* ***Adoption of the Proposed Program would result in a beneficial impact by allowing an additional method for extracting mineral resources (i.e., increasing the availability of such resources).*** *The Proposed Program may also include measures to permanently or seasonally restrict suction dredging activities in certain areas of the State. However, these restrictions on suction dredging activities would not preclude other methods of mineral extraction.* ***Therefore, the Proposed Program would not result in a loss of availability from the existing baseline conditions (i.e., prohibition of suction dredging)*** *and would only change the allowable methods of mineral recovery. Therefore, the Proposed Program would have a beneficial impact on the availability and access to placer gold deposits* (emphasis added).

These statements are misleading, because they are not making a comparison to all of the business activity which has invested itself to the existing (1994) regulations. Your SEIR should make it more clear that the proposed regulations would eliminate suction dredging across the state in most places where existing regulations allow it to occur. In addition, your SEIR should make it more clear that in the places where dredging would be allowed under the proposed regulations, effective mining capacity would be reduced to one quarter because suction nozzles would be reduced to 4-inches from 6-inches[1]. In addition, California's most productive rivers would be reduced to $1/8^{th}$ of existing capacity because allowable nozzles would be reduced from 8-inches to 4-inches.

While DFG states that dredgers may be allowed under the proposed regulations to increase capacity by entering into a Section 1600Agreement, nothing is said about how lengthy and expensive the process is, ultimately which would make it impossible for many or most dredgers to gain approval during the same mining season that the dredger is pursuing the mining project.

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[1] The standard rule of thumb in suction dredging is that in experienced hands, a 5-inch dredge will process twice the volume over a 4-inch dredge and efficiently excavate a hole one foot deeper into the streambed; that a 6-inch dredge will process twice the volume over a 5-inch dredge and efficiently excavate a hole one foot deeper into the streambed; that a 6-inch dredge will process twice the volume over a 5-inch dredge and efficiently excavate a hole two feet deeper into the streambed; and that an 8-inch dredge will process twice the volume over a 6-inch dredge and efficiently excavate a hole two feet deeper into the streambed. This formula has to do with the area-opening of the suction nozzle (rather than the diameter) and the percentage of larger-sized rocks within an average streambed that can be sucked up the nozzle rather than be packed by hand out of the excavation. The formula is the result of countless excavations which I have made over the many, many years. It is not something I just made up. You will find it in the books and articles which I and others have published long before this CEQA process was started.

DFG's has also understated the economic opportunities which were possessed by suction dredgers under the existing (1994) regulations in the way the dredger survey results have been interpreted:

> ***Chapter 4.8:*** *Of the in-state permit holders, approximately 82% of those surveyed identified themselves as "recreational" miners, while approximately 74% of out - of - state permit holders identified themselves as such;*

This statement is a mischaracterization, perhaps because DFG really does not understand the mining process. The Survey identifies ***"Recreational Dredgers"*** as follows:

> ***"Recreational Dredger (Not significant source of income)"***

Just because someone does not realize a significant source of income from dredge mining does not mean that they are not serious about the amount of gold they are recovering. There is a learning curve; so it would be unreasonable for a dredge miner to have high expectations of gold recovery until some experience is obtained. Locating a valuable discovery normally requires a period of prospecting (sampling) during which time not very much gold is being recovered. Finding a valuable discovery normally requires some time. Therefore it takes longer for part time prospectors.

Even a person who believes he or she is ***"only dredge mining for fun"*** will become deadly serious about recovering the gold (because it is extremely valuable) once a valuable deposit has been located.

It is incorrect for DFG to characterize dredging as just another form of recreation on the grounds that it can also be an enjoyable activity in the outdoors. The thing that makes suction dredging different than other outdoor activities is that a very valuable substance is being pursued, gold; which when found, immediately turns the activity into a small business program. I have devoted countless hours with many, many suction dredgers; and I can tell you with absolute certainty that every dredger becomes very serious about gold recovery once a valuable deposit is located. The SEIR does not provide enough emphasis that, by its nature, dredge mining becomes a small business concern once a valuable gold deposit is discovered.

Out of all the people surveyed, the average dredger used a 4-inch dredge and recovered around 3.4 ounces of gold, working about 5.25 hours per day for approximately 31 days of work. These are average numbers. Approximately 25% said they recover gold as a source of income. It is reasonable to assume more gold was recovered by more-serious operators who were using larger-sized dredges than 4-inches. But if we just take the average amount of gold that dredgers were recovering during 2008 under the existing (1994) regulations, at today's value of $1,475 per ounce, the gold adds up to $5,300. Divide that amount by the 31 days which the average dredger had been working, and you have $171 per day. This comes to more than $32.62 per hour, **which is a good wage!** This is especially true in view of California's existing unemployment figures. You might rework the numbers a bit and come up with a different amount. But it will still come out to real money and important business!

Furthermore, there is no acknowledgement in the SEIR that all of this gold is a source of true wealth coming into California. This is not paper money that is coming off the government's printing presses, or credit created by the fractional banking schemes used by banks or the perception of value that is created by the financial markets as capital ebbs and flows to different kinds of investments. Gold is real wealth that will still exist long after today's markets and currencies are a thing of the past. Every additional ounce of gold brought into the market through dredge mining makes California just that much more valuable. According to your survey, suction dredgers recovered 12,410 ounces of gold in California during 2008; or more importantly, 173,750 ounces of gold during the 14-year period which the 1994 regulations have served us -- and your SEIR has not presented a single example where any fish was harmed!

It is reasonable to assume that dredge miners who depend upon the gold they recover as a source of income are taking on the activity as a small business enterprise. If 25% of dredgers during 2008 were pursuing the activity for financial gain as your survey suggests, that amounts to 900 small businesses across the state that were operating under existing regulations, all or most who would be negatively-impacted by the proposed regulations. **There is not enough emphasis in the SEIR about this.**

There is also nothing within the SEIR's economic discussions which project future gold prices based upon the existing growth curve; not even a mention! Financial experts uniformly expect the value of gold to go up. Some suggest the price is nearly certain to reach $2,000 per ounce even before our updated suction dredging regulations will take affect in 2012. That would place the average value in gold recovered by dredgers under the 1994 regulations at more than $200 per day; more than $36 per hour! This creates a very substantial small business opportunity in California for the thousands of suction dredge miners that will be directly and negatively impacted by your proposed regulations. This cannot be ignored or overlooked!

**The SEIR must consider the value of gold at the time the EIR is finalized.**

There is also the matter of how the proposed regulations will undermine California's competitiveness with other states. California's existing (1994) regulations are about the same as Alaska's suction dredge regulations. However, California has a distinct dry season which Alaska does not enjoy. The summer season is also longer in California, providing California dredgers a competitive edge over Alaska under the 1994 regulations. However, the proposed regulations would eliminate dredging in most places across California, reduce nozzle sizes to $1/8^{th}$ the effective capacities of dredges being allowed in Alaska, and shorten dredging seasons so drastically that Alaska will actually have a longer dredging season than California!

While Oregon provides a statewide permit (the permit only costs $25 per year even for nonresidents) which allows dredge mining (with no limit on the number of permits issued) in most parts of the state, their Department of Environmental Quality (DEQ) also allows dredgers to apply for a special dredging permit to operate larger sized dredges.

Since DFG's proposed regulations would impose a limit on the number of permits and close suction dredging across most of California, if enacted, they would also provide Oregon with a competitive advantage. None of this is addressed within the SEIR, as it is supposed to be:

> **Government Code 11346.3:** (a) State agencies proposing to adopt, amend, or repeal any administrative regulation **shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations** or reporting, recordkeeping, or compliance requirements. For purposes of this subdivision, assessing the potential for adverse economic impact shall require agencies, when proposing to adopt, amend, or repeal a regulation, to adhere to the following requirements, to the extent that these requirements do not conflict with other state or federal laws:
>
> (2) The state agency, prior to submitting a proposal to adopt, amend, or repeal a regulation to the office, **shall consider the proposal's impact on business, with consideration of industries affected including the ability of California businesses to compete with businesses in other states.** For purposes of evaluating the impact on the ability of California businesses to compete with businesses in other states, an agency shall consider, but not be limited to, information supplied by interested parties (emphasis added).

The SEIR also does nothing to assess the social and economic impact the proposed regulations will have upon all of the people who have moved their residences to gold country in California so they can be closer to suction dredging opportunities which have been allowed under the 1994 regulations, but disallowed under the proposed regulations. There are dozens of families belonging to The New 49'ers who have completely pulled up their roots and moved to Happy Camp or other places within closer reach of our mining properties. We are certain that this is true along all of the productive gold dredging areas of the state. Many have bought property. I am aware some have taken early retirement or quit their jobs so they could relocate closer to the productive dredge mining areas. What about the social impact upon them under the proposed regulations?

Another very important negative economic and social factor which DFG has overlooked in the SEIR are the millions upon millions of dollars in lost property value which Americans would lose as a direct result of the proposed regulations. This is about the many thousands of federal mining claims and parcels of private property which exist along the gold bearing streams and rivers within the state. Thousands of miles of property along these waterways would be completely closed to suction dredging under your proposed regulations. Those areas which would remain open to dredge mining under the proposed regulations would be reduced to a quarter or a mere eighth of the productive capacity which exists under the 1994 regulations (reduction of allowable dredge sizes from 6 or 8-inches down to 4-inches). This would dramatically undermine existing property values! The EIR waves off this reality as follows:

> *2 6.3.1: In relation to mineral resources, the No Program Alternative would not result in any discernable change from the Proposed Program. Though this alternative would no longer permit the use of a particular device to conduct gold*

*mining, it does not entirely prohibit gold or other mineral extraction.* ***This is similar to the Proposed Program in that methods other than suction dredging would still be allowed in the streams subject to seasonal or permanent closures under the proposed regulations*** *(emphasis added).*

***Impact MIN - 2: Compliance with Applicable Federal and State Mining Regulations (No Impact):*** **Implementation of the Proposed Program would not affect the ability of placer miners using other mining techniques to comply with the applicable federal and state mining regulations because the Proposed Program would only apply to suction dredging miners** *(emphasis added).*

DFG is ignoring information which experienced suction dredgers provided during the PAC meetings when they explained that suction dredging is the only viable method of recovering valuable gold deposits which rest at the bottom of California's active waterways. It would be near-to-impossible, under the state and federal environmental protection reality of the day, for any reasonable person to believe we could obtain the required permits to use heavy earth-moving equipment to extract gold from active waterways in California; especially within the waterways which DFG is proposing to close to suction dredging!

High-grade gold deposits at the bottom of most waterways are buried under too much streambed material to excavate with hand tools. Anyone who has ever tried to excavate with hand tools underwater has already discovered how slow and difficult it is. "Slow and difficult" relates to a non-viable mining program!

The EIR does not place an appropriate amount of emphasis on the reality that the proposed regulations would eliminate the only effective method of gold extraction upon thousands of miles of California's waterways, therefore reducing the value of property which Americans own there, in some cases, eliminating the value altogether. Millions upon millions of dollars have been invested in mining properties which derive most of their value because suction dredges have been allowed to operate there under the 1994 regulatory framework.

While the SEIR goes to great lengths to justify the reasons why DFG wants to impose more restrictive regulation upon suction dredge miners, it has made zero effort to study how many thousands of existing properties along California's waterways would lose some or all of their value. We have not seen that DFG has many any attempt to contact or notify property owners who will be negatively impacted by the proposed regulations. This suggests that DFG is not really making a serious effort to balance the real costs of the proposed regulations to the American people, small business and property interests, something you are supposed to do in this Process.

To place some perspective on this, several years ago our Association decided to sell a number of mining properties (less than 10 mining claims) which were located along the main stem of the Salmon River in Siskiyou County. Several of these properties included some gravel bars along the side where hand-mining could take place; but the true value of

the properties, and the reason people wanted to buy them, was because our organization had managed several group dredge-sampling projects along that portion of the Salmon River and had established a steady high-grade line of gold under an average of 7-feet of streambed. The properties were sold at auction so we could establish their actual value. In all, we realized more than $350,000 for the group of properties, more than $70,000 for the claim which sold at the highest price. The entire reason why Americans bought those mining properties was so they could develop the economically-viable gold deposits which we had established at the bottom of the river under the regulatory scheme (1994) which was in affect at the time. When people pay tens of thousands of dollars for a mining claim, they are mostly doing it for business reasons. The main stem Salmon was allowing 6-inch dredges under those regulations. Your proposed regulations of a 4-inch limit would place those very same high-grade gold deposits effectively out of reach.

Some of the mining claims we sold along the Salmon River were located in canyons where bedrock walls dropped directly into the river. Therefore, gold dredging is the only effective method of mineral extraction there. We had also done some sampling along the surface where gravel bars existed on some of the claims. And while gold existed there, we could not find any deposit rich enough to pay wages for gold panning or other types of high-banking activity. The real value was in the original underwater high-grade deposits which had never been mined in the past.

You make statements in the SEIR that even with dredging eliminated or reduced because of the proposed regulations, prospectors would still have the option of pursuing other types of mining activity on the same properties. This viewpoint shows that you really do not understand mining. **Viable gold deposits are not evenly disbursed everywhere.** They exist where you find them. These deposits are always contained within very-defined boundaries. Dredge miners have to locate and develop the deposits where they exist.

Under the federal mining law, an exclusive right (mining claim) can only be established as a matter of law once a viable gold discovery has been made. By ***"viable,"*** this means a small business opportunity exists. If the discovery can only be viably-developed with the use of a 6-inch or 8-inch dredge (under the 1994 regulations), and you impose a 4-inch reduction in the mining capacity (or disallow dredging altogether), you have eliminated the viable discovery which creates the mining claim in the first place as a matter of law. Saying that the person can still pan gold on the property is like apples and oranges. If you prohibit use of the very equipment which makes it economically viable to work the property, you have undermined the legal foundation which allows the person an exclusive right to develop the property. This means you have taken the person's ownership interest away.

Furthermore, the restricted nozzle size which is proposed in the SEIR would eliminate viable sampling and productive capacity in most of the areas which would remain open to dredging, namely the larger waterways within the state. As just one example, the Klamath River streambed runs an average of 8-to-10 feet thick (sometimes more than 20 feet thick). But the efficient depth-capacity of a 4-inch dredge in experienced hands is only 4 feet. Therefore, DFG is proposing to make nearly all of the areas which remain

open along the Klamath River off limits to **effective sampling** for viable gold deposits! This terrible reality will exist along all of the waterways which you propose to leave open to dredge mining. Therefore, the proposed regulations would reduce or eliminate the property values in the areas remaining open to suction dredging.

The SEIR repeats over and over that dredge miners would have the option to pursue a Section 1600 Agreement to operate larger suction dredges. But there is no guarantee of approval, and there is zero discussion inside the SEIR of how lengthy and difficult that process has become.

I have written very extensively on the subject of using dredges to sample for high-grade gold deposits. And I can tell you with certainty that there is no way that a person **in the business** of dredge mining can afford to stop and apply for another Section 1600 Agreement every time he or she wants to move to the next sample location. The process of sampling must be more fluid than that; because the prospector is tracing the path of gold in the waterway, along with the layer which it rests upon, as he or she is able to follow it through more and more sampling. Each sample requires another test hole; sometimes a distance up or down the waterway; sometimes to one side or the other. The process of finding high-grade is already challenging. Adding the requirement of a Section 1600 Agreement each time the dredger wants to test a new location would render the sampling process impossible.

The SEIR fails to acknowledge that the proposed regulations would effectively undermine most suction dredgers' ability to sample for valuable gold deposits within those places in California which would remain open. This would create economic losses in two ways:

> (1) Dredgers would recover less gold, consequently undermining the business of small-scale mining across the state.
>
> (2) If dredgers cannot find viable gold deposits along the state's waterways (which could otherwise be found if dredging under the 1994 regulations), then the value of those properties would be undermined. This is a discussion about what others would be willing to pay for the properties.

We are all reminded about the property rights which Americans possess under the federal mining law in **USA V SHUMWAY, Ninth Circuit, 22/28/99:**

> "The miners' custom, that the finder of valuable minerals on government land is entitled to exclusive possession of the land for purposes of mining and to all the minerals he extracts, has been a powerful engine driving exploration and extraction of valuable minerals, and has been the law of the United States since 1866."
>
> "The Supreme Court has established that a mining "claim" is not a claim in the ordinary sense of the word--a mere assertion of a right--**but rather is a property**

> **interest, which is itself real property in every sense, and not merely an assertion of a right to property** (emphasis added)."
>
> "[W]hen the location of a mining claim is perfected under the law, it has the effect of a grant by the United States of the right of present and exclusive possession. **The claim is property in the fullest sense of that term** (emphasis added)."

I encourage DFG to consult with your legal staff concerning **CALIFORNIA COASTAL COMM'N v. GRANITE ROCK CO., 480 U.S. 572 (1987).** My own read of this important Supreme Court Decision brings me to the conclusion that while a State Agency may have some limited authority to regulate a mining activity on the public lands, there is **no authority to prohibit mining, or to impose unreasonable regulations** or to override the clear intent of Congress.

DFG does not have the authority to declare that suction dredgers are nothing more than "recreationalists," to be managed just like any other outdoor activity on the public lands (like fishing or hunting). If you have any authority at all to regulate dredge mining on the public lands, it is only within the language of F&G Code Section 5600, namely to work in cooperation with miners to find reasonable ways to prevent a deleterious impact upon fish. DFG's interpretation of "deleterious" in **Section 2.2.2** of the SEIR is as follows: ***"an effect which is deleterious to Fish, for purposes of section 5653, is one which manifests at the community or population level and persists for longer than one reproductive or migration cycle."***

Under GRANITE ROCK, we do not believe you have any authority to impose some kind of state "recreational status" or other regulatory scheme upon dredgers that does not align with the federal management of our program. Therefore, it would appear that all the work which you devoted to addressing how suction dredgers would affect the aesthetics of scenic vistas, noise levels and parking was a complete waste of time. Here is how the U.S. Forest Service defines us:

> **DEPARTMENT OF AGRICULTURE, Forest Service, 36 CFR Part 228 RIN 0596–AC17; ACTION: Final rule:** "Neither the United States mining laws or 36 CFR part 228, subpart A, recognize any distinction between "recreational" versus "commercial" miners, or provide any exceptions for operations conducted by "recreational" miners. **The same rules apply to all miners.** Thus, to the extent that individuals or members of mining clubs are prospecting for or mining valuable deposits of locatable minerals, and making use of or occupying NFS surface resources for functions, work or activities which are reasonably incidental to such prospecting and mining, **it does not matter whether those operations are described as "recreational" or "commercial** (emphasis added).

The clear intent of Congress concerning how the federal agencies are directed to oversee mining on the public lands was confirmed in the controlling case of **USA V SHUMWAY, Ninth Circuit, 22/28/99:**

> "A mineral claim is a parcel of land containing precious metal in its soil or rock."

"Mining claims located after the effective date of the 1955 Act are subject, prior to issuance of patent, **to a right of the United States to manage surface resources** and for the government and whomever it permits to do so to use the surface, **so long as they do not endanger or materially interfere with prospecting, mining, or processing** (emphasis added)."

"As required by the Forest Service's organic act, **the Secretary of Agriculture was delegated the authority to promulgate regulations for the protection of the forests:**

> "The Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon the public and national forests which may have been set aside . . . ; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereupon from destruction."

That same organic legislation limited that power, **requiring that no such rule or regulation "prohibit any person from entering upon the national forests for all proper and lawful purposes, including that of prospecting, locating and developing the mineral resources thereof."** "Such persons must comply with the rules and regulations covering such national forests." **Interpreting these statutes in United States v. Weiss, we held that the Secretary may adopt reasonable rules and regulations which do not impermissibly encroach upon the right to use and enjoyment of . . . claims for mining purposes."** Thus, under Weiss, the Forest Service may regulate use of National Forest lands by holders of unpatented mining claims, like the Shumways**, but only to the extent that the regulations are "reasonable" and do not impermissibly encroach on legitimate uses incident to mining and mill site claims** (emphasis added)."

"Congress has refused to repeal the Mining Law of 1872. **Administrative agencies lack authority effectively to repeal the statute by regulations** (emphasis added)."

The California legislature <u>also</u> has mandated that state regulatory agencies should be careful about imposing unreasonable regulations which conflict with federal regulations:

**Government Code 11346.2**: Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:

(5) A department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal shall describe its efforts, in connection with a proposed rulemaking action, **to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues...**(emphasis added

There are also requirements for "necessity" and "non-duplication" pursuant to Government Code Sections 11349 and 11349.1 that are implicated here. In the Alameda litigation, we have painstakingly described a comprehensive scheme of federal oversight concerning suction dredge mining on federal lands, which constitute most of the areas addressed in your SEIR. In particular, we explained how federal law has created a statutory right to use the waters within the boundaries of national forests for mining (16 U.S.C. § 481) consistent with comprehensive federal regulations addressing and reviewing the environmental impacts of such mining (the 36 C.F.R. Part 228 regulations). Federal forest rangers receive individual ***"Notices of Intent"*** for suction dredge mining operations and make individualized determinations as to whether such operations may create a ***"significant impact upon surface resources"*** (which include the bottom of waterways). *See generally Karuk Tribe v. U.S. Forest Service*, No. 05-16801 (9th Cir. April 7, 2011). The SEIR and proposed regulations completely fail to take account of this system by attempting to impose additional (unreasonable) burdens under California law.

DFG's proposed regulations unreasonably **prohibit** the use of suction dredges across most of the public lands in California along gold bearing waterways where the only viable method of location and development of high-grade gold deposits is with the use of suction dredges. In those remaining areas where the proposed regulations allow suction dredging (larger waterways), a reduced nozzle size will amount to a "prohibition" in most areas because smaller-sized dredges cannot effectively reach the viable gold deposits which exist under deeper streambeds. All of this, without the SEIR presenting any evidence that dredging under the existing (1994) regulations has ever created any deleterious impact upon a single fish, much less the Department's definition of deleterious within the SEIR:

> ***2.2.2 Definition of "Deleterious to Fish:*** *Generally, CDFG concludes that an effect which is deleterious to Fish, for purposes of section 5653, is one which manifests* ***at the community or population level*** *and persists for longer than one reproductive or migration cycle. The approach is also consistent with the legislative history of section 5653. The history establishes that, in enacting section 5653, the Legislature was focused principally on protecting specific fish species from suction dredging during particularly vulnerable times of those species' spawning life cycle (emphasis added)*

We see no emphasis within the SEIR about the important cultural and economic impacts which small-scale miners have played in the history of California, especially to the smaller, rural communities near to where gold mining has taken place. **The entrepreneurial spirit embodied through small-scale mining in California predates California Statehood!** This is not about ***"recreational mining,"*** as the SEIR has attempted to define the heart of our industry. It is about the legacy of small-scale entrepreneurs who risk everything and work our guts out in hopes of striking it rich, or at least making a discovery which will provide enough income to keep a prudent person hopeful.

With only an occasional exception, the only reasonable hope of striking it rich or making real money for a small-scale miner today exists with the use of suction dredges. This reality was made abundantly clear to DFG during the PAC meetings. It is the modern suction dredgers who carry forward the 150-year-old legacy of viable small-scale miners in California. For the reasons we have outlined above, the proposed regulations would be nothing short of cultural genocide upon the viable small-scale mining community. All that would remain are those who have no hope of making real money from the activity. Pursuing the American dream through small-scale gold mining with the use of suction dredges would be a thing of the past. Yet, federal policy on the public lands is to encourage viable mineral development, not recreation; so that it remains a ***"powerful engine driving exploration and extraction of valuable minerals."*** There is nothing explained within the SEIR that the proposed regulations will substantially ***"encroach on legitimate uses incident to"*** viable mining business opportunities which have been available under the 1994 regulations.

Because the proposed regulations attempt to impose such a heavy burden upon our industry, we took special time to carefully review all of the biological considerations which are contained within the SEIR; and we are very surprised, that with the exception of DFG's concerns over mercury (which we will address elsewhere), **your biological concerns are the very same ones that were substantially addressed within the Final EIR that was published in 1994!** Your SEIR addresses the very same tired arguments that have already been looked at and dismissed (in relation to DFG's definition of "deleterious") in numerous studies, and also within the 1994 EIR.

**Completely missing from the SEIR is a single example of any fish ever having been harmed as a result of 14 years of suction dredging activity under the 1994 regulations!**

Rather than adopt a balanced approach in considering the real impacts from 14 years of activity, DFG has chosen in this SEIR to compare ***"possible impacts"*** (which were compared in 1994 to **"ongoing dredging activity"**) to a **"no existing dredging activity"** baseline because of the existing moratorium. Here is the way the SEIR attempts to dance around this:

> ***1.3.1:*** *A state or local lead agency prepares an SEIR when, after having prepared and certified an earlier EIR for the same project, new information,* ***changed circumstances,*** *or project changes are proposed that involve new significant or substantially more severe environmental effects not previously addressed in the earlier EIR* (emphasis added).
>
> *Finally, it bears noting that this SEIR extends beyond the scope of a typical SEIR, in that it presents a comprehensive evaluation of the full range of potential environmental impacts,* ***including topics which were previously addressed in the 1994 EIR****. The 1994 EIR, in general, utilized a fairly broad and qualitative approach in evaluating impacts. To bring additional specificity and clarity to the impact discussion and conclusions,* ***this SEIR revisits many of these topics, even where there is not information to suggest that there may be new***

***significant or substantially more severe environmental effects than were evaluated in the 1994 EIR. In large part, the change in existing environmental conditions at the time of preparation of these planning documents lends to the increased scope of this report compared to a typical SEIR. As explained in more detail below, the Hillman injunction and the passage of SB 670 prohibiting CDFG from issuing new suction dredge permits necessitate a change in baseline conditions from which to assess potential effects, as compared to an environmental baseline that includes ongoing suction dredging activities consistent with the existing regulations in Title 14 as analyzed in the 1994 EIR*** (emphasis added).

***1.3.2 Baseline Conditions:*** *Under CEQA, the environmental setting or "baseline" serves as a gauge to assess changes to existing physical conditions that will occur as a result of a proposed project. Per CEQA Guidelines (Cal. Code Regs., tit. 14, §15125),* ***for purposes of an EIR, the environmental setting is normally the existing physical conditions in and around the vicinity of the proposed project as those conditions exist*** *at the time the Notice of Preparation (NOP) is published. As underscored by appellate case law, however, the appropriate environmental baseline for a given project may be different in certain circumstances in order to provide meaningful review and disclosure of the environmental impacts that will actually occur with the proposed project* (emphasis added).

***In the present case, CDFG has determined that a conservative approach to identifying the environmental baseline is appropriate.*** *As described above, instream suction dredge mining is currently prohibited in California pursuant to a state law enacted shortly before the publication of the NOP for this SEIR. (Fish & G. Code, 5653.1, added by Stats. 2009, ch. 62, § 1 (SB 670 (Wiggins).) The same law and a related court order also prohibit CDFG from issuing new suction dredge permits.* ***CDFG has determined that the appropriate environmental baseline for purposes of CEQA and the analysis set forth below is one that assumes no suction dredging in California,*** *because that was (and remains) the state of the regulatory and physical environment at the time the NOP was published.* ***The SEIR provides a "fresh look" at the impacts of suction dredge mining on the environment generally*** (emphasis added).

***4.0.2 Significance of Environmental Impacts:*** *According to CEQA, an EIR should define the threshold of significance and explain the criteria used to determine whether an impact is above or below that threshold. Significance criteria are identified for each environmental category to determine whether implementation of a* ***project would result in a significant environmental impact when evaluated against the environmental setting/baseline conditions*** (emphasis added).

**Please allow us to review:** During the ongoing litigation in Alameda Superior Court, DFG has made several formal Declarations that it possesses ***"new information"*** which suggests there may be a deleterious impact upon fish **as a result of dredging activity under the 1994 regulations.** Therefore, the Court issued a moratorium upon suction dredging and Ordered DFG to review the impacts. And rather than come forward with any new biological information that would support its concerns, you have seized upon the

opportunity of the ***"no dredging"*** baseline to completely reevaluate the biological impacts which were previously considered during 1994, which were then measured against ongoing dredging activity!

Adoption of a ***"no dredging"*** baseline is extremely arbitrary. The CEQA baseline is a set of physical conditions in the affected area; which in the context of an SEIR, as opposed to an initial EIR, plainly includes such conditions that exist as a result of the ongoing "project" of issuing permits (Fish and Game Code § 5653.1(a)). A temporary moratorium enacted because of your failure to update the CEQA analysis in a timely fashion is precisely the sort of "temporary lull or spike in operations that happens to occur at the time environmental review . . . begins [and] and should not depress or elevate the baseline". *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 328.

Moreover, your focus on a no-mining baseline, if adopted, would have to be consistent as to all the effects. It is well known, for example, that salmon redd counts increased substantially along the Salmon River after significant dredging activity loosened compacted river beds and made them more attractive spawning habitat. A true no-mining baseline would have to assume the absence of such spawning habitat and summer refugia holes created by mining, and a return to generally compacted and poor conditions in many of the affected areas. In reality, the benefits of mining persist for some time, and so the proper baseline is one that is associated with the ongoing mining activity.

Conversely, the SEIR says in the Introduction of the EXECUTIVE SUMMARY: *"This SEIR and related review under CEQA analyzes the new significant and substantially more severe environmental impacts that may be occurring under the 1994 permitting program that were not previously addressed by CDFG in the 1994 EIR."* Only people working for a government agency could believe that you can have it both ways! The only reason the impacts have become *"significant and substantially more severe"* is because you are now measuring them against an unreasonable and arbitrary baseline! **In other words, the only important new factor is the baseline which you are measuring against!**

> **ARBITRARY AND CAPRICIOUS:** Absence of a rational connection between the facts found and the choice made. Natural Resources. v. U.S., 966 F.2d 1292, 97, (9th Cir.'92). A clear error of judgment; an action not based upon consideration of relevant factors and so is arbitrary, capricious, an abuse of discretion or therwise not in accordance with law or if it was taken without observance of procedure required by law. 5 USC. 706(2)(A) (1988).

DFG's decision to proceed on this tact is fundamentally dishonest, extremely arbitrary and very unreasonable. Here is the way you are mandated by the legislature to perform the CEQA Process:

> **CEQA Guidelines 15002. GENERAL CONCEPTS: (g) A significant effect on the environment is defined as a substantial adverse change in the physical conditions which exist in the area affected by the proposed project.** (See:

> Section 15382.) Further, when an EIR identifies a significant effect, the government agency approving the project must make findings on whether the adverse environmental effects have been substantially reduced or if not, why not. (See: Section 15091.) (Emphasis added)
>
> **CEQA requires that decisions be informed and balanced. It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement.** (*Laurel Heights Improvement Assoc. v. Regents of U.C.* (1993) 6 Cal.4th 1112 and *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553) (Emphasis added)

While the impacts from suction dredging have not changed since the 1994 EIR was completed, this SEIR has largely focused upon the fact that more species have been added to the list which require special protection. And from that, DFG has apparently decided that these species deserve special protection from suction dredgers across the entire state of California through the proposed regulations, even though there has been zero evidence presented in the SEIR that any harm has ever occurred to any of these species as a result of the existing (1994) regulations. All this, while there are no meaningful restrictions being imposed upon hikers, swimmers, boaters, rafters, bird-watchers, camping enthusiasts, hunters or other nature lovers or actual recreationists that do not enjoy a mandate from Congress with a right to be present on the public lands! While the SEIR does not present any real evidence of harm from the 1994 regulations, it makes an unreasonable proposal to prohibit suction dredging anywhere that suitable habitat exits for these special species:

> ***2.2.3 Development of Regulations:*** *For certain species, CDFG determined that any level of dredging activity in suitable or occupied habitat would have the potential to result in a deleterious effect to the species. For these species, occupied or suitable habitat is proposed to be closed to dredging (i.e., Class A).*

Please read the Code references which I have quoted above and below. Our conclusion is that DFG does not have the authority to prohibit mining on the public lands without at least being able to provide a specific demonstration of substantial harm. The statute does not direct you to decline to issue permits based upon the *"potential to result in a deleterious effect."* More specifically, you can find an absence of deleterious effect even if there is ***"a potential deleterious effect,"*** and you should do so.

As a general matter, the legislature has made it clear that although EIRs can appropriately consider potential effects, which should be disclosed and considered, regulatory prohibitions require actual effects. Dredge mining in occupied habitat under the 1994 regulations do not have any actual deleterious impact.

It is especially unreasonable for you to prohibit dredging based upon ***"potential"*** effects when healthy fish populations persisted through decades of extremely invasive hydraulic mining with orders of magnitude more impact upon the environment then modern suction dredge mining.

You have suggested, in part, that regulation of potential impacts may be based upon a ***"precautionary approach".*** This approach is unreasonable in the context of an activity which has impacts that are both potentially positive and potentially negative. As we demonstrated in the Alameda litigation, suction dredge activity provides some of the only available summer habitat in many areas; suction dredging improves the quality of spawning beds, and operates to feed juvenile fish. These concrete positive effects cannot be imagined away by the potential that juvenile fish may react adversely to the mere presence of operators (especially given evidence that they cluster about the dredge output looking for food), or that the body heat of dredgers might somehow interfere with "cold water refugia."

Indeed, we would argue that the ***"precautionary principle,"*** as a general principle, is itself unreasonable, because it presumes, contrary to fact, that any change is bad. The very purpose of preparing an EIR is to substitute balanced consideration of actual impacts for subjective presumptions in favor of or against particular activities.

Finally, the "precautionary approach is unreasonable to enforce upon Americans who have a statutory right to develop viable gold deposits, especially while using the only effective method available along the bottom of California's waterways, in this case, suction dredging. Rather, here is what the California legislature has to say about balancing environmental protection with existing social and economic needs:

> **CEQA GUIDELINES 15021: DUTY TO MINIMIZE ENVIRONMENTAL DAMAGE AND BALANCE COMPETING PUBLIC OBJECTIVES:** (d) **CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors and in particular the goal of providing a decent home and satisfying living environment for every Californian** (Emphasis added).
>
> **CEQA GUIDELINES 15043: AUTHORITY TO APPROVE PROJECTS DESPITE SIGNIFICANT EFFECTS:** A public agency may approve a project even though the project would cause a significant effect on the environment if the agency makes a fully informed and publicly disclosed decision that:
> (a) There is no feasible way to lessen or avoid the significant effect (see Section 15091); and (b) **Specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project** (Emphasis added).
>
> **CEQA GUIDELINES 15093: STATEMENT OF OVERRIDING CONSIDERATIONS:** (a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. **If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable"** (Emphasis added).

## Conclusion

The SEIR is attempting to balance the economic and social impacts from the proposed regulations by comparing their value to a **"no dredging"** scenario which is the result of the existing moratorium. In addition to this being an exercise in bad faith, this is all a waste of time; because DFG does not have the authority to decide the value of mining which takes place on the public lands. Congress has already established the value by clearly informing federal management agencies that **mining is the most valuable use of public lands** once a valuable discovery has been made – and even while a prospector is actively pursuing a mineral discovery. **It is well established that suction dredging is by far the most effective method today of locating and developing gold deposits along the bottom of a waterway, and the only practical way to do so.** Therefore, the SEIR should be balancing the impacts of proposed regulations to well-established federal values, rather than arbitrary social and economic values in a deliberate by DFG to marginalize suction dredgers.

It also appears, that rather than come forward with substantial evidence that dredging activity under existing (1994) regulations is ***"deleterious"*** to fish (under DFG's definition), the SEIR has unreasonably changed the baseline that was used in 1994 to a ***"no dredging"*** scenario. This, even though the SEIR admits that the average number of suction dredge permits has been 3,650 per year since the 1994 regulations were adopted. The existing moratorium is a direct result of DFG's Declarations that it had evidence in its possession which suggested a deleterious impact from ongoing suction dredging activity. Still, the SEIR does not contain evidence of a single ***"take"*** of any fish, much less that of a fish that has been granted special protection. There especially is no evidence of a deleterious impact upon an entire species!

Therefore, the Department's ***"precautionary approach"*** which exists as the foundation of the proposed regulations is not supported by a properly-done CEQA Process. These regulations would prohibit suction dredging altogether across most of the public lands in California, and reduce dredge capacity so much in the remaining open areas that it would amount to a general prohibition of mining as a business. The proposed regulations would create very substantial losses to economic and longstanding social values in California while producing no demonstrable benefit to the public.

## Mercury is not a problem!

Here is what the SEIR has to say about mercury:

> **Impact CUM - 7: Discharge from Suction Dredging (Significant and Unavoidable):** As detailed in Chapter 4.2 Water 1 Quality and Toxicology, the discharge and transport of total Hg (THg) loads from suction dredging of areas containing sediments highly elevated in Hg and elemental Hg is substantial relative to background watershed loadings. Additionally, the flouring of elemental

> Hg during the suction dredging process would result in an increased Hg surface area and increased potential for downstream transport of Hg to areas favorable to methylation (i.e., downstream reservoirs and wetlands). Therefore, suction dredging has the potential to contribute considerably to: (1) watershed Hg loading to downstream reaches within the same water body and to downstream water bodies, (2) MeHg formation in the downstream reaches/water bodies, and (3) bioaccumulation in aquatic organisms in these downstream reaches/water bodies.

This impact summary appears to assume an adverse impact from ***"bioaccumulation;"*** but the relevant question is whether any adverse effects occur to the aquatic organisms (e.g., are "deleterious to fish"), or humans who consume fish. As set forth below, there is essentially no evidence of any adverse effect from such bioaccumulation and, more importantly, no credible evidence that suction dredging will have any appreciable impact on watershed Hg loading—other than a long-term benefit.

As to the latter point, the SEIR relies mostly upon the conclusions of Charles Alpers of the USGS as a result of some work that he recently did near the confluence of Humbug Creek and the South Fork of the Yuba River in California. This was actually a BLM-funded project with the stated purpose of discovering if standard suction dredges can be used to effectively-recover mercury from submerged mercury hot spots. Apparently, thousands of pounds of mercury had been lost from the sluice boxes of one of California's largest historic hydraulic mines last century. Most of the lost mercury is assumed to have been washed down Humbug Creek into the South Yuba River along with the tailings from the mine.

As suction dredgers reported to BLM that they were finding pools of mercury in the South Yuba River below the confluence of Humbug Creek, after some further investigation, BLM and the California Water Resources Control Board, along with other entities, designated the area as a hazardous waste, submerged mercury hot spot. Further suction dredging in that area of the river was prohibited until BLM could determine how effective mercury recovery was going to be. This was the purpose of the study which generated the report from Charles Alpers of the USGS.

I personally have substantial experience in heavy metal recovery with the use of suction dredges. Therefore, I was invited to participate in this study. Several other experienced dredgers were also involved. We supplied the excavation tools, and **we performed <u>all</u> of the dredging and digging for the Alpers project.** Therefore, I have an intimate knowledge of what took place; and I know <u>exactly</u> why the conclusions made by Charles Alpers <u>cannot</u> reasonably be relied upon in the SEIR. It is my intention to draft a more-detailed rebuttal of the Alpers conclusions in a separate set of comments. But for the moment, I will present some <u>very</u> important facts.

The purpose of the study was to determine how effectively an 8-inch dredge with a standard recovery system would capture mercury. The study was to take place over a 2-year period. The first year (2007) involved a trial run using a 3-inch dredge. The main purpose of the trial run was so the USGS scientists could establish the best way to capture

sediment and water samples off the back-end of the 8-inch dredge recovery system during the following year.

Dredging was performed using the 3-inch dredge during 2007. However, USGS did not establish any measurable increase in mercury in the captured sediments or water samples discharged from the dredge recovery system.

It did not occur to Charles Alpers and his team to measure the volume of excavated material so that these and future results could be quantified to the actual capacity of a suction dredge.

The following year, The California Water Resources Control Board informed BLM that they were prohibited from using any suction dredge within the South Yuba River. Since the 8–inch dredge could not be used, I suggested to BLM that I could provide a prototype, closed circuit suction devise (not a dredge under the definition of F&G Code 5653) that potentially could remove 100% of the mercury from a submerged mercury hot spot without any discharge back into the active waterway. Since we were not allowed to continue the study using a dredge, I switched gears into coming up with an alternative method of cleaning out the mercury from submerged hot spots.

**Note:** I made the mistake of assuming the ultimate purpose was to discover an effective way of removing mercury from California's waterways. That is probably too much to expect out of government today.

When we resumed the study during 2008, Charles Alpers relied upon me to choose the two places along the South Yuba River where we would excavate material. This was because Mr. Alpers was relying upon my considerable expertise to excavate samples where elevated levels of mercury (heavy metals) were most likely to be present in the gravel. I chose one location out on a gravel bar in the middle of the South Yuba River. This was directly out from the confluence of Humbug Creek. I chose this location mainly because it was an ideal place to operate my closed circuit prototype.

I chose the second location where there was some exposed bedrock immediately downstream from the confluence of Humbug Creek. While we were not able to set up my prototype in that particular location, the site was likely to turn up the highest levels of mercury in the entire area.

No other dredge was used during this study except the 3-incher during 2007.

After digging a hole on the gravel bar, we put my closed circuit prototype to work. **Mr. Alpers and his team made it clear this part of the program was not part of their study**; that it was being allowed only for R & D purposes. We used the prototype for about an hour. Nobody timed the work, and there was no accurate measurement taken of the material which we excavated. The device utilized a suction nozzle to excavate material and water from the hot spot directly into a large plastic water tank. Water from inside the tank was recirculated by a motorized pump to provide suction at the nozzle.

This created a closed circuit system whereby contaminated material and water could be sucked into the tank with zero discharge into the active waterway. There was no recovery system other than the water tank itself. **Importantly, there was no dredge recovery system present.** There was also no way to measure how many times the very same water in the tank was recirculated to excavate the contaminated material; perhaps hundreds or thousands of times. It would just be a guess. The purpose of this design was to capture 100% of the contaminated water and material within the closed circuit.

**Improper Conclusion:** In fact, the water from my closed system test appeared to be so contaminated, USGS staff ordered special stainless steel containers flown in so they could send the water out by helicopter and dispose of it properly! It was mainly from these water samples which Charles Alpers later formed his conclusion that suction dredges may discharge mercury into the active waterway. But the water from my tank had been continuously used over and over again to excavate and capture 100% of the mercury from highly-contaminated material. Therefore, it is unreasonable to take water from a closed circuit system like this and make any kind of scientific estimate what might come off the back of a dredge system using a recovery system which only uses water one time (in a completely different way) to excavate material. **This is atrocious science!**

**Improper Conclusion:** Then Charles Alpers concluded that the levels of mercury captured from our second excavation could be used as a baseline for how much mercury might exist throughout all of California's waterways. Charles Alpers makes some estimations of how much mercury suction dredgers could potentially re-suspend elsewhere in California, based upon the amount of mercury that we excavated off bedrock, just below the source of mercury, in one of California's worst mercury hot spots? **How scientific is that?**

**Improper Conclusion:** Furthermore, Alpers related the potential statewide impacts to the estimated production yardage figures which Keene Industries (dredge manufacturer) publishes in their promotional material. Even though the USGS team stood by and watched my team excavate using a 3-inch dredge, they did not take the opportunity during the study to measure the volume. **Therefore, Charles Alpers reached out to projected estimates from a promotional brochure?** There are so many variables in play while dredging (make up of the streambed, speed of the river water, depth of the excavation, type of power jet, experience of the operator, etc), that there is no way Charles Alpers could use unproven information from a promotional brochure to make reasonable statewide projections in a scientific conclusion! But he did it anyway.

**Improper Conclusion:** Mr. Alpers suggests in his report that most mercury contamination at the bottom of California's waterways is locked in place by armored streambeds and should be left in place until some better method of recovery is developed. However, any experienced dredge miner will tell you that annual flood events, especially the larger ones, naturally tear up armored streambeds and move the material further downstream. The fact that we find man-made objects underneath the armoring is testimony that streambeds are highly mobile:

> **4.1.2** ***California Hydrology and Climate:*** Typically, rain-on-snow events are of a higher magnitude and occur most frequently during the winter months, whereas the peak snowmelt - driven events are of a lower magnitude and occur in spring. This hydrologic setting creates a bimodal distribution of flood events i.e., there is a population of floods associated with snowmelt events, and a distinct population of floods generated from rain - on - snow events that occur, on average, once every 10 years.

Charles Alpers is very wrong in his belief that mercury is trapped forever beneath armored streambeds. How do you think the mercury and streambeds got there in the first place if they were not moved there by a storm event?

Charles Alpers' Conclusions are just one more example of a government employee who has allowed his personal political agenda get in the way of real science. We will be making a formal complaint about this to the USGS. Meanwhile, we insist that this SEIR should not rely upon the Alpers' Conclusions.

The SEIR is conspicuously silent on the peer-reviewed study data provided to DFG by the dredge mining community in the PAC meetings about how natural selenium within California's waterways prevents mercury from causing adverse impacts even if bioaccumulation does occur. **Specifically, bioaccumulation of mercury has no adverse impact whatsoever on fish or those who consume them when the accumulation of such mercury consists of mercury bonded to selenium.** This is because that bond isolates the mercury from further biological activity.

The leading study suggesting adverse effects on humans from mercury bioaccumulation was based on Faroe Islanders who consumed the mercury in whale flesh (not fish flesh) which contains lower levels of selenium.

While there is plenty of peer-reviewed study material which demonstrates that there is a **continuous migration of mercury flowing down some of California's waterways**, there is zero evidence suggesting that the levels have any relationship to suction dredge activity.

The SEIR also does not give enough weight to the Humphries Report (California Water Resources Control Board). Mr. Humphries used an older-model 4-inch suction dredge to recover 98% of the mercury from a confirmed mercury hot spot in California. The SEIR does not provide adequate acknowledgement that a 98% recovery rate is a positive impact; **because suction dredging is the only activity within existence that removes any mercury from California's waterways.**

Rather, the SEIR seizes upon Mr. Humphries' unproven assumption that the 2% of lost mercury was floured (broken down into particles too small for the dredge recovery system to catch) by the dredge. But Mr. Humphries has admitted that he performed no tests of the streambed material before it was sucked up to see if floured mercury pre-existed there! His report also suggests that floured mercury preexisted in the streambed in areas that had not been suction dredged. Having substantial experience in this given

area, I can tell you with certainty that it requires violence over an extended period of time to break mercury down to millions of microscopic particles. The 9-second ride through a suction dredge is not enough.

Therefore, the SEIR's conclusions that dredge flour some portion of the mercury, which then travels downstream to threaten the food chain is not based upon good science.

The SEIR does not acknowledge, based upon the survey results, that suction dredgers remove over 7,000 ounces of mercury (or more) every year from California's waterways. That amounts to 98,000 ounces during the 14 years we operated under the 1994 regulations!

**Since California State agencies are doing nothing to remove mercury from California's active waterways, it is grossly irresponsible for your SEIR to point the finger at suction dredgers who are the only ones that are removing the mercury, at no cost to the taxpayers!**

Adoption of the SEIR position would be fundamentally unreasonable in a context where the mercury is inevitably migrating downstream to areas where you believe it to be potentially harmful. There is no coherent analysis in the SEIR to suggest that, contrary to common sense, it is better to leave all the mercury moving downriver than to take action which removes at least 98% of it from the ecosystem!

## Practical Suggestions

> **Governmennt Code 11340.1.(a):** It is the intent of the Legislature that agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process.
>
> **CEQA Guidelines 15204: FOCUS OF REVIEW:** (a) In reviewing draft EIRs, persons and public agencies should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects.

In view of the comments we have made above, we submit the following practical suggestions in an effort to assist the Department to modify its SEIR and proposed regulations so that they adequately mitigate real environmental concerns while placing less burden upon the small businesses and property owners that are associated with our industry.

**High-banking is not suction dredging:** We agree with the following policy statement that you have acknowledged in several places within the SEIR:

> ***6.2 Alternatives Considered and Dismissed:*** *In general, these provisions of the Fish and Game Code provide that CDFG's permitting authority is limited to in - stream use of vacuum or suction dredge equipment within any river, stream, or lake in California. As such, CDFG's regulatory authority under this Program does not extend to other methods of placer mining or other activities that may be associated with suction dredging which occur in upland areas.*
>
> *The following is a list of activities that are not considered suction dredging subject to CDFG's permitting authority under Fish and Game Code section 5653, subdivision (b)…*
>
> - *Use of a high banker or sluice box above the ordinary high water line and above the current water level, where aggregate is vacuumed into the highbanker or sluice box from a gravel deposit outside the current water level of a river, lake or stream but which may be wetted by a water pump. This method is often referred to as booming;*
>
> - *Processing of materials collected using a suction dredge, in upland areas outside of the current water level of a river, stream or lake;*
>
> - *Use of suction dredge equipment (e.g. pontoons, water pump or sluice box) on a river, stream or lake where the vacuum hose and nozzle have been removed;*
>
> - *Sluicing or power sluicing for gold when no vacuum hose or nozzle is used to remove aggregate from the river, stream or lake; and*
>
> - *Use of vacuums (e.g. shop - vacs) and hand tools above the current water level.*

**Required identification in the permit application:** The proposed regulations should allow for a foreign passport or driver's license be used to provide identification for visitors from other countries so they can apply for nonresident suction dredge permits. Otherwise, California will be discouraging the many visitors which we already receive that like to do their gold prospecting here.

**DFG should not limit the number of suction dredging permits:** We do not see reasonable justification within the SEIR for the Department to limit the number of suction dredging permits in the final regulations. This is particularly because there is no evidence presented that 14 years of dredging activity under the 1994 regulations ever harmed a single fish, much less threatened the viability of an entire species. We also do not believe that a state agency has authority to impose a generalized prohibition to suction dredge mining on the public lands. As noted above, mining within national forest lands is already subject to individualized ranger scrutiny and there is no basis whatsoever

for limiting the number of permits for operations within national forest boundaries. Non-arbitrary limitations, based upon local conditions, may arise through the federal regulatory process and/or on site inspections by DFG staff.

Your proposed ***"precautionary measure"*** of limiting the number of permits would amount to a prohibition upon any person desiring to prospect for or develop viable gold deposits with the use of a suction dredge after the limit is reached, without providing a reasonable environmental justification to the person. What if he or she wants to operate the dredge in some part of the state where there would not be a deleterious impact? A limit on permits would prohibit the person from using a suction dredge without a viable reason.

**Allowing additional dredge permits after site inspection**: Having said that, in the event that the Department decides that you must place a limit on the number of permits issued under a **statewide blanket permitting program;** once the limit is met, rather than prohibit additional dredge-mining, the Department should issue additional permits as long as no deleterious impact (by DFG's definition) can be determined though a site inspection. This would include consideration of permit applications to dredge with larger-sized dredges that are not allowed in a statewide permit, or in areas (or time periods) that are otherwise closed to dredging.

Said another way, in the event that DFG decides that there must be (reasonable) limits set in a blanket statewide permit program that will allow for most suction dredgers, we do not believe DFG has the authority to declare a wholesale prohibition to dredge mining in the other vast areas which exist on the public lands that would not be covered by the blanket permit. That would be an unreasonable closure. DFG has a site inspection mechanism which allows you to consider more individualized impacts in areas, and during time periods, when and where dredging would not be allowed in a statewide permit.

**There needs to be a place on the permit where a site inspection can be signed off:** There should not be some bureaucratic delay involved with signing off on a site inspection when the DFG official can identify no problem (deleterious impact). During my own past site inspections, the local DFG officers immediately signed off on my application and gave me the okay to proceed.

If there is some uncertainty, there must be a time limit in the regulations whereby the application should be allowed or disapproved. The regulations should include what due process is to be allowed the dredge miner if he or she decides to appeal a local denial.

**Prior existing rights on permit acquisition**: There must be an allowance for prior existing rights. This is mining, not recreational fishing or hunting; and it is in many cases conducted as a matter of right under federal statutes, on federally-protected mining properties. Since work was already active to eliminate (and therefore discourage) dredging during the 2009 season, prior existing rights should at least extend to the 2008 season. Some in our organization believe prior existing rights should extend back five

seasons. Otherwise, dredgers who have already invested in property, equipment and even mining claims could potentially lose their prior existing right to work their mine or other mining opportunity (mining club they paid to join so they would have access to mining property).

In this case, DFG would send out renewal notices and allow some kind of due process before a prior existing permit would be returned to the pool to be made available to someone else. We suggest, once prior existing rights are taking care of, it might be more equitable to make the remaining permits available in a drawing, rather than first come, first served.

**Statewide permits, if limited, should be transferable:** If there is going to be a limit placed on the number of permits allowed under a statewide blanket program, the permits should be transferable. This would allow a dredge miner to develop a mining property and then transfer it to someone else who could also acquire the right to suction dredge on the property. Otherwise, miners will make the substantial investment into developing a viable mine and then not be able to transfer ownership to someone new who will be able to dredge it, therefore losing some or most of the value.

The dredging permit could be signed over like the title on a vehicle. This would allow new generations of prospectors to purchase an existing permit from someone else in the event of a cap on permits.

**DFG should <u>not</u> further-limit the size of dredges under the statewide permitting program**: The only justification we can see in the SEIR for reducing dredge sizes in the proposed regulations is your ***"precautionary approach."*** As we have explained above, there is no basis for using such an approach at all, much less in this context. It is patently illegal under the CEQA guidelines, which state, among other things, that "there must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest" and "the mitigation measure must be 'roughly proportional' to the impacts of the project". 14 CCR 15126.4(a)(4). Obviously, "mitigation measures are not required for effects which are not found to be significant" (id. § 15126(a)(3)), and the SEIR presents no evidence that dredge sizes allowed under the 1994 regulations created a deleterious impact upon fish.

It is <u>important</u> to understand that you are proposing to undermine the effective capacity of gold mines all across California. As outlined in comments above, reducing capacity will effectively undermine the economic viability of many properties, and future economic activity all across the state.

It would be one thing if you could point to some evidence showing that dredge size limits under 1994 regulations have caused <u>real</u> problems. But you have not done that. The problem with your approach is that there is never any end to it. When I began dredging in California, it was <u>easy</u> to obtain a permit which would allow me to operate a 12-inch dredge along the Klamath River. Then the limit was reduced to an 8-inch dredge. Now you are proposing to reduce the limit to a 4-inch dredge. Yet, as many times as the

department performed site inspections on my 12-inch operation, **they never expressed any concerns about harmful impacts!** No concerns have been expressed about harmful impacts from the many 8-inch dredges that have operated along the Klamath River over the past 30 years. No concerns have been expressed about the 5 and 6-inch dredges operating in the smaller tributaries, either! So without providing any specific details of why existing capacities are harmful, you are proposing to reduce them 8-fold in many places. Why?

Using this same approach, you are likely to reduce us to mining with teaspoons in the next set of proposed regulations! You must try and understand that not everyone receives a check in the mail from the government. Some of us actually have to create more value than we consume. Since those of us who produce the wealth (which supports those of you in government service) must be allowed to get on with it, you should stop trying to slow us down or kill us off when there is no benefit to the public that you serve. Please try to look through your narrow view of protecting the world (from us), and stop trying to impose unreasonable restrictions upon us.

We suggest that DFG does not have the authority to step onto the public lands and impose a permit restriction upon active mines which would effectively reduce our productive capacity without also coming up with specific reasons why existing capacities are creating a deleterious impact upon fish. Therefore, we strongly encourage the Department to leave nozzle restriction sizes as they exist in the 1994 regulations.

**Important note:** To avoid unreasonable and unnecessary conflicts between dredgers and DFG field staff, the regulations must allow a wear tolerance factor on nozzle restrictor rings. The reason for this is that the standard material which is available to manufacture these rings can be found in 4-inch, 5-inch, and 6-inch inside diameters. If the statewide limit is a 6-inch ring (1994 regulations), a 6-inch ring is what will be used. Some reasonable allowance must be written into the regulations so that the dredgers and wardens are all on a level playing field. The ring begins wearing with the first rocks that are sucked up. At what point does it need to be replaced? We suggest 3/8 of an inch (diameter) is reasonable.

**Allowing larger-sized nozzles after site inspection**: If a dredger wants to operate a dredge having a larger nozzle than is allowed under a statewide permitting scheme, the Department should allow the activity as long as no deleterious impact (by DFG's definition) can be determined though a site inspection. We do not believe DFG has authority to make a wholesale prohibition upon the use of some particular type of mining equipment (suction dredge of any size) being used on the public lands. Dredge miners should be afforded due process, and should be allowed to proceed as long as no deleterious impact is determined by an on site inspection

**DFG should not further-limit the places where dredging is allowed:** We suggest that DFG does not have the authority to step onto the public lands and impose a prohibition upon suction dredging across vast areas. This is very discriminatory, since **any kind of mining or other activity** may submit an application to proceed, and would

be afforded reasonable due process in the very same areas where the proposed regulations would prohibit suction dredgers.

At the very least, in order to prohibit a suction dredge from being operated in any given location, DFG must be able to demonstrate a deleterious impact upon fish.

Therefore, we strongly encourage the Department to leave areas open to suction dredging as they exist within the 1994 regulations. Gold miners should be afforded due process, and should be allowed to proceed in areas which are not allowed under any statewide permit, as long as a site inspection cannot turn up evidence of a deleterious impact.

**Reduction of our existing dredging seasons is unreasonable:** Once again, we do not see that the SEIR contains evidence of a deleterious impact upon fish to impose a reduction of existing dredging seasons. This proposal is supported only by your ***"precautionary approach."*** Just as one of many examples, I have been dredging along the Klamath River since 1983. Existing dredge regulations, and the regulations we were held to prior to 1994, have always allowed year-around dredging on this river. The colder off-season months and wet season already naturally-limit the amount of dredging activity between October and June. In all the time I have been involved with this river, there has never been a single example that dredging has ever harmed a single fish during the months which the proposed regulations want to close the river to suction dredging. Your desire to close the river to this productive economic activity (suction dredging) for 9 months out of the year is arbitrary and unreasonable!

Indian, Thompson and Elk Creeks (Siskiyou County) are another example. During 25 years of overseeing our extensive dredging properties on these creeks in cooperation with local U.S. Forest Service (USFS), DFG and Karuk fish biologists, there has never been a single instance brought to our attention of any harm to any fish or their habitat. So why do you want to completely eliminate productive economic activity by Americans in those areas?

Furthermore, the SEIR does not acknowledging that we have already worked out an agreement with USFS and Karuk fish biologists to keep dredges away from the refugias and limit the number of dredges to 3 per mile on the creeks and 10 per mile along the river. Your proposed regulations are attempting to reach out onto the public lands and prohibit the use of suction dredges altogether, or for substantial parts of the year, on these very same waterways without any resulting positive benefit to the people of California

We strongly suggest, except for those areas where you can demonstrate that a deleterious impact has been created under the existing regulations, that you leave our dredge seasons as they have been since 1994.

**The proposed 3-foot rule is unreasonable:** We view this as just another overreach of DFG upon the public lands based upon your ***"precautionary approach."*** The SEIR has not presented any real evidence that dredging within three feet of the streambank has ever harmed a single fish.

There are also practical difficulties with this proposal. Why prevent someone from dredging within three feet if the side of the river is made up of bedrock? This prohibition would also prevent beginners, non-swimmers or children from starting closer to the shore where water is shallower and/or safer.

There are many places where viable gold deposits exist out in swift water that would not be accessible unless a dredger can begin an excavation closer to the shore to get beneath the strong current. If the proposed regulations would also prevent the dredge from floating or dropping tailings within three feet, it will be nearly impossible to tie off dredges along the shore either when they are operating or sitting idle. Prohibiting dredging within three feet of the edge of the river will eliminate a significant portion of the operational value (perhaps even all of it) on some dredging properties. And to what gain?

Rather than impose an unreasonable 3-foot prohibition, we suggest that DFG and the mining community would be better served with some expanded language describing what the ***"bank"*** is (in relation to dredge mining) that we are not allowed to dredge into or undermine within the existing regulations. With rising and lowering water flows (sometimes daily) in some waterways, there is a lot of confusion about this with dredgers and wardens alike. For example, is there a ***"bank"*** in relationship to a gravel bar out in the waterway that is partially out of the water? What about a bar alongside the waterway that is submerged during the spring, but emerges more and more out of the water as the dry season evolves?

**Suction dredge regulations should not impose the requirement of Section 1600 Agreements:** We do not believe DFG has the authority to impose a Section 1600 Agreement requirement upon a gold dredger **unless the surface disturbance rises to the level which triggers Section 1600 of the Fish & Game Code.**

> **F&G Code 1602:** (a) An entity may not **substantially divert or obstruct** the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake... (emphasis added).

Section 5600 already allows a site inspection mechanism for the Department to determine if a dredging program is deleterious to fish. Therefore, also imposing a Section 1600 requirement upon dredgers who wish to operate a larger nozzle than is allowed under a statewide permit, when there is little or no chance the dredging program will create a substantial impact upon the bed or bank of the waterway, is arbitrary and discriminatory against suction dredgers. Nobody else in California is required to pursue a Section 1600 permit until their activity rises to the level of requiring one.

**We have never heard of a case where local DFG officials expressed concern about a potential Section 1600 violation when the dredger was operating within the 1994 regulations.**

We all know how long these Section 1600 Agreements can take to work out. They also cost real money! Why impose that upon a dredge miner whose activity has not created a substantial impact upon surface resources? This is bad policy. There is nothing in Section 5600 which allows DFG to place a Section 1600 Agreement requirement upon someone merely because the person applies to the Department to operate outside of a statewide dredge permitting process. Forcing dredgers to pursue a 1600 Agreement is terribly wasteful of creative resources and will stifle investment into productive economic activity.

> **Government Code 11813:** The Legislature finds and declares the following:
> (a) Waste and inefficiency in state government undermines the confidence of Californians in government and reduces the state government's ability to adequately address vital public needs.
> **(b) State government, in many instances, is a morass of bureaucratic red tape and regulations that ultimately stifle economic revitalization and further alienate the people the agencies were created to serve** (Emphasis added).

**This <u>also</u> applies to the use of power winches.** Gold miners can use a power winch anywhere on the public lands without the requirement of pursuing a 1600 Agreement, <u>unless</u> our program creates a substantial impact upon surface resources that are associated with a waterway. But the proposed regulations would prohibit the use of the same winch if a dredge is involved unless we also pursue an Agreement – even if there is not a substantial impact. **Why would you do this?**

**This was already explained to you during the PAC meetings:** In some dredge holes, a power winch provides the <u>only</u> safe and efficient means of progressing either when a rock is too heavy to move by hand, or when it cannot be rolled over other rocks that are in the way. We are discussing how heavy something is to move. Each person is different, but everyone has a limit. Some people are disabled. Some heavy rocks can exist up off the bedrock, and <u>must</u> be removed in order to avoid a <u>very</u> serious safety issue. All of this normally takes place down below the surface of the streambed where the result (of moving the rock 4-to-10 feet) will not have <u>any</u> impact upon the waterway above.

Furthermore, from looking at the surface of a streambed, there is no way for a dredge miner to determine in advance if boulders exist down below that will be impossible to move out of the way without some mechanical assistance. With a prohibition on winches, or the requirement to go through yet another time-consuming regulatory process, many dredgers will be forced to abandon dredge projects that otherwise would be productive. The prohibition on the use of power winches in your proposed regulations would result in stopping progress on some dredge programs, and also force operators to take unnecessary risks.

Please note that nearly all rocks of any size can be moved down beneath the surface of a streambed in dredging which will <u>not</u> cause any important impact upon the water flows or the surface of the bed. You guys are overreaching when you believe you must regulate the movement of every rock in the river! How can you believe that Americans can

possibly be productive if we have to ask the government for permission on so many unimportant things? Do you really want to tie up the Department's limited resources managing the rocks that need to be moved by dredge miners?

We do not believe DFG has authority to reach onto the public lands and impose a prohibition upon power winches anywhere, at least until the Department can demonstrate that a substantial impact is happening. The ***"precautionary approach"*** will not work here, either!

**Imposition of the 3/32-inch intake requirement on pumps is unreasonable:** Do you really want your wardens out there measuring screen sizes on our pump intakes, when there is no deleterious impact on fish in the first place? In 30 years of dredging, having likely been present on more dredging operations across California than anyone else alive, I have never witnessed or heard of a single occurrence where these intakes did not adequately prevent fish from being sucked into the pump, or even trapped against the screen.

The 1994 regulations already prohibit operation at times when fish are too small to swim away from pump intakes as they are already being manufactured.

The two dredge manufactures who sell the most units in California are Pro Line and Keene Industries. Pro-Line manufactures a pump intake with $3/16^{th}$ inch holes. Keene manufactures intakes using $15/64^{th}$ inch holes. Therefore, the proposed regulations would place nearly every dredge in California out of compliance, and require dredge manufacturers to completely retool or resource their material, all for zero gain to the public benefit. The SEIR does not take account of the obvious adverse impacts arising from placing an entire category of mining capital stock out of regulatory compliance.

We suggest, if you want to make sure that fish are protected from dredge pump intakes, that you adopt a hole size that is bigger than larger of the two holes that are being used on most dredges in California.

**Allowance of locations on permit applications must be more broad:** Your proposed regulations, as presently written, require dredge miners to be very specific about where we intend to mine. This would be substantially burdensome to dredge miners wishing to sample multiple properties which belong to mining associations like ours. Our organization makes more than 60 miles of the Klamath River available to our members. Some of our properties extend three miles or longer along the river.

To save limited time, most members obtain their suction dredge permits before they arrive (especially if there is going to be a cap on the number of permits issued), **but they do not know where they will decide to dredge on the river until after they come and take a look at the many options.**

We already have an agreement with USFS to prevent more than 10 dredges per mile on the river or 3 per mile on the creeks. So any concern about over concentration is already

being managed. Therefore, the requirement that dredgers notify the Department of the exact place they intend to work is not reasonable.

Since the existing regulations already set the times and places where dredging is allowed, we do not see any practical reason to force dredge miners to inform DFG exactly where they are dredging – and then hold them to the location unless the permit is amended. This was never done in the past. **Where is the deleterious impact?**

In the event that DFG decides that locations are needed on the application, we strongly suggest you broaden the requirement to identification of the waterways which the person intends to work. This would at least allow dredge miners some flexibility to move around in search of gold without having to make an extended and expensive trip to the closest Department license sales office (which could be more than 100 miles away) each time they want to move around the next bend in the river.

**The proposed dredge marking system is not workable:** Suction dredges are not boats. The pontoons typically are of molded Marlex floatation which will not allow paint, tape or glue to adhere. If you screw something into the Marlex, then you may incur leaking or perhaps structural problems. If you place a sign on the dredge, it is either in the way or is likely to fall into the river and float away. By "in the way," we mean blocking the dredger's ability to remove plug-ups or manage the motor (especially fueling).

Since the average size of dredge during 2008 was less than 4-inches, and there are many dredges in existence larger than 4-inches, there must also be many dredges smaller in size than 4-inches. We challenge the Department to come up with any practical way of attaching a sign meeting your proposal to a 2-inch, 3-inch or one of the mini-4-inch dredges; it is totally impractical!

We also question how this proposed imposition has anything to do with the language of Section 5653, or has anything to do with preventing a deleterious impact upon fish? Do you really want your wardens out there measuring the size of numbers on suction dredges?

In the event that DFG decides it must have an identification number on the dredge, we strongly suggest you eliminate the 3-inch number requirement and allow the numbers to be marked on both sides of the dredge; either on the pontoons or on the sluice box, but only if it is possible to do so. This would allow for smaller numbers in the case of smaller dredges.

**Fuel should be allowed within 100 feet of the waterway if kept within a water-tight container or a boat:** California already has plenty of laws on the books that prevent us from spilling gasoline into the water. Now you want miners and wardens out measuring the distances between our fuel cans and the waterway? **When does the overregulation stop?**

Here is another place where we believe DFG is reaching out far beyond your authority to impose a prohibition on the public lands; specifically to prohibit the placement of a can of fuel within 100 feet of the waterway only if there is a suction dredge involved.

No other activities within California are held to this proposed 100 foot regulation! Millions of boaters all over California are allowed to keep fuel safely in their boats.

The truth is that the more you have a dredge miner tromping up and down the embankment (in wet-suit and bulky boots), the more you will have him disturbing all of the other values in the riparian zone that you believe are so important to protect elsewhere in the SEIR, and the more you increase the chances that the person will fall down and spill the fuel!

There are plenty of effective ways to prevent fuel from leaking into the waterway without making a dredge-miner walk 100 feet up the embankment. At the very least, fuel can be placed inside of a boat, or inside a sealed catch tub of some kind up on the embankment to prevent leakage. These catch tubs are already routinely part of a dredge program to assist with cleanup of concentrates.

We suggest, rather than attempt to impose a regulation that ultimately will have your wardens out in the field pacing the distance to fuel cans (even when they are placed in a safe place), that you make some helpful suggestions in your Better Practices handout.

**Disturbance of mussel beds:** This is an unreasonable proposal that is not consistent with preventing a deleterious impact to a species.

Some rivers are so inundated with muscles, that this imposition would amount to a suction dredge prohibition in a large part of the waterway.

Are you proposing that every dredge miner must now do a survey before dredging to make certain that there is no place within 30 feet downriver where more than 40 muscles per square yard exist? How unrealistic is this? Are you also going to have your own wardens out underwater counting mussels?

What about a dredge miner who makes a valuable discovery in the river, and is in the process of developing it when he comes up into a mussel bed containing 42 per square yard? What then? Is the State of California going impose a criminal citation for sucking up muscles? Or is the State of California prepared to buy his gold mine in order to save the muscles for the public benefit? Or is the State of California going to require an expensive and long-delayed study and perhaps require licensed experts to replant the muscles somewhere else? Where does all this nonsense stop?

What is to prevent you guys from issuing a regulation against killing ants if there are more than 40 per square yard? What's next?

We strongly advise DFG to withdraw from the notion that you should be prohibiting dredge mining to protect any species (from extinction as a result of the dredging) which is not afforded special protection. Because you are taking away the rights of Americans to be productive. There is a cost for this. You are also going to experience this when the State no longer has any money to meet your pension obligations.

Rather than impose a criminal penalty for sucking up or dropping tailings near mussels, we suggest you discuss them in your Better Practices handout.

**Returning the site to the pre-mining grade to the greatest extent possible:** It is clear that whoever thought this up had zero experience in suction dredging!

**Please allow us provide some insight:** Sampling is the process of making multiple sample holes in an attempt to locate a high-grade gold deposit (business program). Sampling is a process, not a single hole. Sometimes a dredge miner makes a discovery, but wants to continue sampling to determine the length and width of the deposit, or to see if he deposit might provide better results that he can develop first. Your proposal would require him to fill each hole, even if he is not finished there.

Nearly always, once a discovery is made and defined, an experienced dredge miner drops further downstream doing more short tests in an attempt to find the lower-end of the gold deposit. Then he begins the development project there so tailings will not be dropped on top of the deposit and moved again.

Sample holes are not filled in, because the prospector may need to go back and take another look! **Your proposal on this seeks to manage the way a mining operation is done**. Even the federal agencies have no authority to manage a mining program! But you would have your wardens out there writing criminal citations to a serious dredger that is attempting to trace down a mineral deposit with several open excavations? This proposal proves that DFG does not understand the mining process that you are trying to regulate, and that you have not seriously considered the input from the mining community, especially during the PAC meetings.

**Here is the reality:** It is entirely impractical for you to believe we can somehow take our dredge tailings and refill the holes. There are water currents involved which prevent the material from being shoveled and carried 30 feet upstream, or even dredged upstream. Furthermore, according to the SEIR's extensive information in Chapter 4; no matter what we do, the light gravel (tailings) will remain unstable until the next storm event places them behind a natural obstacle in the waterway.

Ample evidence shows that salmon are less likely to place their redds in a heaped tailing pile than they are on a pre-mining grade which is unstable. So your proposal will actually create more harm than good! While it occasionally happens, there are very few cases on the record where salmon have spawned in a heaped tailing pile, because they

seem to have an instinct that the pile is unstable. So wouldn't it be better to leave it alone and allow the next storm event to settle things where they belong?

On this subject, the SEIR does not contain enough acknowledgment about the proven positive impacts that result from suction dredging. It is well established that these tailings eventually wash downstream to create ideal spawning habitat where it may not have existed before. In addition, it is well established that the holes we leave behind create cool water refuges where salmon and other fish hold up during the warm summer months. The piled cobbles create protected habitat where fingerlings are able to hide from predators. And you would have us destroy these improvements right at the time when the fish need them the most? **Why is that?**

It is well established that the river will overrule any reclamation efforts which dredgers attempt and return the waterway **exactly the way it is supposed to be** during the next flood event. It is perplexing why the Department would have us bury the holes which are helping fish in the meanwhile.

Furthermore, since it would be impossible to move tailings and rocks upstream in a swift current, where would you have us source the material to fill in our holes? The regulations already prevent us from importing material off the bank. The only other source would be from upstream in the waterway. But then we would be disturbing other habitat (and mussels) from another part of the river that the SEIR has expressed so much concern about.

We strongly suggest that you eliminate this whole idea from your regulatory proposal about managing the way that dredge miners prospect and mine. Because you are not being realistic. This would be a subject better suited to your Best Practices handout.

**Dredge mining between one half hour after sunrise to sunset**: You would attempt to prohibit mining on the public lands after sunset? **Your authority is limited to preventing a deleterious impact upon fish!**

We suggest you drop this from proposed regulations and leave it to local authorities where it belongs.

Thank you very much for giving careful consideration to our comments and suggestions!

Sincerely,

Dave McCracken, President
New 49'er Prospecting Association

# J & J Mining

April 10th, 2011

To:

Mark Stopher
Environmental Program Manager
California Department of Fish and Game
601 Locust St.
Redding, CA 96001

***Comments In Regards To: Suction Dredge Permitting Program Draft Subsequent Environmental Report***

To whom it might concern:

I wish to have my documented repudiation and comments reviewed and addressed by the California Department of Fish and Game along with the rest of the public review comments prior to the release of the final Subsequent Environmental Report. I additionally hope that my comment letter doesn't fall upon biased minds with deaf ears.

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I would like to start by stating that I am not going to comment in great length on all of the newly proposed suction dredging regulations as they are **NOT** justifiable. This is not acceptable and will be challenged regardless of the outcome of the Subsequent Environmental Impact Report (SEIR). The Federal Mining Law only allows the State to reasonably regulate mining, and these proposed regulations are a far cry from reasonable.

The newly proposed regulations for suction dredging are way past the point of being over-restrictive and are based, **NOT** on sound scientific data, but on mere speculation throughout the entire DSEIR. "If" the California Department of Fish and Game (*CDFG*) were to remove all the occurrences of the words; if, might, could, and may from this DSEIR then there would be nothing left but a few "potential" environmental impacts based upon inconclusive biased reports and studies that most certainly cannot support the very harsh changes made to the 1994 regulations. Furthermore some of these proposed regulations have obviously not been given any thought and are just being used to satisfy the call for change by those who are using suction dredger's as scapegoats to the longtime existing problems. These problems are clearly stated within the DSEIR which to have been caused by "*anthropogenic*" means. This includes but not limited to the constructions of dams, pesticides washing into the drainages, over fishing before salmon have spawned, and yes even the CDFG non-native fish stocking programs decimating amphibian populations. These are only some of the many impacts that have been proven to be deleterious or outright fatal to fish and other wildlife by true scientific facts; suction dredging is **NOT** one of them. Yet these serious impacts still continue as the fingers of blame are pointed elsewhere.

The first proposed regulation that was clearly not given any thought or planning was the proposed requirement for an on-site inspection for those who wish to operate dredges over the proposed new maximum size limit of 4", which is clearly unwarranted in itself. First off, based on the CDFG suction dredge survey there was around 25% of permittees that operated dredges over the proposed limit of a 4" nozzle size. So, if this is true, then based on those percentages there would be roughly 1000 permittees on average out of the proposed 4000 issued future permits that would be required by the CDFG to have an on-site inspection and would need the written permission before they can operate. With this said will the CDFG be able to handle this sort of demand and work load? Does the CDFG have this sort of resources available? Would the CDFG be able to meet the demand within a timely fashion as some of the river's and creek's dredge use classifications have been severely changed and are only proposed to be open for a month and others only for two months. Where are the CDFG guidelines and procedures for these on-site inspections? What should the permittee holders' expectations be or will it be an unorganized, understaffed, government free for all? It wouldn't be wrong to assume that an operator would like to use his or hers suction dredge permit in the short time they would be permitted to do so. Another issue, How is the CDFG planning to access remote areas to perform these inspections? How about inspections in the late fall and winter with the seasonal weather in most of these locations on rivers and creeks that are proposed to be designated Class D and E? Now we can add in the additional operators, regardless of dredge size, who own motorized winches as many do and very well intend to use them. They too will be required of an on-site inspection as it is clearly proposed. I see an awful big demand being placed upon the substantially limited CDFG resources from these proposed regulations and this not including the regular routine enforcement of these regulations or including the other responsibilities of the CDFG. I would additionally like to make mention for the records that many suction dredgers own and use motorized winches for the safety requirements of the divers who work underwater in the proximity of large boulder which impose a danger if not managed safely. Boulders can become loose, shift, or roll, crushing or pinning the diver(s) under the water. The CDFG should consider safety for all the permitted suction dredge operators and not jeopardize this by requiring an on-site inspection and written permission for this less than significant impact. Let's not put a limit on safety for those who wish to work in a safe manner. The 1994 regulations for winching have worked just fine as they were written and is not in need of any changes.

Another one of the CDFG newly proposed regulations has placed a dredge boundary on a variable water level. CDFG has proposed that the suction dredging not be allowed from within three feet of the lateral edge of the current water level. This existing water edge can change dramatically and can change swiftly during the time of year that the dredge use classifications dictate as they are being proposed; the new classifications for rivers are in its entirety unfounded. How can the CDFG enforce this proposed regulation when the water levels change due to high water from weather or from dam releases? If the dredge operator dredges as written for this regulation, then the water level recedes and now he has inadvertently broken this regulation and dredged within the three foot water edge boundary. This is very inconcisive and allows for an inconsistency which makes for undue enforcement. This new regulation is entirely unreasonable and it also poses for inadequate enforcement practices on the part of CDFG.

I would see fit to now comment on the fact that annually, during runoff and storms, Mother Nature herself moves everything within the river's and stream's high water zones and then some. It all moves, it is not a matter of if but when. This is a basic science of physical geology, rivers are channels for drainage of precipitation and they cut their way to form canyons as the water returns to the sea. Everything in these channels is worn and ground down with an awesome abrasive action of running water and friction of moving gravels, rocks, and yes big boulders. The bedrock is carved deeper as it decays over time. This process continues in stages till the mountains are transformed into plains. This is a basic natural process, a true science, and within that process you have others working as well. Such as weathering, erosion, deposition, and so on. All of the suction dredge mining since the beginning on any scale even with the utilization of the motorized winches can't even come remotely close to the effects of these natural forces and the magnitude of the impacts caused by these processes that are seen on a massive scale but yet all species survive it just fine. So how can anyone say that suction dredging does NOT in fact carry out this exact process but on a very isolated minute scale of what is indeed happening naturally?

Back to the proposed regulations. It has been proposed that each dredge operator should have their dredge permit number affixed to their dredge using 3" numbers. What if there is a group of miners that were to share the operating of a single dredge as it is a very common practice. Now what if they share a small dredge, as that is all that is being proposed to be allowed in the draft regulations. How can a small group of operators possibly affix all their permit numbers on that single dredge? Physically impossible and very confusing if it was at all possible. Maybe it should be a true "dredge" permit; meaning the CDFG would permit the dredge in itself and all the operators would be listed under that permit, each to hold a copy of the permit in their possession. Comparable to a boat registration with the registration numbers displayed on the boat hull and anyone can operate that boat. Also the same numbers on the dredge could possibly be carried over from year to year with a renewal. As it is already proposed the amending of the permit would be a proper way to change operators or other pertinent information. Another good example of a similar concept is a building permit. It is a permit for the structure itself that is being worked upon and it is not required that all the contractors acquire separate permits for working within that building or structure. Makes sense to me but with all the presumptions being made on the SDEIR maybe making sense isn't in the agenda.

I would like to make a very specific comment on the one matter that affects me the very most as a claim owner and operator on this SDEIR. It is the species-based restriction for the Foothill Yellow-Legged Frog. The restrictions that are being based upon this particular species are proposing a radical change to the river and tributary use classifications of many Sierra Rivers and their tributaries, especially in CDFG Region 2. They are proposed to be changed to a Class E and a restriction to not allow any dredging within 3' from the lateral existing water edge. Both of these restrictions emanate from this species-based restriction. ***This frog species is not listed as endangered, threatened, or a candidate for either.*** The Foothill Yellow-Legged Frog is stated by the CDFG to be a mere "Species of Special Concern". It is also stated in the description of a SSC species ""*Species of special concern" is an administrative designation and carries no formal legal status.*" These proposed regulations are profoundly restrictive for any species, regardless that it is only a species of concern and nothing more. I for one have never seen any frogs, tadpoles, or egg masses in any of the tributaries within region 2 in all my years of

frequenting that region. The CDFG propose to classify all the tributaries within this region including the main branches and forks of the mainstem rivers as a Class E. This action would close a large area down for dredging for me and many others. I ask if these frogs are of such a great concern to the CDFG then why not know exactly where they exist and not try to lump a large section of the Sierra Rivers and their tributaries under the same dredge use river classification. Also if the CDFG is taking the stance of protecting these frogs then you might consider NOT stocking non-native fish that eat the tadpoles and also try to thin out the water snake population as they are just booming as of lately. Furthermore if there was indeed any so called "potential impact", as the CDFG calls it, to these frogs and this particular species then why is there NO specific sound scientific data or thorough detailed scientific studies done that have an outcome that suction dredge mining had a **definite** and significant impact upon the Foothill Yellow-Legged Frog species. The impacts, all of them ***"less than significant"***, as they are stated by the CDFG in the DSEIR for amphibians were more often than not speculated based upon generalized studies of frog and amphibians and NOT conclusively to the direct effects that dredging have on these species. Without sound evidence all the proposed restriction as listed in TABLE 4.3-1. ACTION SPECIES of the DSEIR that were based upon this species, the Foothill Yellow-Legged Frog, should be completely removed and not included in the final draft and the regulations set back to what they previous read.

As far as CDFG statement "*The Department's initial determination that this proposed regulatory action would not result in a significant adverse socioeconomic impact*" that is wrong as the proposed regulations stand with the river classifications, nozzle size limitation, and other restrictions would in fact make mining claims non-profitable and not viable for suction dredging operations for many of the previously permitted suction dredge operators. If the proposed regulation were to go into effect as they are written on this draft then I would not be able to justify making the trip to California each year and I would be looking to spend my money and time in other states as I am certain many others will also do exactly the same, we have already witnessed this happening during this time while the current moratorium on suction dredging is in effect. I cannot even recuperate the costs of maintaining my claims with these restrictions that are proposed never mind the operational and logistical costs. The CDFG has come to this conclusion and has stated it for themselves "*alternatives that would result in greater levels of suction dredging activity relative to the proposed amendments would result in further increases in socioeconomic activity. This would be true of the 1994 Regulations Alternative described above.*" Would this not help relieve the economic situation in California? I am terribly confused on the message that the CDFG is promulgating, maybe economics are not as bad as they seem or as they are being reported there in California and should not be of concern to the residents or the government officials.

The suction dredging regulations that were based on the 1994 EIR and that were in place prior to the 2009 moratorium on suction dredging ARE NOT so far off from meeting the CDFG suction dredge program directives as is implied and they had served the purpose well. It is stated in Chapter 6 of the SDEIR section 3 "*The following alternatives have been evaluated for their potential feasibility and their ability to achieve most of the Program objectives while avoiding, reducing, or minimizing significant impacts identified for the Proposed Program. These alternatives (with the exception of the No Program Alternative) were determined to ...meet the Program objectives.*" This statement in fact included the 1994 Regulations Alternative. Any newly proposed regulations should have a similar resemblance to the 1994 based regulations as not much has changed in the way of sound scientific studies and data that supports these major changes that are being proposed to the suction dredging program regulations. I am not saying that some changes might be required at this time but these changes must be based on solid scientific data and not be speculated on the unknown or conceived by

biased input. There is NO justification for anything when the words if, may, might, could, and, possibly are being used for the basis of the reasoning behind such restrictive regulations.

As a responsible person that cherishes the great outdoors and considers myself a true Stewart of this environment I can say that suction dredge mining is by far the most environmentally sensible method of mining, causing the least of impacts, when compared to all other mining methods of comparable production amounts. In fact it was proven and indeed has the associated scientific data and studies that support the facts that suction dredge mining has many benefits to the environment and not just with the act of suction dredgers removing the trash and refuge from the forest and rivers, left by other forest users. I do believe and strongly feel there exists a balanced and effective plan for a new set of regulations for the CDFG suction dredge program and would hope that this plan could be adopted by us all. One which allows the CDFG to do its job sufficiently and effectively but yet would not ultimately cripple suction dredge miners and also allow us reasonable access to the minerals found on our Federal mining claims and the practice of our mineral rights as they are written in the Mineral Estate Trust Act of 1866 and the Mining Law of 1872.

James Saulen
1628 Waterford Forest Circle
Cary, NC 27513

John Michael Saulen
918 9th Street SW
Puyallup, WA 98371

**Suctiion Dredge Rules**

D Smith

Sent: Sunday, April 10, 2011 11:45 AM

To: dfgsuctiondredge@dfg.ca.gov

Hi Mark

I logged for 25 years in California.

Logging was pretty much stopped by the stotted owl and salmon concerns by enviromental groups. Nothing has changed where i lived in Yuba county with the owl. They were everywhere then but nobody would listen to the loggers that saw them everyday we worked. A tree would hit the ground mice would run the the owl would get its lunch. After logging stopped the brush has grown up so high going up to LaPorte you cant see off the road in the forest. The Bug Timber up in the Yuba River area is bad. You know anything about standing dead trees they make good lightnig targets and as the bug eat them tupentine runs out the roots into the streams.

Just like the owl when we dredge fish feed all around us. Again nobody will listen. I have swam in rivers an streams on all the places we dredge before setting equipment in the water and there are no fish present. As soon as we start dredging hundreds of fish show up for lunch. These rivers are so large how can you think it harms a fish in Klamath by HWY 101 when you are dredging in Scott Bar? My friend was married to a Kurak Indian woman. The reception was held in Arcata Ca. They had Salmon and lots of it. I ask about the issue of no fish in the river. They told me there were lots of fish. I then ask about why they say theres no fish? I was told they want the fish for themselves and dont care about up river people. These are the same people stopping the dredging. Again nobody is listening to the truth about fish versus dredging. Why do you as a state goverment get swayed by these lies and not the truth ? I am part indian so i was let into there inter circle. They all own boats but complain about boat traffic. They all fish but complain about other fisherman. They only want what is good for them no matter what they have to do to get it and lying seems to work pretty well from looking outside in.

One more thing. You have 3500 dredgers who dont want to kill any fish. Most of us dont even by fishing licence. 3,500,000 people bought fishing licence in California .I am sure you have the real numbers at your office. You can cross reference and see how many dredgers have fishing licences. I have buckets of lead from the places
i have dredged. I dredged on the N Yuba River below some very big old hydraulic mines and i found less than a gram of Mercury. I believe from being raised on the rivers in the Sierra,s that old mining ways hurt our lands. The dredging in your state i have does not. I dont leave a mess and i go back every year to find my holes gone from spring flooding.

In 2009 spring there were no fish visable in the Yuba then it rained for 8 days and nights. We were stuck down there and couldnt get out. After the river went down a week later i went back to dredge and there thousands of fish everywhere.

The river was very muddy from some big slides on Slate Creek. How could this be possible? The fish were all shinny and moving around very fast not slow like a person might think after a huge flood of that size.

Thanks for your time. We arent bad people. We just enjoy being out dredging and find a little gold. You should check out the people doing this to us. You will find they hate anything we or any other campers do. This is America not Russia.

Thanks

Donnie Smith

PS i have pictures of Yuba River at flood stage if you are interested email me.

**From:** rICHARD sOURS
**To:** mstopher@dfg.ca.gov;
**Subject:** Suction Dredging (Power Winching)
**Date:** Sunday, April 10, 2011 5:05:04 PM

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Dear Sir,
This response is to suction dredging and the use of power winches. I have suction dredged since 1980 moving many rocks by mechanical hand winching and power winching. I prefer power winching as it saves time considering the time limits set, by Forest Service on how long we can camp at our dredge site. I move the rock from its (set) dredge beneath it not moving boulders more than a couple feet. I also use rock sled to move cobbles and power winch them out of my dredge hole. Nature moves more rocks in a couple weeks (spring run off) than I could in a life time of dredging. My power winch cost $ 2500.00 two years ago..
Thank You for your time,
Richard L. Sours
1024 Tioga Way
Manteca, Ca
209-679-3296

041111_Chambers

Mark Stopher April 11, 2011

Department of Fish & Game

601 Locust Street

Redding, Ca. 96001

Re: Proposed Suction Dredge Regulations - Project No. 09.005

Dear Mr. Stopher,

I am opposed to all of the proposed changes made in the CDFG Proposed Suction Dredge regulations. I would like to focus on and bring to your attention three points about suction dredging and salmon populations that I believe are not addressed in the Draft Supplemental Environmental Impact Report as required by the Alameda Court Order and CEQA.

(1). The Karuk Tribe and other "Environmental Groups" contend that there is new data which implies that suction dredging may be deleterious to fish habitat. Most of what I have read in the DSIER are conclusions that have been arrived at from misinterpreted hearsay and anecdotal information. The DF&G seems to have adopted this *theory* and subsequently written the new Proposed Regulations to severely restrict suction dredging by closing off many rivers and streams in a number of ways. Including but not limited to; disallowing (statewide) dredging above 4,000-5,000 feet in elevation(Sec 228.5), restricting the number of permits issued to 4,000 (Sec 228(g)) and in a very subversive way, closing many other small streams with the restriction of no dredging closer than 3 feet from the edge of a waterway(Sec 228(k)(3)). In essence the new restrictive Proposed Regulations will have the effect of forcing 4,000 suction dredgers into a smaller area of the state. Given the "deleterious to habitat" <u>*theory*</u>, is this the best, environmentally sound practice? And given the DF&G has presented these Proposed Regulations for consideration, isn't that an admission that cramming a large number of dredgers into a smaller area would not harm the environment?

(2). Suction dredging has been used in the waterways of California since the mid 1960's. During those 46 +/- years the statewide populations of Chinook and Coho salmon has fluctuated as reported through the number of Salmonoids "landed". (NOAA, National Marine Fisheries Service, California Commercial Landings, 1980-2008). If the DF&G intends to restrict suction dredging under the *supposition* that dredging is harmful to fish habitat, how does the Department account for the years where the Salmon populations were increased, all the while dredging was performed on the waterways of California? The effects of suction dredging have repeatedly & scientifically been found to be "de minimus".

(3). In my research the first action taken in California to protect salmon was in 1870! (Holmberg, Bureau of Reclamation, 1971). Long before suction dredges were invented. The Fish & Game Commission restricted the *fishermen* that were taking uncontrolled numbers of salmon! There are hundreds of reports and papers written on the habitat, populations & mitigation efforts to

preserve the salmon of California ((www.swr.noaa.gov/hcd/cvscb.htm) Central Valley Chinook Salmon Bibliography). I have yet to read any mention of suction dredging as a reason for salmon decline. Holmberg (Bureau of Reclamation 1971) sites a statement by G.H. Clark (1929:23)...*The greatest single cause (for depletion), and certainly the most important, is without a doubt the extensive overfishing during the last fifteen to twenty years.* Overfishing has been the main cause of salmon population decline since well before suction dredges came onto the scene. It is well documented and common knowledge that the Native American Tribes along the major salmon run rivers of California take extensive and un-regulated numbers of salmon. Other reasons for salmon decline mentioned in various reports are migration blockage (dams), low water flow at critical times, agricultural pollution, oxygen depletion & susceptibility to disease. None of the literature I have read mentions suction dredging as a cause of salmon depletion, not even past Ca. DF&G reports.

Why have none of these points been addressed in the DSEIR? I recommend that the Department adopt the 1994 Regulations Alternative, the ONLY Alternative that has been arrived at through sound science.

Sincerely,

Tom Chambers

2126 Franklin Way  Hanford, Ca. 93230

The Morones
PO Box 61
Scott Bar Ca. 96085
530-496-3284

Sir

I AM A RETIRED SCIENTIST. I CAME TO CA IN 1991 AND PHYSICALLY KEPT MYSELF ALIVE BY MY GOLD FEVER. IT WAS VERY REWARDING TO ME EMOTIONALLY, PHYSICALLY + A LITTLE FINANCIALLY

I BOUGHT PATENTED GOLD PROPERTY. THIS PROPERTY WAS SOLD IN GOOD FAITH OF BOTH: THE FEDERAL GOVN. + THE PURCHASER. IT COULD NOT HAVE BEEN PATENTED WITHOUT THE SURETY OF A MINEABLE MINERAL

WHEN YOU STOPPED DREDGING, IT WAS LIKE SOMEONE REACHING INTO MY CHEST + RIPPING MY HEART OUT. WHAT YOU DID VIOLATES THE CONSTITUTION, MY CIVIL RIGHTS OF LIFE, LIBERTY + PURSUIT OF HAPPINESS. YOU ALSO ABSOLVED A CONTRACT BETWEEN ME AND THE GOVERNMENT. I ALSO HAVE WATER RIGHTS TO THE SCOTT RIVER, YOU DID, IN MY ESTIMATION, IRREPARABLE DAMAGE TO ME

I READ THAT GOLD MINERS CONTRIBUTE LITTLE TO CA. IN TERMS OF REV. I'VE SPENT MILLIONS OF MY DOLLARS IN REAL ESTATE IN CA, I HAVE ALSO BOUGHT MILLIONS OF CA. BONDS

YOUR AGENDA IS NOT SUPPORTED BY SCIENTIFIC FACTS. YOU ARE DESTROYING ENTRONMENTAL EFFORTS. CA. THE GOLDEN STATE, IS DEAD BECAUSE OF GOVERNMENT IRRESPONSIBILITY.

J MORONE

041111_Rougle

| | |
|---|---|
| **From:** | "Wolfgang Rougle" |
| **To:** | dfgsuctiondredge@dfg.ca.gov |
| **CC:** | |
| **Date:** | 04/11/2011 10:59:11 AM |
| **Subject:** | Reject Suction Dredge Mining in California |

To: Mark Stopher, California Department of Fish and Game

On Elk Creek in Siskiyou County, I've seen firsthand how dredge mining can turn a clear stream, full of fish and frogs, into a torrent of gritty, lightless sediment. Kids will be swimming in the creek, hear a distant engine start up, and a few minutes later watch a cloud of murky brown soil moving downstream toward them, turning a clear river brown in minutes. Dredge mining was banned on the Klamath and most of its tributaries last year, and with good reason. I hope it won't ever be a threat to California's other waterways either.

Our waterways are too important to take chances with, and I'm not asking you to take my word for it: state wildlife experts and scientists from every discipline have testified to its suction dredge mining's destructiveness. Not only does it interfere with recreational uses, it can suffocate fish and reintroduce sleeping sedimentary toxins (like mercury) into the water cycle. Most scientists agree: Suction dredge mining is a costly and destructive use that should be rejected. I urge you to adopt the "no action" alternative to protect these waterways from needless harm.

Wolfgang Rougle
16395 Ridgewood Rd
Cottonwood, CA 96022
US

**Subject:** SEIR Draft
**Date:** Monday, April 11, 2011 5:24:40 PM PT
**From:** Mike Ryan
**To:** dfgsuctiondredge@dfg.ca.gov
**CC:** Michelle

Dear Mr. Stopher,

It is unfortunate that such a tremendous amount of time, energy and taxpayer money went into the SEIR draft. Once again, the public is helpless against the self-destructing machine of government. With all due respect to your position and livelihood, the SEIR proposal is yet another form of job security, taxation and expansion at the expense of the people. And like all of these environmental issues, it is shrouded in more supposed benefit than is true.

I understand that over 50% of the population is now employed by the government in one way or another, so there is no way for the general population to really have a vote that counts. California in particular has been determined to rid itself of industry and invite undocumented workers into it's arms for decades now. Aerospace, Film, Auto Manufacturing, Milling and now, once again, Mining have all been regulated to near death, by people without a horse in the race. At this point, it will never stop until the whole thing collapses, and even then, the standard government mantra of "I was just doing my job" will be heard throughout the land, with no one willing to take responsibility for what has happened to a strong productive America.

No one can fix it and you have to do what some politician told you to do, but this proposal virtually eliminates dredging in Northern California without having to take extreme measures. Proposing a September to January season on the middle-fork of the Yuba means just a few weeks of temperate water and probable snow removal from the ridge lines just to access the sites for half of the "season".

Gold has never been worth more than it is right now and many small miner/ working, taxpaying individuals have a chance to better their position in life and give California some income.

In the end, if this is allowed, we will need to outlaw boats with motors, swimming, camping, water-sports and access to the outdoors. Any biologist can find a snail darter, devil fish, desert shrimp or other unknown critter to put forth to stop work at any site. The SEIR gives broad permission to Fish & Game to shut down an operation or drag their feet and delay miners from proceeding.

I think that you said in Valencia that your proposal had 2,300 some pages. How can anyone know and understand the full import of this proposal? Even Congress has proven that they don't read and comprehend documents containing thousands of pages. Write it in ten clear, concise pages in common english and be fair about it. Let's stop trying to turn California into a bankrupt foreign state that is being so completely controlled and preserved, that humans are just barely allowed to live here.

Not that it means anything, but I vote no to the SEIR as it currently stands.

Regards,

Mike Ryan

Extreme Performance, Inc.
25111 Rye Canyon Loop

Santa Clarita, CA. 91355
office 661-295-7711
cell 818-404-8230
fax 661-295-7721
www.fastrucks.com
www.picturevehicles.com

**Subject:** SB 670
**Date:** Monday, April 11, 2011 8:51:45 PM PT
**From:** SBishop1979@aol.com
**To:** dfgsuctiondredge@dfg.ca.gov

*April 11, 2011*

**Attention:**
Mark Stopher,
Environmental Program Manager
California Department of Fish and Game
601 Locust St.
Redding, CA 96001

I, Curtis Willie, strongly support the Miner's Act of 1872 that gives individuals the right to mine all minerals including gold. Taking away this freedom and enforcing restrictions in regards to dredging takes away part of our rights. I am in favor of the set of regulations that were enforced as of 1994. Regulations that limit the use of dredging to a 4-inch dredge would strictly be considered recreational and could not be used as a means of generating income. I have researched and learned that a 4-inch dredge is practical for a great day of enjoyment and possibly a small profit yet not a substantial way of providing a steady amount of income. Furthermore anything requiring the use of a smaller dredge would not be a profit equal to a days work and would be a loss. With the current law in effect it is effecting all miner's opportunities for profit and gain, and ultimately reflects back to the state. The cost of running a 4-inch dredge and the work needed to operate the equipment would not generate enough profit. With all this said I would like to state that I do agree with enforcing new requirements that require more documentation of the project plan and recording the hours of the mining project. As a GPAA member, I respect the land and feel that it is important to restore the land back to its natural state as best as can be made. In conclusion, gold mining has been a great way to subsidize income for the miners and provide millions of dollars of revenue for the state. This has been a great loss for the state of the California and for my personal family.

Curtis Willie

**Subject:** late comments

**Date:** Tuesday, April 12, 2011 2:39:59 PM PT

**From:** Rabideno@aol.com

**To:** dfgsuctiondredge@dfg.ca.gov

Dear Mark Stopher,

Much to my chagrin I screwed up. I didn't realize until Monday morning that Monday was the 11th. I did not know I could send comments via e-mail until this morning when a friend gave me your address. I hope you will realize I worked hard addressing the issues. Yes, you can hit the delete key, but the issues remain the same.

I am aware I have lost my right to follow up these comments with a lawsuit because I missed the deadline. I am also aware that agencies like the USFS have used late comments (that benefited USFS) against me in a court of law, so I am aware that these late comments can be of some use depending upon what the true agenda is. If you are genuinely interested in "clean water" and "wildlife" then my comments will be of use to your agency.

Comments attached in word format.

Thanks,

4-12-2011

To: Mr Stopher, Ca. DFG
From: Donald E. Eno
Re: Public Comments on Proposed Suction Dredging Regulations / DSEIR

Dear Mr. Stopher,

Monday morning (11th) I was doing an edit of my comments, turned on the printer, and much to my chagrin, I realized that Monday was the 11th and not the 10th. I couldn't believe the due date would fall on a *Sunday*, the one-day the Post Office does not accept and postmark a letter. (*Many of us are simultaneously working to beat the April 15thdeadline to keep the IRS happy.*) Excuses, Excuses…Anyway, all the work I went through preparing comments over the last weeks was all for nothing. I slept on it and this morning I got to thinking that you wanted public input to "help" you make better decisions, and yes my comments are technically late, and you don't have to accept them, but the information I am providing for your benefit is as good today as it was on the 10th. These comments might help you make a better decision even if you don't "Officially" recognize them. I have a choice, delete my comments, or send them and hope you will consider them. The fact is that the State DFG and the miners are in an adversarial relationship, the following comments were not intended to flatter your agency, nor are they intended to be disrespectful. They are simply honest comments based upon my experience, and questions that DFG should be able to answer. Thank you in advance for your consideration.

I attended the Sacramento public meeting on March 29th, 2011. You expressed your desire for thoughtful public input via public comments apparently to aid DFG in making decisions concerning these new proposed rules. After reviewing the DSEIR and the proposed rules, it is apparent that DFG and Horizon staff have no first hand experience with the real world of suction dredge mining. I have been a gold prospector, miner, and dredger since 1992. I have dredged in Cambodia, Viet Nam, Oregon, and California. I have been qualified in prior mining claim litigation as an "expert witness" in the field of suction dredging. It is my intention with these comments to inform and educate DFG as to the realities of suction dredging that only an experienced dredger can possibly know.

In general, these proposed regulations defy logic and common sense, as I will demonstrate throughout these comments. The proposed regulations appear to micro-manage small scale placer mining even though DFG has no concept of the realities dredgers face in the field. Frankly, *the proposed regulations and permit process would more accurately be described as a submission for* ***plan of operations*** *that requires more permitting, site inspections, equipment inspections, various approvals, and dredgers must now make special requests to use a 6" or 8" dredge and to use a power winch, either of which may be denied.* The proposed regulations - if adopted – will have a devastating impact upon holders of otherwise valid mining claims because under these regulations the USFS or BLM will now be able to challenge the validity of a mining claim on the basis

that mining under these "recreational" dredging regulations cannot make a profitable, or cannot be mined at all thus the claimant could not meet the "prudent man" test.

If DFG were proposing these regulations for purely *recreational dredging activities on lands not subject to the US Mining Laws*, then there would be no issue. However, here your unreasonable regulations attempt to make suction dredge mining on a bona-fide placer mining claim impossible to work, and/or impossible to work at a profit. If these unreasonable regulations are not defeated in court, the USFS and BLM will use your regulations to invalidate just about every single mining claim located within a river or stream because DFG proposed regulations make dredging far more labor intensive, less efficient, more expensive, more cumbersome and therefore suction dredgers will lose their mining claims based upon the economics of mining. Dredgers are simply regulated out of existence by these regulations.

## Legal Framework

Despite your admonition that you don't want to hear anything related to "*mining rights*" conferred by Congress, "*takings*," and "*prohibition of mining*," it is essential to establish as a matter of record that miner's rights under the US Mining Laws will be directly adversely affected by this set of proposed regulations. These proposed regulations are "unreasonable" regulations that "impermissibly restrict placer mining" in the rivers and streams of California. In many cases these proposed regulations will completely prohibit placer mining because the only lawful means of mining gold from active streams is suction dredging. These proposed regulations absolutely fail to recognize the Miner's "**Dominant and Primary use**" of the claim. The DFG apparently fails to acknowledge that DFG management cannot lawfully "**endanger or materially interfere with mining operations and uses reasonably incident thereto.**"

I am absolutely baffled that DFG has blatantly disregarded 150 years of case precedent with respect to the rights of miners under the US Mining Laws. Having studied the mining laws and 150 years of case precedent over the course of the last ten years, I believe the DFG has broadly overstepped its authority in its gambit to micro manage and ultimately destroy placer mining on the streams and rivers of California. It is not my intention to provide a legal brief or exhaustive legal analysis. However I do offer the following references to important cases, legislation, and other documents to ensure that DFG is advised of these legal concerns prior to formally adopting these proposed rules.

The best "on point" case that demonstrates that the State *management* of fish and wildlife must yield to the dominant and primary use (mining) is **Robert E. Shoemaker IBLA 87-340 Decided July 13th 1989**. Other important guidance with respect to the authority to manage wildlife tempered by strict limitations of management by managing agencies can be found below. I cite these following somewhat *obscure references* for your consideration because it is highly unlikely that other miners will. I am certain other

miners will be providing vast amounts of mainstream case law and legislation for your consideration. I can send you copies of these documents if you cannot readily obtain any of them on your own.

The first thing the DFG should have done when they set out to perform the EIS and *prior* to drafting these *new* proposed suction dredging regulations would be to take a requisite "Hard Look" at the statutory framework that protects the Miners essential bundle of rights conferred by Congress, primarily the *US Mining Law of 1872* as amended by the *Multiple Use Act* circa 1955, as well as all relevant *case law*, the *Mineral Policy Act* of 1970, the *Mineral and Materials Policy Act* of 1980, President Ronald Reagan's Executive Order 12630, March 15th 1988 "*Governmental Actions and Interference with Constitutionally Protected Property Rights*," and the Legislative Histories of the 1872 Mining Laws, the Mineral Policy Acts (1970 and 1980), and the Multiple Use Act 1955.

Further, DFG should have extensively reviewed the Hearings before the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs, House Of Representatives, Ninety-Third Congress, second session, Serial No. 93-44, Hearings Held in Washington, D.C. March 7 and 8, 1974. (PROPOSED FOREST SERVICE MINING REGULATIONS.)
DFG should also have reviewed the USDA FS Environmental Statement for the Proposed Mining Regulations, Transmitted to Council on Environmental Quality (CEQ) July 12th 1974. DFG should have reviewed all relevant and available information related to the FS proposed regulations (1974 era) because that review would shed considerable light upon the *essential bundle of rights* miners hold with a valid Mining Claim. It also illustrates that Congress has made great efforts since 1872 to protect the miner's rights when passing all public land laws that might affect mining rights. These aforementioned documents are replete with credible information related to the severe and consistent limitations Congress has consistently placed upon the Managing Agencies with respect to management of surface and sub-surface resources on mining claims.

**Are these proposed suction dredging regulations *or* placer mining regulations?**
I am somewhat confused at whether DFG is attempting to establish new "*placer mining regulations*" or "*suction dredging regulations*" within the active streams and rivers of California from the water line to water line.

The new proposed SD regulations and permitting system appears to be far too complex and cumbersome to be efficient. Based upon the proposed rules I must 1st fork over my money and apply for a permit, and provide a list of up to six specific and defined locations where I would like to dredge. Then I must contact DFG to inspect all my mining equipment. And because I will need to apply to operate a 6 inch dredge on one claim in particular, then I must schedule an on site inspection and request approval for a 6 or 8 inch dredge, and I must also apply for 1602 permit, which must also be approved. And because I need to use a power winch I must also request a winch permit, request an on site inspection, and hope for an approval. Nothing is certain.
*Frankly, I don't think DFG could have made obtaining a permit for suction dredging any more difficult and complicated if DFG tried.*

Further, these so-called proposed regulations and permit system is more akin to a **Plan of Operations** than a set of rules and a permit, because the application processes requires a series of applications, inspections, and approvals, and requires miners to provide specific locations where we plan to mine many months in advance, and now we are expected to dredge only during the hours of the day DFG has specified in these proposed regulations, and we must also provide specific dates that we plan to work at each site. *Hell, even BLM and FS Plans of Operations under mining regulations don't establish hours of operation or days of operations.*

**Foreign Materials**

DFG Proposed Suction Dredge Regulations (PSDR) state that *foreign materials* may not be introduced into the stream or river. This regulation needs further clarification. I suggest that DFG specifically state that *foreign materials* may not be thrown into the river for the purpose of suction dredging these foreign soils/materials. Since these regulations are proclaimed to be "Suction Dredging Regulations" and not "mining regulations," the regulations as proposed may lead one to believe that dredgers may not *pan* lode or placer materials located outside of the existing water line. Panning and/or sluicing foreign materials in the active stream course are not a *dredging activity* and therefore should not be included in "Dredging Regulations." The weird part is that when we agree to the terms of the DFG permit, we are actually signing a contract thus we cannot argue later that our rights have been usurped by the regulations. Now, if a miner holds a valid mining claim and has not agreed to the terms of the dredge permit, he may indeed pan foreign materials because he is not under contracted terms and conditions. Furthermore, placing a prohibition on panning and sluicing of foreign materials would unreasonably restrict and frustrate one's ability to *prospect* for either placer or lode minerals for future location and entry. As I will extensively demonstrate in the following pages, in the scheme of things, your prohibition of introducing foreign materials into the rivers would be laughable if you weren't *seriously* trying to regulate panning.

Under these new Proposed S.D. Regulations, if not rectified, prohibits panning samples taken anywhere above the water line of the stream, and it stands to reason that miners can not shovel streambed gravel (located anywhere in the forest above the waterline) into a *sluice box* – operating in a stream - even for minimal samples consistent with prospecting. This portion of the new proposed "Suction Dredging regulations" is *unreasonable* and unwarranted. Panning is not and never has been a *feared, dreaded, or destructive* mining practice. I doubt sincerely that any miner has ever caused a significant disturbance of surface resources by panning samples in a creek. Panning is typically used for removing gold from concentrates, and/or sampling streambed materials and mosses located near and above water line (but often well within the high flood Stage Water line). *Panning* is a back breaking and labor-intensive task and therefore it is obvious that no appreciable amounts of "*Foreign Materials*" would enter the stream course by suction dredgers using a mere gold pan for the purpose of prospecting.

The so-called "*foreign materials*" referenced in the Proposed SDR can be fairly described as auriferous gravels / bedrock w/gravel / and sand *deposited* or *rewashed* during major flood events. Mother Nature carried these gravels to a specific location during flood

events from higher elevations. Eventually, another future flood will either wash or transport some portion of these gravels downstream along with **vast amounts of asphalt, concrete**, road signs, guardrails, bridges, and virtually any object that happens to be in the way of powerful flood waters.

Since DFG is evidently concerned about miners panning *foreign materials* in California streams, then DFG has a huge problem. I have been mining in California for over 18 years. I have personally witnessed two major flood events on the NF Feather River drainage, which includes all drainages into the NF Feather River. During the Jan 1st 1997 flood event, the Feather River Highway was destroyed on countless outside bends of the river. At the same time, on the opposite side of the river, the Railroad tracks are located at approximately the same elevation, and the flood also tore out miles of RR track. RR tracks were suspended in the air with nothing under them in some cases for hundreds of feet at a stretch. The destruction was significant, requiring some 8 months of work just to re-open Highway 70. In fact, at Rich Bar, the NF Feather River completely destroyed a bridge (some 200 feet in length) and the flood pushed the bridge several hundred feet downstream. The bridge was constructed of steel, wood, paint, wood preservatives, and asphalt. The bridge has been buried in the river gravel ever since.

Now, all these Highway and RR beds were re-built after the flood using *foreign materials* from local borrow pits (usually Serpentine or granite). These Foreign materials were side cast (or dumped all the way to the river's edge) to re-create highway and RR beds. Then, after grading, the roads were repaved with **asphalt**, a **known hazardous material**. Then, Cal Trans used a concrete pump to pump concrete on top of the side cast (road bed and RR beds) from the shoulder of the road/RR to the waters edge. In 1997 when the river flooded and tore out massive sections of the highways and RR tracks, all that *foreign material* (road fill base) and **asphalt** and **concrete** was washed directly into the Feather River system. With respect to the RR tracks and fill base, all that material also washed into the river system.
I have personally walked miles of RR track in this area. On the downhill slope from the RR tracks to the river, I have seen vast amounts of RR trash side cast all along the way. The trash I am referring to is old RR spikes, massive bolts and washers, scraps of metal, welding rod, old creosoted timbers, oil drums, 5 gallon buckets with various oily or chemical residue, hunks of RR track, industrial batteries and so forth. In certain areas, where the flood completely tore out all the RR bed, this kind of trash washed into the river. Furthermore, the gravel under the RR tracks is often saturated with oil/grease that heavily contaminated numerous sections of RR track along the route throughout the canyon. All that oil contaminated rock and dirt washed into the Feather River.

Now, considering floods occur here in Northern California on average every ten years, (major floods 1986 and 1997) DFG must accept the reality that another flood is due any time. If DFG truly wants to protect the river systems and ensure clean water for our future, it appears to me that DFG must examine this issue carefully and thoroughly. I am certain that DFG can contact Cal-Trans and other involved parties to obtain essential data, which would prove; how many tons of **asphalt** was used to repair the Highways after the flood, which would be a good indicator of how much **asphalt** washed into the

river by the flood. The data would approximate how many cubic yards or tons of *foreign materials* (road fill base) were used to rebuild the roadbeds and the RR track beds, which would provide an accurate estimate of how many hundreds of tons of foreign materials were introduced into the river. If DFG searches out the data referred to here, it will stagger the imagination how many hundreds of tons of toxic asphalt and how many Thousands of tons of foreign material washed into the North Fork Feather River alone.

Taken a step further, this was not an isolated flood event. During the flood events of 1986, countless other major rivers and streams flooded in a similar fashion throughout Northern California. There can be no doubt that thousands of tons of asphalt and concrete entered the NF Feather River alone as a result of one flood event. If DFG investigates this issue, and calculates the total volume of asphalt, concrete, and road/RR fill material that was washed into all the rivers and streams in Northern California during any one flood event, then the DFG can analyze the probable long term adverse environmental impacts to various species and water quality as a direct result of introducing massive amounts of asphalt, concrete and road/RR bed materials into the active stream beds. Further, DFG should also calculate how many thousands if not millions of tons of Road bed base and RR bed base washed into all the river systems throughout Northern California, and then analyze what harmful environmental effects these foreign materials may be causing.

Please take note here that up to this point I have only addressed the introduction of road bed and RR bed materials, and the associated asphalt and concrete that has been introduced into the active riverbed as a result of floods.

But, then we still must consider and estimate the vast volumes of all the other *foreign materials* (AKA earthen materials) that were deposited into the river as a direct result of flooding on the NF Feather River drainage, and by extension, DFG should estimate how much of this more natural earthen material entered all the rivers during each flood event.

**Flood Events, Foreign materials, and Garbage**

After the 97 flood, I hiked through many small streams that I was very familiar with in the recent past. I observed numerous small streams that in the summer typically run 4 feet wide and a foot or so deep that were unbelievably altered by flooding. On tiny streams like this I saw log dams created by the flood that were thirty or more feet high and 80 feet in width which were composed of downed timber and filled with gravel. I saw areas that the year earlier had several feet of streambed material, but the flood stripped away the entire gravel bed down to bare bedrock. I saw areas along small streams as described above where I could count approximately twenty trees leaning or laying across the stream in an area perhaps 150 feet in length. The trees are all sizes, but I am not talking about trees the size of bushes, no, the trees ranged between 8 inches to 2 feet in diameter. The floods scoured the banks, undercutting the tree roots causing the trees to fall toward and across these streams.

The floods also destroyed gravel and dirt roads, and in many locations, the flood ripped out numerous culverts ranging in size from perhaps 2’ to 10’ in diameter that were used to construct roads across small streams. Many of those galvanized steel culverts were

simply blown down stream, crumpled up and partially buried in streambed gravel. You can bet that these culverts are still located where the flood pushed them.

The point is that natural erosion within the river drainage system caused mass erosion and transport of massive volumes of *foreign materials;* stream bed materials, river bank materials, sand, silt, clay, gravel, vegetation of all kinds along with trees and bushes. Here, DFG should look for available data from whatever source available to determine how many hundreds or thousands of tons of stream bed and *foreign materials* were introduced into the watershed of the NF Feather River as a direct result of one major flood event. Once that is done, DFG should expand this investigation to determine how many hundreds of thousands or millions of tons of *foreign material* was introduced into the river systems throughout Northern California as a direct result of one major flood event. Once this is known, DFG should analyze the adverse environmental impact to species as a result of all this foreign material co-mingling with the asphalt, concrete, oils, creosote, road base, and RR base which all mix with native stream bed materials.

Major flood events have occurred throughout Northern California nearly every decade since the 1850's. Plainly DFG has access to credible data and statistics proving this point. Since the mid 1800's humans have built homes, sheds, cabins, and businesses along rivers and streams in the Sierra Nevada. Major floods have completely destroyed many of these structures along with all their contents and washed it all into the rivers. Some property owners rebuilt after a major flood, only to be wiped out again in yet another flood. One very important point is that if we consider a dozen or so major flood events spanning the past 160 years, we must acknowledge that hundreds if not thousands of homes, cabins, sheds, vehicles, and structures have been washed into our rivers along with all contents such structures contained. As these structures were ripped apart by the power of the water, virtually all the contents of these structures that do not float obviously sank and became mixed with gravel and the bulk of all that garbage still remains under the river gravel. During these flood events, the streambed goes into suspension moving vast amounts of gravel and boulders; the best way to describe this is equating a flooding river to a massive grinder. If you toss a refrigerator into this grinder, it will tumble, and be crushed over and over, and any open cavities will fill with sand and rock, and ultimately it will be found in the future as a crushed mass under river gravel. Therefore importance of flood events and the cumulative quantities of foreign materials, asphalt, heavy metals, and general garbage should not be overlooked.

The DFG - and perhaps the environmentalists who dream of destroying mining rights - appear to believe that the rivers and streams are somehow **pristine and natural** and in need of protection from evil suction dredgers. The river systems in California are in fact loaded with garbage and heavy metals. The problem is that most of the garbage and heavy metals are out of site and out of mind. Personally I would be amazed if I dredged a day and did not find any garbage. Even DFG appears to turn a *blind eye* to the vast amounts of cumulative trash and heavy metals flowing through our rivers.

The DSEIR is void of any meaningful investigation or analysis pertaining to the quantity of garbage in the rivers, and void as to an analysis of the types of garbage in the river, and void as to providing any genuine analysis of how the; break down, corrosion, oxidization, rusting, and leaching of these heavy metals and toxins might effect the

aquatic species and water quality. All the flood events spanning the past 160 years have washed virtually anything and everything imaginable into the riverbeds. Floods wash and grind entire homes and estates into the riverbed. I say estates to cover the storage of campers, boats, trailers, vehicles, garden equipment and all the typical things one would find on any estate located along our rivers. All "experienced dredgers" have uncovered vast amounts of heavy metals and garbage in pretty much every river that the public has had access to.

A description of the **garbage** dredgers encounter routinely includes but is not limited to this brief list; Crumpled automobiles, automotive frames, engine blocks, transmissions, wheels, wheels with tires, tires, car batteries, bridges, culverts, guardrails, road signs, silverware, nails, nuts, bolts, rivets, threaded rod, steel rebar, bailing and barbed wire, old pull tab cans, aluminum and steel cans, broken and unbroken bottles of every description, hubcaps, welding slag, small engines, aluminum ladders, metal buckets and tubs, copper and steel pipe and fittings, and virtually anything else you can imagine.

The smaller **heavy metals** that we routinely encounter include but are not limited to the following; lead fishing sinkers, lead split-shot of all sizes, brass swivels and fishing lures, broken fish hooks, bullets, lead/copper projectiles and spent ammunition cartridges, buck-shot, lead balls, steel ball bearings, bb's, lead pellets, metal zippers and grommets, silverware, occasional coins, copper wire and plumbing pipes, solder, mercury, gold, amalgam, lead from auto batteries, pull tabs, bottle caps, tacks, zinc and galvanized nails, garden tools, shovels, rusty nails and scraps of rusty iron of every description.

Basically, our rivers and streams are loaded with trash and garbage of every description. And, the river will deposit much of its garbage and heavy metals in pay streaks along with the gold. To me, a river or stream is a sluice box. In fact, during major flood events, when the entire streambed goes into suspension and flows downstream, all the higher specific gravity materials (gold, metallic garbage and heavy metal) drop down to bedrock and settle together in what is known as a *pay streak*. Most experienced dredgers have learned that if you want to find gold, follow the trash.

Having covered the topic of flooding above, I am keenly aware that it can be argued that floods are often construed as an act of God, or may be described as periodic and natural events. However, flooding is also a re-occurring event that can be predicted to some degree, and there is no doubt that the next major flood(s) will cause precisely the same problems previous floods have caused. Hwy 70 and the RR tracks have not been moved to new locations or elevations since the last flood, thus there is no doubt the rivers will flood again and flooding will introduce another massive volume of *foreign materials*, road base/RR base, stream bank materials, garbage and debris, and yes more estate property will wash into the active stream and river beds.

If the DFG is genuinely concerned about gold miners "panning" which would introduce relatively miniscule amounts of *foreign materials* into the watershed as a result of panning samples, then the DFG must incorporate a careful analysis of the cumulative impacts of 10 year flood events in the DEIS for the proposed dredging regulations. The Environmental Impact Statement must make reasonable efforts to analyze the adverse environmental impacts resulting from past flood events which introduced natural

streambed materials, stream bank materials, road fill base, RR fill base, asphalt, concrete, garbage and other contaminates into the river systems. The DEIS must then presume that a future flood of similar magnitude will cause similar results which will have some adverse impact on the aquatic species in the aquatic environment and water quality. This year in particular, we have near all time high snow pack in the Sierra Mountain Range. Depending upon how quickly this snow pack melts, and considering the last flood was 1997, it is highly probable that flooding will occur this spring.

Another reason we have such vast amounts of garbage in our rivers is that there were no environmental laws related to the early day construction of highways, RR, Bridges, tunnels, dams, and roads. Today, anyone could set up a dredge below or slightly downstream of a bridge and you will find massive amounts of scrap steel, rivets, metal straps and so forth.

Wrapping up the significant issue of flood events in relation to how floods have caused vast volumes of foreign materials, earthen materials, asphalt, and garbage into our rivers over the past 160 years, I have a few more points to make and several questions.
DFG has been informed for decades that individual dredgers conservatively remove 10 – 20 or more pounds of heavy metals (primarily lead) steel, and mercury, mercury amalgam during a single mining season. We generally only add up the weight of the small pieces we find in our recovery systems, we do not add the weight of all the other large scrap metal and garbage we remove. Assuming that in one year, 5000 dredgers removed similar quantities of heavy metal, then it is safe to say that dredgers remove 50,000 to 100,000 pounds or 25 – 50 short tons of heavy metal from our rivers in one season, and this figure does not include the weight of all the other garbage we remove. Now, estimating that dredgers have been removing these heavy metals for nearly 40 years, and converting pounds to tons, it appears that dredgers have been responsible for removing between 1000 and 2000 short tons of heavy metals from our rivers and streams.
Question; Over the past 40 years, how many pounds or tons of heavy metal has DFG removed from our rivers and how much money did it cost you to remove these heavy metals?
Question; Has the DFG ever seriously analyzed the amount of garbage suspended in the streambeds of our rivers or developed a plan to clean up our rivers?
Question; is there any other user group that is actively removing streambed garbage and heavy metals from our rivers?
Question; I understand that the DFG at one point attempted to collect mercury from miners. So, after all the years DFG has "regulated" suction dredging, why is it that DFG has not created a simple way for dredgers to turn in their heavy metals and mercury for disposal?
Question; Has DFG ever conducted a study or analysis to determine how much asphalt has washed into our rivers, and if so, has DFG made any determination(s) regarding the adverse environmental impacts to species and water quality?
Question; Has DFG analyzed the adverse impacts to aquatic species and water quality as a direct result of all this asphalt breaking down over time and releasing toxins?
Question; Has the DFG considered or developed a plan to remove asphalt from the riverbeds?

Further, since these are suction dredging regulations, and not "placer mining or lode mining regulations," then I fail to see how or why DFG has created a **separate inspection and approval provisions** for dredges over 4" diameter and less than 8" diameter, and for winching boulders. These extra steps, seeking various inspections of (dredge equipment, nozzle restrictor ring size, dredge permit numbers, intake screen size), application for power winching and approval process for winching, and various other approvals are overly cumbersome, they will take considerable time to arrange, schedule and ultimately approve or disapprove. Therefore this multi-level application/approval process is unnecessary, and amounts to unreasonable regulation that impermissibly encroaches upon the rights given to miners by Congress.

This lengthy process will also require the DFG to spend vast amounts of time and money traveling all over the State to make inspections and ultimately to approve or disapprove certain equipment and requests; for example winching and oversize dredge. With our economy in such sad shape, I cannot believe the State of California can afford to perform all these inspections and approvals in a timely manner. If you have not addressed the State budget of both *time* and *money* for all these unnecessary activities, you simply will not be able to fulfill your obligations to the miners who apparently will be required to wait for your inspections and authorizations.

The **4" dredge restrictor ring** limit is going to cause injury and death. If DFG limits the nozzle to 4" then you have pretty much regulated profitable mining out of existence. If a miner can not obtain a permit for anything greater than 4" and he must work 6' - 10' - 15' of overburden, it goes without saying that most dredgers are going to take a lot more risks, they will make their cut slopes nearly vertical, and as a result these walls (cut slopes) will cave in on dredgers and mark my words, dredgers are going to be injured or killed as a result of DFG's half-baked idea of reducing nozzle size and compelling miners to use only hand winches.

The question that plagues me is why DFG wishes to restrict the size of nozzle to 4 inches? Here I will provide a hypothetical situation; Assuming a six inch dredge will move nearly twice as much material per hour, and assuming it will take a miner 2 months to mine a particular area with a 4 inch dredge, then the same job should be completed in one month using a six inch dredge.

So again, why in the world would DFG find it more environmentally sensitive to require the miner to use a 4 inch dredge? The net result is that the miners will be compelled to; commute for an extra month and make the miner work harder. Dredgers that travel say 30 miles a day (one way) to dredge 5 days a week will travel 1200 more miles for the extra 20 days it will take to do the same job. At 20 mpg and nearly $4.00 a gallon, it will cost the dredger in this example another $240.00 in fuel for the commute alone. It will also take 25 to 30 hours to commute to the dredge site over the course of 20 days. As a result of being forced to use a 4 inch dredge the commute includes travel on gravel roads. There will be more traffic on these roads, more dust from the roads, more wear and tear on the

roads and our vehicles and more toxic exhaust emissions. *Come on DFG, I thought you guys wanted to regulate greenhouse gasses and regulate carbon, and want us all to have more efficient clean burning vehicles. Yet, you create dredging regulations that serve to cause more environmental harm than if you did nothing.* Ultimately the same work gets done it just takes twice as long and costs us twice as much. As a result, dredgers will disturb wildlife twice as long and dredgers will trudge up and down the riverbed and stream banks twice as much. It will require transporting and storing more fuel, and refueling more often. It will also take more fuel to run a 4 inch dredge than a six inch dredge because of loss of efficiency. While the dredge is running, we must handle all the rocks by hand that ranges in size between 3.5 inches and 5.5 inches because they will not fit through a 4" Nozzle. Furthermore, a 4 inch dredge comes with a 3.5 inch restrictor ring because if the constrictor ring is the same size as the nozzle, the rocks will get hung up in the hose and it will take time to clear the hose thereby losing efficiency. Therefore most dredgers who own a 4 inch dredge can only use a 3.5 inch restrictor ring. So the only way miners can avoid clogging their hose and dredge with a 4 inch restrictor ring is to use a 5 inch or 6 inch dredge.

**Size matters**. On every job mankind does, there is an old adage. *Choose the right tool for the job*. In hard rock mining, every mill is designed for a particular mine. There is no one mill that has ever been designed that can be used at any lode mine because every mine has its own issues. The same is true with placer mining and dredging. There are a vast number of streams that DFG has proposed we cannot ever use a dredge larger than 4 inches on. Yet there are many streams of that description that have over ten feet of overburden in patches, and other patches of the same stream might be completely exposed bedrock. Experienced dredgers can look at a project area and select a dredge for that job, but with these proposed regulations we are limited to taking the river apart with our bare hands and sucking up the crumbs. DFG is *arbitrarily selecting the dredge size* we can use. Another important factor is that each stream course contains a very unique mix of aggregates. Some streams are comprised primarily of slates. Slates will be ground down but all the rocks are flat and thin which constantly get stuck in the dredge hose and nozzle. Other streams have a high percentage of small rock, so that using an 8 inch dredge would suck up the vast majority of the streambed with very few cobs and boulders to deal with. Other rivers have vast amounts of cob and boulders, and comparatively very little gravel that can be vacuumed from the bedrock thus a smaller dredge might be the right tool for that particular site. And, every stream has its own special mix of aggregate and therefore to efficiently dredge, miners need the flexibility to select the most efficient dredge for that particular location on that particular stream because dredging is a business and that business must be profitable. Dredging can be profitable when the dredger is efficiently moving materials and that can only be accomplished when the miner uses the right tool for the job. Again, this is where DFG regulations concerning dredge size is arbitrary and capricious. This proposed regulation is unreasonable and far too restrictive.

Furthermore, DFG must be advised that allowing larger dredges to work will not cause unnecessary harm to the environment or cause dredgers to dash out and buy large dredges because even if a dredger had a ten or twelve inch dredge, he will not continue to mine if he cannot make a profit. Therefore he will move the dredge until he finds a location that is profitable. The general rule of thumb is that we need 1 inch of dredge for every foot of

overburden. Now, most major rivers contain 8 to 20 feet of overburden. So the question is how can DFG create a set of regulations that prohibit the use of the proper tool for the job, meaning the right size dredge and power winches for efficiency, health and safety, and profitability?

***During the DFG public hearing in Sacramento DFG advised us that

Regarding Indian Creek, Plumas County, I see that the proposed regulations have changed the 6 inch dredge with option of using an 8 inch dredge (with permission), to a 4 inch dredge restriction and option for a six inch dredge. Now, from the intersection of Hwy 70 and Hwy 89, heading up stream, this placer ground is suitable for an 8 inch dredge because of the deep gravel beds and shear volume of water in the stream. From the Hwy junction to the bottom of Indian falls, a span of perhaps 3 miles should be open to an 8 inch dredge. Once you go past Indian Falls, there is no dredging because the valley is so deep with gravel one would need a bucket line dredge to mine it. My claim has typically average overburden on the lower end of the claim, but the upper section covering several acres is up to 18 feet deep and most of the overburden is comprised of boulders. Now, how can you expect a miner to dredge this massive wall of boulders with a 4 inch dredge and a hand winch? If I am mining this wall of rock and I create a slope or ramp to allow winching boulders, and I hook up my hand winch, how do you propose I can winch by hand if I don't even have something to stand on? You want me to place a stepladder underwater and see if I can winch a boulder from on top of the ladder? And then I am in harms way because I would literally be winching between a rock and a hard place!

**Prohibiting mining within 3 feet of waterline**

The proposed regulations that limit dredging to within **3 feet of the water** line also impermissibly encroach upon the miners right to mine his *property*, (the gold contained in the gravel). This is completely unreasonable. For example, if a citizen owns a placer claim on a small stream say 10 feet wide waterline to waterline with gravel river banks a foot or more high, then the miner can only dredge a narrow four foot strip of gravel in the center of the stream. Now, if he has 3 feet of overburden depth in the center of the stream, the miner can only expose perhaps one or two feet width of gravel on bedrock. If per chance, the side of his trench sloughs in, then DFG can measure from the bank to where the trench sloughed, and the net result is that the miner will be subject to fines, appeals and litigation under these proposed regulations.

Taking this logic further, if the stream is 6 feet wide, then any attempt to dredge would result in citation, appeals, and litigation. Effectively, most streams 8 or 10 feet wide or less will become un-mine able entirely if your proposed regulations take effect as planned. As such, and considering that the proposed regulations do not provide any ***alternative*** methods of placer mining within the stream channel (for example ***Drag Line Dredging***) that might be used in places where dredging is prohibited under the proposed regulations. These mining claims will ultimately be abandoned at some point in the future, but the State of California DFG will be subject to countless lawsuits, and

expensive litigation for each and every claim so "taken" by the unreasonable proposed regulations where the miner chooses (or can financially afford) to file such lawsuits. The 3' streambank rule is unreasonable and prohibits placer mining on small gold bearing streams.

**Power Winching**

Regarding **winching** in the active stream course, the PSDR allow only *non-motorized hand winching* without asking (or begging) DFG for an inspection and permission to use a power winch. First, what is the logic behind allowing a miner to winch boulders with hand operated winches versus power winches?

Hand winching takes much longer to perform than power winching. Further, most small hand powered winches are rated between two tons and 6 tons. Hand winches generally are capable of holding only 20 to 30 feet of cable, meaning that if the 2 ton hand winch must move a 3 ton boulder, then the cable must be doubled up for a 2:1 ratio. This shortens the cable length to 10 – 15 feet, meaning that a miner may need to hook up the boulder(s) perhaps two or three times to get the boulder out of its original location and to a location far enough away to be useful.

Considering also the fact that hand winches are very slow, may require hooking and re-hooking up the same boulder several times to get it where it needs to be, moving these boulders by hand is hard physical labor, is extremely labor intensive, and moving large boulders underwater is extremely dangerous as it is, but becomes even more dangerous when hand winching. Why? Because the miner is up close and personal with each and every boulder he must move under water and he is literally in between the boulder and bedrock. Ever heard the term "Between a rock and a hard place? When we use power winches, we hook up a boulder, go to a safe place on shore where the winch is set up and we pull the boulder to where we want it. Nobody needs to be in the water risking their lives while struggling to move a boulder when power winching would be safer.

On the other hand, power winches have one or two drums that hold the cable depending upon the model. Such power winches can be as small as two tons but depending on the model, these winches suitable for dredging operations can move a 40 ton boulder if need be. Using a power winch allows the miner to move the boulder(s) 30 feet – 50 feet – or more as needed and the move is accomplished in one quick move. I have moved rock sleds, rock nets and boulders as much as 70 feet in one pass, and each pull takes perhaps 30 seconds. Each pull can easily move 4 tons using a 5 hp gas motor driven Mighty-lite winch which measures 3' long, 18 Inches wide and 16 inches tall, weight is about 125 pounds. Once the boulder is attached with a strap, net, or choker, it can be moved quickly and safely.

It is obvious that compelling miners to use hand winches will undeniably lead to death and / or injury of suction dredgers. Why? Because if the suction dredger cannot acquire the necessary permit to use a power winch, the miner will attempt to *undermine* the boulder or boulders and he will try to use *pry-bars and gravity* to move the boulder(s). Now, it must also be understood that suction dredgers wear a facemask underwater. Anyone who has ever spent any time underwater knows that the images we see underwater is very *distorted*, like tunnel vision. In fact, I have worked around boulders underwater many, many times over the years. As I worked around them, I thought my work was safe, until I came out of the water and looked down at the scene from the

surface. Then it became obvious that I had been working in a very dangerous situation that I had not recognized earlier when I was underwater. I have seen this situation occur on many occasions, this is not an isolated incident.

Another significant issue with hand winching is the **adverse economic impact**. Requiring hand winching only will make movement of boulders more *labor intensive*. As such, when the BLM or USFS elects to challenge the validity of a particular mine in the future, the economics of mining the deposit will be heavily scrutinized. I have significant first hand experience regarding how the USFS and Office of General Council attack mining claims, namely economics and the "prudent man rule." See US V Burton and US v. Eno IBLA cases, and see also the EA for the Soda Rock Mineral Withdrawal for an education in relation to how the economics of suction dredging, moving boulders, using a 4 inch nozzle, will adversely impact the economics of a mine. For example, USFS Geologist Richard Teixeirra is a geologist and an expert witness for the USFS in validity determinations. Mr. Teixeirra documented and testified specifically about the economics of my "Hound Dog" placer mining mine. Mr. Teixeirra plainly stated in my case that he uses an estimation of how much gold can be recovered per unit of time, generally in milligrams per hour. He lists <u>all regulatory restrictions</u> so as to show that under existing DFG and/or other regulations, a miner cannot make a profit. Therefore, as discussed at length earlier, the 4" nozzle restrictions and hand winching will make an otherwise profitable mine unprofitable, and all because the proposed DFG regulations are unreasonable and places unnecessary economic and regulatory burdens upon the miner.

I own the Hound Dog placer claim, located on Indian Creek (HWY 89) approximately 2 miles from the junction of HWY 89 and Hwy 70. On the upper half of my claim, the river widens out some 100 feet, and the overburden is as much as 18 feet deep. The entire area is armored with large boulders ranging in size between a half-ton each and 10 tons each. The boulder pile (armoring) has in fact protected the placer gold on bedrock from being washed away for countless centuries. In order for me to mine this area of the claim at a profit, and for my safety, I definitely need to use a double drum winch with the capacity of moving 10 ton boulders otherwise mining this location will be too labor intensive to prove profitability and too dangerous for my personal safety.

**Pollutants, toxins, heavy metals**

**Pollutants** are also another topic of interest. I personally have removed countless pounds of contaminants from the rivers I have dredged including but not limited to; lead, fishing sinkers, split shot, swivels, fish hooks, lures, bullets, bullet casings, buckshot, rusty iron, nails, screws, bolts, aluminum cans, tin cans, copper, zinc, alkaline batteries, automotive batteries, broken glass, and mercury and mercury amalgam. I have removed all these toxins as most dredges do routinely every time they dredge. Now, <u>I am curious why DFG does not applaud our successful removal of various heavy metal toxins</u> as a direct net benefit of allowing suction dredgers to mine the rivers. It costs DFG NOTHING to have all this toxic material removed from the river systems. Yet, according to the DEIS for the proposed rule, the big cry-baby issue is that some small amounts of flowered mercury might escape the recovery system and flow back into the river. I firmly believe that removing 95% of the mercury and the bonus of having all the other heavy metals

removed from the streams more than compensate for the tiny amounts of flowered mercury that might not be captured in the recovery system.

DFG must also be aware that **mercury** in the river systems is not all caused by historic mining. Vast amounts of mercury have entered the human environment all over the world from time immemorial because the native mercury ore "cinnabar" has eroded from its source. Natural erosion, freezing, tree roots, wind and rain, earth quakes and floods have caused natural erosion that put vastly more mercury into the environment than mankind ever has dreamed of. Regardless of the reasons why mercury may or may not be in a river system, the suction dredgers and miners have been cleaning it up for four decades. Don't you think it is time to acknowledge the good works suction dredgers have done cleaning up heavy metals contamination of out watersheds?

Can you provide any credible estimate of how much the State of California would have had to pay to hire "reclamation dredgers" to remove all the heavy metals we have removed over the past 20 years alone? I guarantee the cost would have been staggering and the State would not have paid anyone to clean up the streams. So all the "talk" about "clean water" is just that, talk, or worse, it is actually just another means of controlling miners and controlling land.

**Other User Groups**

Another issue presented itself at the Sacramento hearing in relation to other user groups who use the same lands as the suction dredgers. There were a number of complaints concerning these user groups that defecate and urinate on the riverbanks, leaving behind toilet paper, and trash, killing fish and other life forms. And, because the public uses our mining claims to recreate, and because they leave trash on our claims, we pick up the trash. We pick it up because otherwise we will be blamed for it and we can be cited into court over it, so it is best to keep the trash cleaned up.

Fishermen have fishing licenses, AKA a "**take permit**," which allows them to enter rivers and streams to fish. Now, these fishermen in their quest to *either*; catch and keep fish, or **worse**, to taunt, tease, torment, or otherwise play with fish (AKA catch and release). Plainly fishermen must also have serious impacts to the river systems that apparently are not addressed. These fishermen use the same roads as miners, they park and camp in the same locations, and they walk up and down the river systems along the river banks both in and out of the water with impunity. In the course of fishing, these fishermen are not required to observe, look for, or avoid disturbing the fish and frog eggs, and they are not required to avoid disturbing vegetation.

Further, for centuries fishermen have erroneously presumed that fish don't feel pain. Well, some years ago a PBS presentation demonstrated that fish do feel pain when hooked. Fish leap out of the water and fight as a direct result of pain. So, it is *abusive* to all fish species to allow people to fish using the "catch and release" philosophy. As fish have been proven to have feelings after all, *it makes as much sense to allow fishermen to fish for, hook, play with and catch cats and dogs with a fish hook as long as the fisherman "Releases" the cats and dogs when he is done playing with them*. Apparently it is OK with DFG if fishermen taunt and kill fish, and trample fish and frog eggs, and trample vegetation at will, *but suction dredgers* are held to a *higher standard* under these proposed SD regulations. Further, great numbers of the so-called "catch and release" type

fishermen are killing fish regardless of the fact they *release* the fish they catch. This is because fish will bite a fly or bait with a hook. Sometimes the fish gets hooked in the lip, or the throat, or the fish swallows the hook. Then, to make matters worse, fishermen play with the fish. This causes many fish to die of shock and/or traumatic injury regardless of the fact they were "released."
Add to this all the various other users of the same rivers and streams; forest visitors floating downriver using inner tubes, kayaks, rubber rafts, and swimmers, campers, hikers, fishermen and hunters. All these users are free to trample anywhere and upon anything they choose throughout the watersheds and would / do cause the same alleged harms to the vegetation and native species as the suction dredge miners, but none of these other user groups are required to protect the environment under existing law and regulations that the DFG is trying to saddle suction dredgers with under the new proposed SD Regulations. If suction dredge miners are allegedly causing harm to the environment by merely walking in the water, or on vegetation on the stream banks purportedly causing environmental harms, then all users of the forests who might walk in or near the water or on streamside vegetation are causing environmental harm, and thus, DFG will have no other option than to perform an EIS and propose *restrictive* regulations related to all other forest users otherwise there will be ample evidence of "use prejudice" as defined in the US v. Milender IBLA case. It would be fundamentally unfair to single out suction dredgers for alleged harms to the environment when any and all other users cause the same harms. In fact, comparatively, I dare say that the number of suction dredgers as compared to the cumulative number of other forest users would be staggering. Dredgers are far out numbered. Therefore I anticipate DFG will be performing an EIS to comprehensively review and analyze all other user groups' impact upon the riparian zones, watershed, vegetation, fish, and aquatic species. **This means that DFG must propose vast new regulations** to protect the watersheds, fish, aquatic species, and water quality **for virtually all other user groups** including but not limited to; hikers, fishermen, hunters, swimmers, sunbathers, tubers, kayakers, rafters, skin divers, families with kids building sand castles, general tourists, photographers, 4WD, ATV, motorcyclists, **and virtually anyone who might go in or near the rivers and streams.**
Therefore my question is whether or not the DFG has done an EA or EIS as relates to the proper regulation of any or all other forest users to ensure those users are not damaging the environment? If not then why not? When can we anticipate DFG to get started on the EIS and proposed regulations that will ensure all users are held to the same standard as suction dredgers?

Another point is that DFG proposes to allow **only 4000 permits**. I absolutely oppose placing a limit on the number of permits issued because anyone who owns a mineral deposit /claim who must mine gravel in an active stream or river and who cannot obtain a permit will be absolutely prohibited from mining his property. DFG has no authority to prohibit mining. We also understand that the highest number of permits issued in the 1980's was around 12,000.
Question; how many freshwater fishing licenses does DFG issue per year?
Question; how many hunting licenses does DFG issue annually?
Question; how many green stickers are issued annually for ATV and off road use?

Question; does DFG maintain any data on how many other users of our National Forests engage in activities in or near the rivers and streams? If not, please advise us of how you plan to ascertain this information and how soon such information will be made available. There should be no limit on the number of dredge permits issued annually.

The next issue is related to **cultural impact** upon miners. California has a long history of mining beginning with the 49ers. Primarily it was miners seeking gold that caused the greatest migration of people in the US to migrate to California, Alaska and numerous other western States. This is a 160 year evolution of miners culture. Suction dredgers are miners operating under the US Federal Mining Laws, and suction dredging was an innovation that was and is environmentally preferable to all other methods available to miners. *(For example, prior to the invention of the suction dredge, the only way a miner could work the river gravel was to flume a river and work the gravel dry. Or, miners would use a dragline dredge to drag the river material unto shore for processing and disposal. Obviously dredging was and is preferred over Dragline Dredging and Fluming Rivers.)*
To this day, whenever a miner tells anyone that he mines gold or dredges gold, people light up with enthusiasm. These people are genuinely fascinated and want to know all about gold mining. If the proposed regulations are implemented, suction dredging for gold will steadily decline just as DFG and other Government Agencies are planning. It will be a slow and incremental process effectively destroying any opportunity to mine for gold in any river system within the State of California. In the future, we will only be able to tell our children what it was like to be a California gold miner.

I strongly oppose the regulation requiring that we **affix 3 inch lettering** on our dredges for identification purposes. I oppose this in part because equipment breaks down, or might be stolen. Thus, even if we replace the motor, now we have to notify DFG and perhaps amend our approval/permit or obtain a new dredge number. Whether a dredge has a number or not, DFG officers will engage conversation and inspections for compliance. So a dredge number is simply another pain in the ass that accomplishes nothing worthy of merit.

I strongly oppose the idea of **naming 6 streams** specifically by GPS or Township, range and section. I object because we must select these sites months in advance of the season, when much of the Sierras are snowed in. If we are selecting streams for prospecting, and we may have never been there before, it is difficult to know what equipment may be needed, whether we need a power winch or not, thus we may have a permit, but discover we cannot get a winch permit until the end of the season. Pre-selecting dredging sites is a bad idea that will most definitely frustrate prospecting and dredging, and much time will be wasted complying with the paperwork nightmare DFG has eagerly prepared for us.

**Re-Filling Dredge Holes**

I strongly object to filling in our dredge holes. This is stupid. Dredge holes give fish a place to hang out (out of the current), to feed on whatever drops in the hole. And, as DFG doesn't want to see turbidity, the fact is that the only way to re-fill the holes is to re-position the tail end of the dredge over the upstream end of the dredge hole and re-dredge

the material. As we do, we are obviously downstream in the current so that we will be working in cloudy water where we can't see, and we will have to wait for the river to clear us so we can see well enough to resume dredging. This is referred to a "Blind Dredging." It is a waste of time, a waste of fuel, and certainly does not benefit the fish. Furthermore, a few months after dredging season ends, annual high water or minor/major flood events will erase all evidence that dredging ever occurred. Re-filling the dredge holes is a waste of time, a waste of fuel, and makes dredging more labor intensive, thus adversely affects profitability of such mining operations.

**Damaging Streamside Vegetation**

I strenuously object to the new proposed regulations concerning the "damage streamside vegetation" provision. I see that DFG has intentionally removed the words "Woody riparian" from the prior set of regulations which used to read "No person shall remove or damage woody riparian streamside vegetation during suction dredging operations." I think "woody" is a key qualifier as to the type of vegetation damage DFG intended to protect. Now however, DFG has removed the term woody, thus as written, this provision is far to broad and will lead to abuse because any dredger working any stream can not possibly dredge without stepping on some form of vegetation. Furthermore, there are times when the miner must place a dredge where there is concern for the potential of a fire for example where hot exhaust is brought close enough to the streams side vegetation. The reasonable solution is to allow the miner to cut or trim vegetation to ensure fire does not erupt when we are busy underwater mining. I also will advise you that fishermen often cut or break tree branches and break branches off bushes that get in the way when they are trying to cast their lines into the rivers. I do not believe DFG fishing regulations specifically prohibit fishermen from cutting, trimming, or otherwise damaging or removing vegetation. If fishermen were held to the standard DFG is imposing upon dredgers, then virtually any fisherman who walks on the riverbank could be cited into court for "Damage[ing] streamside vegetation." All users of the rivers and streams generally will walk on the riverbanks could not help but damage vegetation because a crushed blade of grass would be damaged if walked upon.

**Destabilize instream woody debris**

The proposed regulations state " No person shall cut, move ore destabilize in stream woody debris such as root wads, stumps, or logs." I oppose this proposed regulation for several reasons. If a root wad, stump, or log is found in the river gravel, it is because river floods carried it there. When we dredge, we have no idea what lurks beneath the surface of the gravel. We may have spent weeks getting the dredge hole started. As we begin to progress forward, if we encounter some woody debris, DFG expects us to simply pull out and go to a new location. Behind such obstructions to the river flow, one would expect to find gold, but instead of recovering gold, DFG insists we move. Furthermore, these terms are vague. What size stump are we talking about? What if I found a two-inch diameter stump? What size log are we talking about? A log can be 2" in diameter. And root wads tend to be washed downstream by Mother Nature. What is the big deal? What is the harm of working around loose random debris submerged in gravel? The fact is that generally it is rare to encounter an occasional stump/log/ or root wad, and even so, we generally work around it, or we may move it slightly <u>if</u> we are recovering gold. And, even if we do mine

around such "woody debris" or move the debris slightly, we end up burying the debris with dredge tailings. If we are not recovering sufficient gold around woody debris we will move on of our own accord.

**Disturb[ing] redds, actively spawning fish, amphibian egg masses or tadpoles**. I object to this regulation on various grounds. First, the proposed regulation is broad and vague. I presume it all depends upon the definition of "disturb." Then, the proposed regulations instruct us to "cease operations and re-locate dredging operations." Again, the regulations are vague. So assuming we have actively spawning fish,… first of all I have dredged for years and I have never actually witnessed spawning fish. Having been not just an avid fisherman, but an absolute fishing fool, I was a fish slayer. Yet I don't know if I would recognize a spawning fish unless it happened right in front of me and I spent some time observing the fish behavior. And tadpoles move about at will, I simply can't understand what the concern is. And obviously, if we see amphibian egg masses, we generally avoid them anyway because dredgers are also very aware of our need to protect the environment.

**DFG may close any water to suction dredging**

The proposed regulations state that DFG can close any water to suction dredging. I strongly object to this rule if such a closure adversely affects mining claims on federal lands open to location and entry under the US mining laws.

**Turbidity and Sediments**

As a general comment to the DEIS concerning sediments and turbidity, *actual dredging experience* once again sheds light upon this issue. It must be fully understood that each and every river and stream is unique. As I pointed out earlier, the aggregate mix that is the streambed load is generally local and native. By aggregate mix I am referring to the analysis of the various sizes of the aggregate expressed in percentages for each size contained in the aggregate mix. My first hand experience reminds me of dredging on the upper reaches of a small creek that was draining a granitic pluton. In that stream, because the material had not been transported far enough to round off and smooth the rock, the rock was rounded a bit, slightly angular and rough. Granite does weather easily and it is common to see granite in this type of area that one might assume traveled enough to be rounded, but really, it is simply the nature of weathered granite outcrops that feed rock to streams. In that particular stream I noted the sand was really coarser than river sand. Turns out that really isn't sand as we know it, it is simply coarse granite granules along with impurities.

Now if we go downstream several miles, we discover that the streambed materials have changed. The change occurs because several other feeder creeks deposit their "native" gravel load into the main stream. Now, if a feeder stream originates in another type of country rock (for example slate) and deposits into the aforementioned granite stream described above, then you will observe that the main stem of the streams contains a mix of granite and slates of variable percentages. The local native slates generally break down and become thin, flat, somewhat rounded aggregate of every size. Wherever these

streams cut through tertiary channel, you will find the main streams now contain some percentage of the ancient gravel in the mix. Therefore you will find well-worn quartz aggregate in the stream, and walking upstream no more worn quarts. Hike up hill and you will find some evidence of the source (exposed ancient channel). So now I hope DFG understands that the example above we have a native high elevation stream, a brisk stream that started out as a granite aggregate mix with granite granules for sand and upon digging it contained precious little sand or sediment. And finally, as the stream flows down the mountain other streams, feeder creeks add their own streambed load into the mix. In my example stream above, the stream aggregate visually evolved, it became a new mix of varying percentages of slates, granite, some ancient channel, and some misc. stray rocks that likely weathered and rolled into the stream. And so it goes all the way down the entire watershed. Streambeds joining and mixing with other streambeds, and each time the new aggregate mix will pass through a certain size dredge and a different rate, perhaps faster, perhaps slower.

The above is crucial to understanding the amount of material a certain dredge can move per hour, and in determining the amount of sedimentation that is released from any given size dredge. Also, the amount of aggregate that can move through a given dredge per hour is completely dependant upon the nature of the aggregate, its shape, the percentages of oversized cobs in the way. Often dredgers find aggregates that contain sharp jagged slate slivers, and thin, flat, round slate discs, that often get hung up in the hose. And of all the clogs known to man, flat round rocks are absolutely the worst in terms of the time it takes to clear the hose. The flat rocks often lay in the hose in such a way that if the lighting isn't just right, you can't see the obstruction. Perhaps I beat on the hose, vary the throttle, jam a stick down the venturi jet, and I see some rock coming out with the water so I dive down and start to dredge but immediately it plugs up again. *Thus, estimating how much volume a dredge can move per hour in the real world is far more complex than DFG appears to understand.* For example, in high elevation streams where native materials are the general run of a streambed, the other issue becomes the type and physical shape of the rocks. Generally these streams contain a much higher percentage of sharp rocks, angular rocks, jagged and not well rounded because they are not well traveled. The problem is that there is no way to rush dredging these materials because the hose will clog, over, and over. The only way one can overcome this is to use a larger dredge and where possible, use a dredge hose one or two inches larger than the restrictor ring.

On the other extreme we can look to the Sacramento valley, perhaps rivers like the Consumnes. Rivers like this, far removed from the raging powerful waters of the Sierras also have a unique composition. Absent large boulders, deposits like this can often be mined with an 8 inch dredge. Basically 95% of the rock goes through the nozzle at a fast pace. Also, in such conditions the rocks are well rounded and smooth. Therefore an 8 or larger dredge will efficiently mine this type of gravel bed due to its unique composition of conveniently sized aggregate. I dredged the Ma Mong river in Cambodia, it was the size of the Yuba or MF Feather river. I found that every rock in the streambed aggregate passed through my precision 5 inch dredge. Admittedly, the gravel in Cambodia, and perhaps certain rivers located in the valley represent ideal dredging conditions.

With respect to sediments, the amount of sediment available in the streambed material is what dictates how much sediment will flow out of a dredge. Therefore the DEIS should expand the discussion and analysis concerning the alleged quantities of sedimentation released from various sized dredges. I believe that the DFG analysis concerning how many cubic yards a particular dredge can move per day and how much sediment each size dredge produces must also consider and document the type of materials in the gravel, the *percentages* of the various particle/pebble sizes contained in the aggregate, and must document the swiftness of the water expressed in the rate of flow.
For example, in swift water, there is precious little sediment contained in the streambed aggregate because the water is swift enough that sediments simply cannot settle into the gravel. This swift water does not have to be very swift, I don't have the formula for sediment deposition, however swift does not mean whitewater. Whitewater gravel contains very little sediment.
On the other hand, where the river has long quiet sections with precious little movement, they generally get an extra dose of sediment as the spring runoff recedes. The dirty and sediment laden water entering a long slow area will eventually drop a fair quantity of the sediments. The sediments tend to accumulate in these slower areas. Also, vast amounts of organics like leaves and pine needles also accumulate in the same locations. Thus if one is dredging samples to determine measurable sediment dispersal in the slower areas of rivers will likely produce the most sediment.

**Wrapping it up**

The proposed regulations do not provide an alternative method of retrieving gold (our property) from a river or stream. The proposed regulations plainly prohibit and/or unreasonably restrict miners from extracting their property (gold) and DFG has failed to provide other lawful alternative methods for miners to economically recover their gold from their mineral deposits.
DFG freely admits that 4" and 6" dredges are considered recreational in nature, and 8 - 10 inch dredges are commercial. Mining under the mining law is a commercial activity and DFG proposed regulations will prohibit miners from using the proper size commercial dredge for the safe and economic extraction of the minerals.
DFG proposed regulations are suitable for recreational activities on lands not subject to the mining laws. The dredge size restrictions and winching restrictions will lead to cave-ins, injury and death.

It is my understanding that a number of other forest user groups and environmentalists groups are diligently working very hard to ensure DFG imposes the *regulations from hell* in their gambit to stop all mining in *their* playground. Frankly, DFG has not defended the dredging community for decades. The plain fact is that dredgers are the only group of people who have a long track record of cumulatively removing vast amounts of heavy metals and garbage from our rivers. DFG simply has not educated the public as to the significant benefits dredgers provide at NO cost to the taxpayers or the government. We remove these heavy metals in the course of extracting minerals. And we are happy to do so. We don't do it for DFG, we do it because it is the right thing to do.

It's funny, a group of school children go on a field trip and remove shopping carts and tires from a stream and it makes the evening news as a feel good piece. Dredgers have removed all manner of garbage and heavy metals for decades, something that no other user group can do, and something DFG cannot do or afford to do, but we are still under attack and we get no credit for our invaluable service. I believe DFG has avoided acknowledging the existence of trash in our rivers for years. I think it is because if DFG did openly admit that there is a vast amount of heavy metal pollution in the rivers, then the only way it can be cleaned up is by dredging it. Knowing Government, they will pay big bucks for private contractors to run reclamation dredges to clean up here and there. To top it off, DFG would permit reclamation dredgers to dredge with large, efficient dredges that we are prohibited from using.

**Take Permits and incidental Take Permits**

I am extremely baffled about the idea that suction dredging has been going on for 40 years, and in all those years, and in this DSEIR there is precious little evidence of harm. Sure, there is bound to be some turbidity and silt, but at the same time we create new clean gravel beds and remove heavy metals in the process. So, apparently DFG's position is that dredging is causing or may cause minimal harm to certain aquatic species.
But here's the kicker! Hunters get a hunting license to go kill a deer, or perhaps the hunter also buys an elk tag, and a duck stamp and so forth. And fishermen do the same thing, they can buy a license for trout, tags for a certain number salmon and steelhead and so forth. All these licenses and tags are is a "take permit."
DFG is selling citizens permission to go kill lots of critters and fish. In fact, I am surprised that DFG sells fishing licenses to citizens who are taunting, harassing, and injuring fish simply because they enjoy it. Fishermen call it catch and release.

On the other hand, suction dredge miners are required to purchase a dredge permit. Miners go out into the forest with a mission to find gold. Note: Unlike hunters and fishermen, miners are not out in the forests on a mission to go kill critters or fish.
What is bothersome is that assuming that dredging *might* cause some harm to certain species here and there, then **why doesn't our dredge permit come with a take permit or incidental take permit to offset the alleged loss???** *It is just plain weird that dredgers pay good money for a permit and we are not entitled to inadvertently kill anything including vegetation!* Yet, many of the other forest users go purchase take permits from DFG and go on a killing spree. Even I could purchase hunting and fishing licenses and tags and I can have a grand old time slaying various species on purpose!
So it appears to me that DFG should simply issue a general dredge permit as we have for all these years, under the same old regulations we had, and DFG should incorporate a **take permit** so that dredgers can lawfully go out and kill stuff too. Meaning that in the rare event dredging inadvertently harms some species or habitat, the take permit acts as a license to occasionally and inadvertently kill or harm some species. On one hand DFG suggests that silt might harm some fish eggs, but if we pay DFG for a fishing license we can catch and eat our daily limit, no problem…I imagine we could also trap crawdads if that has not been outlawed.

In conclusion, the proposed regulations as published appear to be "*use prejudice*" against a less favored group namely suction dredgers. The proposed regulations appear to be *politically motivated* because 40 years of dredging has produced little if any provable harm to the environment. Therefore it is bizarre that DFG insists upon destroying suction dredging by imposing unwarranted restrictions in the proposed regulations. And finally, it is a crying shame I had to go through all this trouble commenting on the proposed regulations. I could not be more disgusted with the proposed regulations.

Thank you for your consideration,

Donald E. Eno

**Subject:** Suction Dredging Environmental Report
**Date:** Tuesday, April 12, 2011 1:18:55 PM PT
**From:** Michael Middleton
**To:** dfgsuctiondredge@dfg.ca.gov

Dear Mr. Mark Stopher,

I'm a regularly voting resident of Bella Vista, just east of Redding. I tremendously enjoy many of the outdoor activities in this area year-round. I am thankful that many years ago, our leaders had the foresight to establish a Department of Fish and Game to safeguard our state's outstanding natural resources. I'm not acquainted personally with you. However, I hope, and choose to believe that you are part of the DFG because you share a passion for the intrinsic value of all that you safeguard and manage.

Suction dredging is an activity that has a disproportionate damage to human user ratio. Many people use our state lands and we all have some type of impact. Hiking, camping, hunting and fishing are some primary activities Animals get killed, plants get stomped or dug up, trash may be left, and other types of damage happen. However, this type of damage is a byproduct of just being in the outdoors.

Suction dredging is an activity in which one person can purposefully destroy the habitat for a wide ecosystem in the pursuit of personal financial gain. The purpose of suction dredging is not to enjoy and live in harmony with the ecosystem they interact with, but it is to destroy that ecosystem to withdraw something which has no intrinsic value. I'm sure that those who suction dredge will argue for some equality in access and use of state lands. However, suction dredging has no place in a closed system in a highly populated state. There is no time or space for the land or fish or other life to recover. Maybe there remains some time and space in Alaska, but certainly not here in California.

I urge you to ban suction dredging in California streams. Preserve the flora and fauna for a wide variety of other human interactive enjoyments. Don't allow our streams to be ruined for so many by so few.

Thank you. Sincerely,

Michael Middleton
PO Box 740
12480 Dry Creek Road
Bella Vista, CA 96008

# Notice of Availability of a Draft Subsequent Environmental Impact Report for the Suction Dredge Permitting Program (SCH #2009112005)

**NOTICE IS HEREBY GIVEN** that a Draft Subsequent Environmental Impact Report (Draft SEIR) has been prepared by the California Department of Fish and Game (CDFG) for the Proposed Program described below, and is available for public review. The Draft SEIR addresses the potential environmental effects that could result from implementation of this Program. CDFG invites comments on the adequacy and completeness of the environmental analyses and mitigation measures described in the Draft SEIR. Note that pursuant to Fish and Game Code Section 711.4, CDFG is exempt from the environmental filing fee collected by County Clerks on behalf of CDFG.

**PROJECT LOCATION**: The scope of the Proposed Program is statewide. Suction dredging occurs in rivers, streams and lakes throughout the state of California where gold is present, and CDFG's draft suction dredge regulations identify areas throughout the state that would be open or closed to suction dredging. Most dredging takes place in streams draining the Sierra Nevada, Klamath Mountains, and San Gabriel Mountains. Suction dredging may also occur to a lesser extent in other parts of the state. Because suction dredging may occur throughout the state, it is possible that the activity could occur in a hazardous waste site or listed toxic site.

**PROJECT DESCRIPTION AND ENVIRONMENTAL REVIEW**: The Proposed Program, as analyzed in this Draft SEIR, is the issuance of permits and suction dredge activities conducted in compliance with these permits, consistent with CDFG's proposed amendments to the existing regulations governing suction dredge mining in California. The environmental assessment of the Program was developed in parallel with amendments to the previous regulations governing suction dredge mining throughout California. To most accurately reflect the environmental effects of the Program, the DSEIR includes an assessment of the suction dredge activities as well as the proposed amendments to the previous regulations.

The Draft SEIR evaluates the potential environmental impacts of the Proposed Program and four alternatives: a No Program Alternative (continuation of the existing moratorium); a 1994 Regulations Alternative (continuation of previous regulations in effect prior to the 2008 moratorium); a Water Quality Alternative (which would include additional Program restrictions for water bodies listed as impaired pursuant to the Clean Water Act Section 303(d) for sediment and mercury); and a Reduced Intensity Alternative (which would include greater restrictions on permit issuance and methods of operation to reduce the intensity of environmental effects).

The analysis found that significant environmental effects could occur as a result of the Proposed Program (and several of the Program alternatives), specifically in the areas of water quality and toxicology, noise, and cultural resources. However, as CDFG does not have the jurisdictional authority to mitigate impacts to these resources, such impacts have been identified as significant and unavoidable.

# DFG Suction Dredge Permitting Program SEIR NOA (SCH#2005-09-2070)

**PUBLIC REVIEW**: The Draft SEIR and supporting documents are available on the CDFG Program website (http://www.dfg.ca.gov/suctiondredge) and upon request at 530-225-2275. Copies of the Draft SEIR are available to review at the following county libraries and CDFG offices:

- 601 Locust Street, Redding
- 1701 Nimbus Road, Suite A, Rancho Cordova
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- 7329 Silverado Trail, Napa
- 1234 E. Shaw Avenue, Fresno
- 4949 Viewridge Avenue, San Diego
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Sacramento: Tuesday, March 29, 2011 at 5 p.m. at Cal EPA Headquarters Building, Byron Sher Room, 1001 – I Street, Sacramento, CA 95812

Yreka: Wednesday, March 30, 2011 at 5 p.m. at the Yreka Community Center, 810 North Oregon Street, Yreka, CA 96097

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

If you require reasonable accommodation or require this notice or the DSEIR in an alternate format, please contact the Suction Dredge Program at (530) 225-2275, or the California Relay (Telephone) Service for the deaf or hearing-impaired from TDD phones at 1-800-735-2929 or 711.

041211_Osborn

# SUCTION DREDGE PERMITTING PROGRAM
## Draft Subsequent Environmental Impact Report (DSEIR)
## Comment Form

| | |
|---|---|
| Name: | Phillip W. Osborn |
| Mailing Address: | 1027 North Street |
| | Yreka, CA 96097 |
| Telephone No. (optional): | (530) 842-7831 |
| Email (optional): | |

**Comments/Issues:** I've been dredging for more than 30 years and have experienced gradual infringement on my freedom to dredge profitably. The proposed regulations in the DSEIR are draconian and seem to be designed to discourage dredging entirely rather than to simply protect "Fish".

A few of the extreme objectionable changes I noted are:

- Issuance of a maximum of 4000 dredge permits.
- Suction hose nozzle size restriction of four inches
- Motorized winching restriction
- No dredging within three feet of water's edge
- Seasons reduced or closed on most streams
- Time of day limitations on dredging
- Establishment of thermal refugia and excessively large areas pertaining thereto.

The ~~attached~~ included additional sheet has suggested changes that will clarify and/or simplify the proposed regulations.

*Please use additional sheets if necessary.*

**SUBMIT WRITTEN COMMENTS (POSTMARKED BY 05/10/11) TO:**

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

**Email:** dfgsuctiondredge@dfg.ca.gov

**Fax:** (530) 225-2391

Questions? Please call us at (530) 225-2275 • More information: www.dfg.ca.gov/suctiondredge

# Suction Dredge Permitting Program

## Draft Subsequent Environmental Impact Report

## Recommended Changes to Chapter 2, PROGRAM DESCRIPTION

page 2-2, line 4 Add the word "regulating" between the words "and" and "suction".

page 2-8, line 8 Move the phrase "for the extraction of minerals" to line 6 and insert between the words "lake" and "and".

page 2-12, line 13 Replace the word "past" with "recent".

page 2-12, line 17 Replace the word "revocation" with "citation or conviction".

page 2-19, lines 30 & 31 Change the sentence to read: Only boulders and other material located within the current water level may be moved.

page 2-19, line 32 Replace the word "moved" with "relocated".

page 2-18, lines 29-33 Replace lines 29 through 33 with:

(3) Pump Intake Screening. Intakes for suction dredge pumps shall be covered with screening mesh or perforated plate with openings not to exceed 1/4 inch.

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4840 Lobo Trail

Garden Valley, CA 95633

April 12, 2011

Mr. Mark Stopher

California Dept. of Fish and Game

601 Locust Street

Redding, CA 96001

Dear Mr. Stopher:

I attended the California Fish & Game Public Comment Hearing on March 29, 2011.

I make the following comments regarding new suction dredge regulations:

1. The limit of 4000 permits is ridiculous.
   a. loss of money to CDFG
   b. unfair to numerous gold miners
   c. scalping of dredge permits
   d. people continue dredging without permits
   e. prejudice against dredgers compared to other recreation activities
   f. loss of free cleanup to the state from dredgers removing lead and mercury
   g. loss of economic revenues to small towns in gold bearing areas.
2. New Regulations for dredgers
   a. over 900 pages of unbearable reading
   b. practically impossible to follow all county, state and federal laws on mining
   c. new regulations are a waste of taxpayer money
   d. no basis for new regulations
   e. new regulations discriminate against dredgers compared to other recreation activities.

f. new regulations are not based on any actual dredge operations

g. all biased personnel working on new regulations and not any dredge personnel

h. all rivers & streams are different and new regulations do not apply to most

3. California rivers & streams

a. rivers & streams are a lot more resilient than people think

b. mother nature dredges out all rivers and creeks during winter with massive amounts of erosion to the whole eco-system of the river canyon

c. rivers and creeks are choked with boulders and debris creating poor spawning for fish

d. rivers and streams choked up are too warm for fish like trout, to live and multiply

e. dredgers open up waterways for fish to navigate

f. dredgers eliminate algae, creating cleaner gravels for fish habitat

g. rivers and streams are hurting not from lack of dredging

4. Dredging season

a. moving dredging season up to later months creates multiple hazards

b. fire danger increases dramatically on later summer months

c. rainy season can arrive early

d. USFS denies access to all public on federal roads after the rains start

e. discrimination on open season compared to other recreation activities

f. small streams and creeks dry up with a later season

g. lower water levels make it hard on the dredger

5. River bank or stream bank

a. where is the bank?

b. no real definition of location of the bank

c. location of the bank changes within the week, month, or a storm

d. no dredging within 3 feet of the bank is dangerous for miners

e. dredgers have less impact on the bank than all other activities such as: rafter, kayakers,

fishermen, motorcycles, horses and bikers

e. animals, reptiles, fish, and insects all tend to leave the bank when activity occurs

6. Wildlife along the river

a. dredgers do not destroy wildlife

b. fishermen, rafters, and kayakers destroy wildlife and its habitat

c. small animals, reptiles and fish are naturally eaten by water snakes, birds, and larger fish

d. rare and endangered birds along the banks of a river will not stay long when humans approach

e. even bears and raccoons eat frogs and fish

f. new regulations do not protect wildlife, but dredgers with common sense live with wildlife and respect it

g. all wildlife is very resilient and many times when a species feel threatened then it multiplies

7. Dredgers are the rare and endangered species

a. dredgers are the only humans actually looking out for all wildlife.

b. you can't protect wildlife sitting behind a desk

c. you have got to get out in the field and study the wildlife

d. gold mining built California and dredging is part of that unique history

e. it's great to hand down this unique history to our children and grandchildren

f. dredgers are just out trying to make a living

g. a lot of dredgers can't do anything else

h. you should never try to kill initiative when people try to help themselves

i. dredging is a very hard life and a lot of work, harder than most other jobs

j. do not discriminate against dredgers just because they want to make it on their own

k. dredgers pay taxes and fees and wildlife pays nothing

l. it seems like you would try to protect the source of your income, rather than fish that you

have no control over

m. dredgers are the only ones who have control over fish because they live with them

n. all dredgers love to see fish hanging around their dredges

o. dredgers want to do the right thing

p. dredgers are the only class of Americans that don't mind cleaning up hazardous waste out of California waterways for free

My name is Gerald W. Wehrly. I am more than qualified to speak on dredging and the effects of dredging on California waterways.

1. I have planted seedling trees in Oregon and California.

2. I have harvested and thinned Christmas trees in California

3. I have set choker cables in California.

4. I am a retired Fire Captain from the State of California's CalFire with 33 years of service. I have worked in areas from Crescent City to San Diego, Alturas to the Anza Borrego Desert.

a. fighting wildland fires for 33 years

b. supervision of inmate fire crews for 20 years on fires and work projects

c. stream clearance

d. thinning forests

e. control burns

f. rehab after fires

g. flood control

h. working in federal and state parks

i. working in game preserves

j. brushing levees

k. removal of unwanted plants and brush

l. creating fish habitat

m. safety of the public

n. protection of the water shed

o. protection of archeology sites

p. improving wildlife habitat

q. managing fuel breaks

r. fuel reduction of the forest

s. removal of log jams in rivers

t. river rescue

u. pre-planning wildland fires, especially in an urban interface area

v. improving wetland areas

w. building nests for birds

x. signing off and certifying deer tags

y. education of the public on fires and wildlife

z. search and rescue of humans and wildlife

5. 39 years of dredging on the American, Consumnes, and Yuba Rivers

a. using a 6-inch, 5-inch, 4-inch, 3-inch and 21/2-inch dredge

b. using a 6-inch underwater dredge

c. using dry washers in the desert

d. using metal detectors

e. teaching at schools about gold mining

f. AA Degree in geology

g. teaching other gold miners about gold mining

h. teaching other gold miners and property owners about the environment & wildlife

i. pulling dead deer, bear and fish carcasses out of the river for better water quality

j. educating other miners and the public on campfires and littering

k. teaching river and boulder safety to other miners

Closing Statement:

As you can see, I am more than qualified to speak on this subject. I am very familiar with the State of California procedures and politics.

What I am also familiar with is all the problems caused in our state by the environmentalists. They have caused loss of revenue and industry to our state. Houses and subdivisions have been lost on wildland fires because of environmental issues. Forest fires have increased in size to major fires and cost millions of dollars because environmental issues have had to be resolved before suppression could be worked out. This endangers the public, livestock and wildlife.

I am also very familiar with loss of millions of dollars from floods because of environmental issues.

If we don't shut down the extreme power the environmentalists have, then they will eventually shut down the CDFG, the State of California, and the United States of America. They have practically accomplished this already!! Environmentalists are using illegal extortion to force states and companies to spend billions and making themselves rich in the process.

Fish and Game needs to stick by the gold miners and support them and there will be fish to take care of. If not, you stand to lose everything.

Thank you for your time and consideration.

Sincerely,

Gerald W. Wehrly

**Subject:** Suction Dredge Mining damages aquatic resources
**Date:** Wednesday, April 13, 2011 1:55:36 PM PT
**From:** Dick Artley
**To:** dfgsuctiondredge@dfg.ca.gov

I have seen how suction dredge mining causes long-term damage to aquatic species and habitat.

If you value the aquatic resources, please select the No Action alternative.

I have spent my entire career dealing with private uses that harm the public land owned by 307 million Americans.

Dick Artley (USFS retired)
Nez Perce National Forest in north Idaho

Dick Artley
415 NE 2nd
Grangeville, ID 83530-2257

041311_Baker

**From:** "Scott Baker"
**To:** dfgsuctiondredge@dfg.ca.gov
**CC:**
**Date:** 04/13/2011 6:53:26 PM
**Subject:** EMark Stopher, Department of Fish and Game, 601 Locust Street, Redding, CA 96001.IR/

Hi Mark,
Just a quick note on the regulations, I have talked with you on the phone a few times. I would like to see 8, 10 and 12 inch dredges allowed in the deep water areas. It is very hard to pull material from 15 to 25 to deep down/water depth/ straight up to a dredge. Especially when there is still another 10 to 20 feet of overburden to get to bedrock.
The winching permit should be dropped.
Restrictors rings should be dropped period.
Back filling  dredging holes dropped, its a net zero loss, dredge one hole to fill another. That's just goofy.
The dredge permits need to be unlimited, You dont see Colorado telling people now we are only going to allow 4000 skiers this year now do ya!
No NOIs on anything
Oh, and I still want my permit money back from last year.
Scott Baker 19409 East Brown Drive  Aurora Colo 80013 720-202-7093

041311_Blevins_Baseline
V

**Mark Stopher**
California Department of Fish and Game
601 Locust Street
Redding, CA 96001
Fax: (530) 225-2391 E-mail: dfgsuctiondredge@dfg.ca.gov

Dear Sir,

Please consider my following comments regarding the SEIR and Proposed Regulations for suction dredge mining in California:

**SEIR Baseline is wrong:** I take strong exception to the Department using an arbitrary and misleading baseline within the SEIR in an underhanded attempt to make the impacts from suction dredging appear greater than they really are, and in an attempt to marginalize the serious economic and social impacts to Americans which would result from your proposed regulations. You should use a proper baseline that is based upon existing dredge and small business activity under the 1994 regulations during the season before the moratorium was imposed.

**Mercury is not a problem:** Your SEIR relies unreasonably upon the unfounded conclusions of Charles Alpers' who has allowed his personal political agenda get in the way of real science. The SEIR does not give enough weight to the discovery by Rick Humphries Report of California Water Resources Control Board that normal gold dredges are effective at recovering at least 98% of the mercury from the bottom of California's waterways.

The SEIR does not acknowledge, based upon your own survey results, that suction dredgers have been removing over 7,000 ounces of mercury or more every year under the 1994 regulations from California's waterways. That amounts to 98,000 ounces during the 14 years we operated under the 1994 regulations! Adoption of the SEIR position would be fundamentally unreasonable in a context where the mercury is inevitably migrating downstream to areas where it is believed to be potentially harmful.

**Since California State agencies are doing nothing to remove mercury from California's active waterways, it is grossly irresponsible to point the finger at suction dredgers who are the only ones that are removing the mercury, at no cost to the taxpayers!**

Rather than reduce the amount of mercury which we are removing from the ecosystem, the responsible approach for State agencies would be to create a collection system in California which rewards dredge-miners for collecting and turning in mercury.

**Identification requirement:** The proposed regulations should allow visitors from other countries to use a foreign passport or driver's license as identification so they can apply for nonresident suction dredge permits. Otherwise, California will be discouraging the many visitors which we already receive that like to do their gold prospecting here.

**DFG should not limit the number of suction dredging permits:** There is no evidence presented in the SEIR that 14 years of dredging under the 1994 regulations ever harmed a single fish, much less threatened the viability of an entire species. What if I want to operate a dredge in some part of California where there would not be a deleterious impact? A limit on permits may prohibit me or someone else from using a suction dredge without a viable reason.

**Allowing additional dredge permits after site inspection**: In the event that DFG decides to impose (reasonable) limits in a blanket statewide permit program that will allow for most suction dredgers, I do not believe DFG has the authority to declare a wholesale prohibition to dredge mining in the other vast areas which exist on the public lands that would not be covered by the blanket permit. DFG has a site inspection mechanism allowing you to consider more individualized impacts in areas, and during time periods, when and where dredging would not be allowed in a statewide program.

**Onsite inspections should be immediately signed off when approved:** There should not be a delay in signing off on a site inspection in cases where DFG officials cannot identify a deleterious impact. There should be a time limit in the regulations in which the application will be approved or disapproved. Due process should be allowed if I desire to appeal an application which has been disapproved.

**Prior existing rights on permit acquisition**: There must be an allowance for prior existing rights on a limited permit program. Otherwise, dredge-miners who have already invested in property and equipment could potentially lose our prior existing right to work our mining claims or other mining opportunities (belonging to an association that provides access to mining property).

**Statewide permits, if limited, should be transferable:** Permits should be transferable if there is going to be a limit on the number allowed under a statewide program. Otherwise, miners will make the substantial investment into developing a viable mine and then not be able to transfer ownership to someone new who will be able to dredge it, therefore losing some or most of the value.

**DFG should not further-limit the size of dredges under the statewide permitting program**: I do not believe that DFG has the authority to step onto the public lands and impose a permit restriction upon the productive capacity of my dredge without also coming up with specific reasons why existing capacities under the 1994 regulations are creating a deleterious impact upon fish. Please leave nozzle restriction sizes as they were in the 1994 regulations.
The regulations should also allow a wear tolerance factor on nozzle restrictor rings. I suggest 3/8 of an inch (diameter) is reasonable.

**Allowing larger-sized nozzles after site inspection**: If a dredger wants to operate a dredge having a larger nozzle than is allowed under a statewide permitting scheme, the Department should allow the activity as long as no deleterious impact can be determined though a site inspection.

**DFG should not further-limit the places where dredging is allowed:** This proposal is just supported by your "precautionary approach." Except for those areas where you can demonstrate that a deleterious impact has been created under the existing regulations, please leave our seasons as they have been since 1994.

Gold miners should be afforded due process, and should be allowed to proceed in areas which are not allowed under a statewide permit, as long as a site inspection cannot turn up evidence of a deleterious impact.

**Reduction of our existing dredging seasons is unreasonable:** I do not see that the SEIR contains evidence of a deleterious impact upon fish to support the reduction of existing dredging seasons that are in the 1994 regulations. This proposal is only supported by your "precautionary approach." Except for those time periods where you can demonstrate that a deleterious impact has been created under the existing regulations, you leave our seasons as they have been since 1994.

**The proposed 3-foot rule is unreasonable:** The SEIR has not presented any real evidence that dredging within three feet of the streambank has ever harmed a single fish. This prohibition would prevent beginners, non-swimmers or children from starting closer to the shore where water is shallower and more safe. Prohibiting dredging within three feet of the edge of the river will eliminate a significant portion of the operational value (perhaps even all of it) on some dredging properties.

It would be more productive to provide better language describing what the "bank" is in relation to dredge mining. For example, is there a "bank" in relationship to a gravel bar out in the waterway that is partially out of the water? What about a bar alongside the waterway that is submerged during the spring, but emerges more and more out of the water as the dry season evolves? Existing language is not clear enough. The proper answer is to clear that up, rather than impose an additional buffer zone which reduces our mining opportunities.

**Suction dredge regulations should not impose the requirement of Section 1600 Agreements:** Fish & Game Section 5600 already allows a site inspection mechanism for the Department to determine if a dredging program is deleterious to fish. Therefore, also imposing a Section 1600 requirement upon dredgers who wish to mine at a time or location that is otherwise closed, or to use larger nozzle than is allowed under a statewide permit, when there is little or no chance the dredge project will create a substantial impact upon the bed or bank of the waterway, would be an unreasonable imposition upon dredge-miners. Nobody else in California is required to pursue a Section 1600 permit until their activity rises to the level of requiring one. It should not be any different for suction dredgers.

This also applies to the use of power winches, which provide the only safe and efficient means of progressing when some rocks are too heavy to move by hand, or they cannot be rolled over other rocks that are in the way. You should not impose a 1600 Agreement requirement upon a gold dredger unless the surface disturbance rises to the level which triggers Section 1600 of the Fish & Game Code.

**Imposition of the 3/32-inch intake requirement on pumps is unreasonable:** The 1994 regulations already prohibit dredge operation at times when fish may be too small to swim away from pump intakes as they are already being manufactured.

Most dredges today are being produced using 3/16$^{th}$ inch or 15/64$^{th}$ inch holes for the pump intakes. To avoid conflict, you should adopt something larger than the two hole sizes which are already being used on most dredges in California.

**Allowance of permit locations must be more broad:** Since existing regulations already set the times and places where dredging is not deleterious to fish, I do not see any practical reason to force dredge-miners to inform DFG exactly where they are dredging – and then hold them to the location unless the permit is amended.

Since I intend to prospect, I will not know the exact locations where I will be dredging at the time I apply for my permit. You should broaden the location requirement in your permit application to naming the waterways where I intend to work. This will allow me some flexibility to move around in search of gold without having to make an expensive trip to the closest Department license sales office to amend my permit.

**The proposed dredge marking system is not workable:** There is no practical way of attaching a sign to a small dredge! What does this have to do with preventing a deleterious impact upon fish?

If you must have an identification number on my dredge, you should eliminate the requirement of 3-inch number and allow the numbers to be marked either on the pontoons or the sluice box, but only if it is possible to do so. This would allow smaller numbers in the case of smaller dredges.

**Fuel should be allowed within 100 feet of the waterway if kept within a water-tight container or a boat:** I question your authority on placing any requirement upon suction dredgers in this matter, other than to prohibit the spillage of fuel. Millions of boaters all over California are allowed to keep fuel safely in their boats. Your proposed regualtions would prohibit suction dredgers from doing the very same thing!

There are plenty of effective ways to prevent fuel from leaking into the waterway without making a dredge-miner hike 100 feet up the embankment. At the very least, fuel can be placed inside of a boat, or inside a sealed catch tub of some kind up on the embankment to prevent leakage. These catch tubs are already routinely part of a dredge program to assist with cleanup of concentrates.

**Disturbance of mussel beds:** It is unreasonable to propose that every suction dredger must now do a survey before dredging to make certain that there is no place within 30 feet downriver where more than 40 muscles per square yard exist before dropping tailings! Some rivers are so inundated with muscles; this imposition would amount to a suction dredge prohibition in a large part of the waterway! And why, since there are so many? How does the protection of mussels from dredge-miners conform to the language of Section 5653? Please drop this silly mussel idea from final regulations.

**Returning the site to the pre-mining grade to the greatest extent possible:** Since it is impossible to move tailings and rocks upstream against a swift current, the requirement to fill in our holes and level off our tailings is unrealistic.

Ample evidence shows that salmon are less likely to place their redds in a heaped tailing pile, than they are on a pre-mining grade which is inundated with unstable gravel; so your proposal will actually create more harm than good! The dredge holes which I leave behind create cool water refuges where salmon and other fish hold up during the warm summer months. My piled cobbles create protected habitat where fingerlings can hide from predators. It would be better for the fish if we just allow Mother Nature to settle things out in the next storm event.

**Dredge mining between one half hour after sunrise to sunset**: Your authority is limited to preventing a deleterious impact upon fish. Please drop this from proposed regulations and leave this particular concern to local authorities where it belongs.

Thank you very much for giving careful consideration to my comments and suggestions!

Sincerely, The Reason I use Dave's Letter is I can't think of any Better way to say this.

Montana Stevens PO Box 151 Happy Camp CA 96039 4-13-11

Name and Address Date

P.S. Open all Rivers + Creeks in California.

**Subject:** Comments regarding SEIR and Proposed Regulations for suction dredge mining in California

**Date:** Wednesday, April 13, 2011 8:32:45 AM PT

**From:** Jim

**To:** dfgsuctiondredge@dfg.ca.gov

Dear Sir:

Thank you for allowing me the opportunity to comment on the California Department of Fish & Game's (DFG) Suction Dredge Permitting Program Subsequent Environmental Impact Report (SEIR) and Proposed Regulations.

I am quite concerned that this report has based its claims upon actions and problems that ***might take place***, rather than using information readily at hand indicating what actually ***DOES HAPPEN***, and I believe this review does not represent a fair review of dredge mining activities. Nor does this report take into account the value those dredging and mining activities have upon the local communities where these activities take place, or upon the thousands of people affected by overly restrictive rules and regulations pertaining to mining.

I would like to point out that during the 14 dredging seasons between 1994 and 2009 the report states that **seven tons of gold** were removed from California's waterways, and at today's rate that equals ***more than $20,000,000.00 worth of gold***. Additionally the report indicates that 4 tons of mercury was removed from the waterways, yet **it fails to document a solitary fish that has been harmed by dredging**.

I believe the proposed regulations and rules in this report are far too restrictive and based upon fears rather than facts, and that these proposed regulations would be harmful to thousands of people and many communities.

I urge the Department of Fish and Game to return to the regulations that were in place before this dredging moratorium began.

Thank you.

James Box
909 SW Hater Street