Subject: suction dredging

Date: Saturday, May 7, 2011 3:34:24 PM PT

From: Brent Ralph

To: dfgsuctiondredge@dfg.ca.gov

As a fifth generation Californian I am very upset that I can not exercise my right to suction dredge.Yes it is a right not a privilege! I started prospecting with my grandfather when I was five. I have three sons and we are all being denied are rights to dredge.The very restrictive rules you are proposing are crazy now you are trying to over regulate us out of our rights.I hope you use some common sense and come up with something fair.

050711_Reynolds

From:	"Cecilia Reynolds"
To:	dfgsuctiondredge@dfg.ca.gov
CC:	
Date:	05/07/2011 12:07:40 PM
Subject:	Oppose Suction Dredging

Please register my opposition to suction dredging. I am not able to come to the meeting in Sacramento on May 10, 2011. I live on Spanish Creek in Plumas County and am vehemently opposed to suction dredging both for the noise pollution and the stream bed pollution.

Cecilia Reynolds
36231 HIghway 70
PO Box 3057
Quincy, CA 95971

May 7, 2011

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

Dear Mr. Stopher:

SUBJECT: California Department of Fish and Game Suction Dredge Permitting Program and Draft Supplemental Environmental Impact Report

On behalf of our thirty member counties, the Regional Council of Rural Counties (RCRC) appreciates the opportunity to address the proposed California Department of Fish and Game (CDFG) Suction Dredge Permitting Program and Draft Supplemental Environmental Impact Report (Draft SEIR). Suction dredge mining is a recreational and commercial activity that provides an economic benefit to many communities in our member counties. Suction dredge permits were issued in 22 of our rural member counties, with Sierra, Plumas, Siskiyou, Placer, and Trinity counties among the most visited areas in which permits were issued in 2008. The financial impacts from the proposed strict regulations will significantly impact our rural counties due to the vast difference in the economy of scale in our rural counties and urban areas of the state.

While the CDFG determined that the proposed amendments to the suction dredging regulations will not be deleterious to fish, the amendments are much more restrictive than the current (1994) regulations. First, there will be a maximum number of 4,000 permits to be issued throughout the state on a first-come, first-served basis. There are also specific permit application information requirements that present logistical problems, including a list of their equipment and up to six locations where the permit applicant plans to suction dredge. Will changes to the permit information require additional staff time, processing delays, and processing fees? Some of the other excessive proposed new requirements include:

- An intake nozzle restriction no larger than four inches, unless CDFG has conducted an on-site inspection and approved a larger nozzle size in writing.
- Intake nozzles up to eight inches may be permitted at CDFG's discretion only in the American, Cosumnes, Feather, Klamath, Merced, Mokelumne, Scott, Trinity, and Yuba rivers.
- No person may suction dredge within three feet of the lateral edge of the current water level.
- No person can construct a dam or weir without an on-site inspection and a CDFG 1602 permit.
- Restrictions on the movement of boulders, gravel, and other materials, and no gas powered winching without prior inspection and approval.
- The increased restriction of the days suction dredging is allowed in the Use Classifications system in California lakes, reservoirs, streams, and rivers. Classes range from Class A, no dredging permitted anytime, to Class H, open to dredging throughout the year, with ranges from one to six months in between.

RCRC does not believe the Draft SEIR adequately justifies the extreme mitigation measures proposed for the new Suction Dredge Permitting Program. Most disturbing is the use of the existing moratorium on suction dredge mining (Senate Bill 670) as necessitating a change in the baseline conditions from which to assess potential effects, as compared to the environmental baseline that includes ongoing suction dredging activities as analyzed in the 1994 EIR, resulting in more significant impacts than were considered in the 1994 EIR. And the report then uses this same no suction dredging baseline as a beneficial effect to the local economy by allowing suction dredge mining to resume (on a more limited basis), thereby increasing economic activity for small businesses.

As indicated on pages 4.2-19 and subsequent pages of the Draft SEIR, there is very little information available on many aspects of the potential environmental impacts of suction dredge mining. However, on page 4.2-53 the discussion proceeds to determine that there may be the potential to contribute substantially to watershed mercury loading, methylmercury formation, and bioaccumulation in aquatic organisms downstream, and concludes that it is a significant and unavoidable impact. There are still ongoing studies evaluating the relative magnitude on dredging-related effects on mercury discharges compared to other causes. Winter storm events contribute far greater mercury mobilization than that of suction dredge mining. In addition, there has been no evaluation of the negative impacts of suction dredge mining compared to other outdoor recreational users. For example, the Draft SEIR indicates there is a significant and unavoidable impact to passerines associated with riparian habitats. However, this disturbance could also be attributable to fisherman, rafters, hunters, off-road vehicles, bikers, hikers, and cattle grazing. The Draft SEIR appears biased against the suction

dredge miners as the primary cause of environmental degradation, when in actuality other recreational users are responsible. In fact, regulating flow releases from dams produces far greater environmental consequences.

The Draft SEIR has no evaluation of the number of miles of rivers, creeks, and tributaries that were previously available for suction dredge mining that will now be prohibited. It would be a very valuable tool for the public to be able to visualize where the activity was previously allowed and where it is proposed to be allowed under the proposed amended regulations. As part of this mapping, it would additionally be helpful to map those rivers, creeks, and tributaries that are greater than six feet in width, in light of the restriction of dredging within three feet of the lateral edge of the current water level. The list of Suction Dredge Use Classifications beginning on page 2-23 is very misleading if the rivers, creeks, and tributaries are less than six feet in width during the allowed times for the activity. There are many more areas where suction dredge mining will be prohibited due to the width of the water flow during the time it is open to dredging.

The proposed Suction Dredge Permitting Program contains many restrictions requiring Fish and Game notification, inspection, and approval, such as any intake nozzle size greater than four inches, use of gas powered winching, and flow diversions. This significantly expands the responsibilities of Fish and Game personnel, increasing the workload, time to process permits, and the cost of permits. Without additional funding associated with this new program it is expected that permit fees will increase substantially. An analysis of the workload and financial impacts of the Suction Dredge Permitting Program to Fish and Game needs to be included in the SEIR.

RCRC requests that the information that has been received from the public during this public comment period be evaluated in the Final SEIR and the proposed restrictions in the Proposed Suction Dredge Permitting Program be reevaluated. RCRC appreciates your consideration of our comments. We would be happy to facilitate meetings with our county members to discuss alternative requirements that could address our concerns.

Sincerely,

Mary Pitto
Regulatory Affairs Advocate

cc: RCRC Board of Directors

>>> martin schumann <martin@modfather.org> 5/7/2011 1:23 PM >>>
Mark Stoffer

This just another annoying letter to ask you to look at the common "science" facts before you decide that dredging is harmful to our frog depleted rivers. You know from past experience that dredging isn't the cause of the disappearance of the yellow legged frogs', it **is the trout that Fish and Game introduced to the lakes and rivers.**

Fact is that when you quit introducing trout; the frogs came back in abundance. So don't even try to lay the cause on us. I have been dredging for 45+years and have never seen a yellow legged frog. They are in the high country (above 6000' elev.) Reference the following: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1839007/

Removal of nonnative fish results in population expansion of a declining amphibian (mountain yellow-legged frog,*Rana muscosa*)

Roland A. KNAPP,a Daniel M. BOIANO,b and Vance T. VREDENBURGc
a Sierra Nevada Aquatic Research Laboratory, University of California, HCR 79, Box 198 Mammoth Lakes, CA 93546, USA.
b Sequoia and Kings Canyon National Parks, 47050 Generals Highway, Three Rivers, CA 93271, *USA*; E-mail address: Danny_Boiano@nps.gov
c Department of Integrative Biology and Museum of Vertebrate Zoology, University of *California, Berkeley, CA 94720, USA*; E-mail address: vancev@berkeley.edu
Corresponding author: Tel: +001 760 647 0034; fax: +001 760 935 4867; E-mail address: knapp@lifesci.ucsb.edu

The nozzle size should be left right where it has been for the past decade and leave the season as is. As a dredger there is only a small window where the water doesn't come up every day; for us to dredge the fast water where an abundance of gold lies the water level needs to be low and that only happens during the last couple of weeks of dredging season.

You are also trying to make changes for the Consumnus River from "H" all year to just winter months; what brings this on? **are you trying to kill us off**. It is impossible for a person that works the Cosumnes River

in some of the steep canyon areas, to escape if it rains at upper elevations; the river comes up so fast that you could be swept away or caught on the other side leaving you to the elements. If you think you have a lot of lawsuits now wait until you kill someone because of your unsupported data. Lots of dredgers work alone and are underwater for a long periods of time, if they are working in a quite area the water can come up many feet without them even noticing it, DANGER, DANGER WILL ROBINSON you are about to die, or at least lose all your equipment. Stop sticking your head in the sand and speak up for the unemployed miner, it's your civic duty to support Americans that are need.

Shutting down small streams like Weber creek is a taking, it is infringing on every property owners right to the minerals found on his property, taking his dredging rights away makes his property less valuable and less likely to sell. Weber creek is one of the best creeks in California for dredging; I know several land owners that paid for their property from the gold that they found in the creek. Beware more lawsuits will be coming if you dare to take away their property rights without reimbursement.

Sincerely, Martin Schumann 530 642-9762

May 7 2011

Mark Stopher
DFG Project Manager
Suction Dredge DSEIR

Enclosed are my comments on your Suction Dredge DSEIR and proposed rules. Copies of each comment will be sent to the El Dorado County Board of Supervisors and my state senator Ted Gaines. Please take all comments into consideration.

Steve Tyler
5601 Bumper Road
El Dorado Ca. 95623

Mark Stopher
Ca. DFG
DSEIR COMMENT
March 16, 2011

Mark, today at 5:30 P.M. while driving across Weber Creek on Green Valley Road, .5 miles west of Placerville, I noticed that the creek was running high, and was the color of thick milk chocolate. This is a normally occurring winter event and is a crystal clear illustration that natural processes move thousands of times more material than suction dredges ever can. No amount of dredging ever has or ever will create this type of sediment movement. And this was not even that big of a high water event. DFG's new proposed rules to permanently prohibit dredging on Weber Creek, Rock Creek and every other small creek in the state is not acceptable, in light of the magnitude of normally occurring processes. No amount of maybes, might, could or any other type of conjecture will alter the facts that are obvious in our natural world. Let's stick to only reality in this EIR process. Thank you for your consideration.

Steve Tyler
5601 Bumper Road
El Dorado, Calif. 95623

BIG CANYON CREEK

MARCH 23, 2011

SAME SPOT APRIL 9, 2011

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

April 27, 2011

Due to the fact that El Dorado County has produced many tens of millions of ounces of gold since 1849 and the fact that many thousands more have been produced even in the last thirty years on our streams and rivers in the historical "County of Discovery", we are very concerned with your present DSEIR on suction dredge mining and the new rules which have been proposed by your Department. Since this DSEIR and DFG rules will affect not only thousands of jobs in our state, as well as adversely affect, in no small way, the economy of our county as well as the entire State of Calif. and will diminish the value of the mineral estate of many additional thousands of private property owners who hold title to land in this state, our recommendations are as follows.

1. This DSEIR, to be objective and accurate, must not be based on conjecture but must reflect science based, peer reviewed studies of which there have been no small number in the past 50 years.
2. This DSEIR must clearly reflect the obvious macroscopic effects of natural processes, compared to the effects of the few thousand miners who extract gold from our streams and rivers. Ex: (Cooley 1995)
3. This DSEIR must accurately address the economic contributions of the suction dredge industry as well as the documented, environmental benefits created by their activity, with the removal of trash, lead and other toxic metals which have been introduced by millions of other resource users.

New or previously created regulations, which are not substantially supported by facts and peer reviewed science are not acceptable. I.E.

1. Your new rule prohibiting dredging within three feet of the wetted edge of a stream is a prohibition on nearly every small stream in California and affects a "Takings" of the only "economically viable means" to produce gold from the mineral estate on every private gold bearing property in the state which contains a small stream. This rule has not been justified by the facts and is not acceptable.
2. Specific to El Dorado County, your new, complete prohibition of dredging on Rock Creek or Weber Creek has not been supported by facts. Weber is predominately private property and Rock Creek is one of the best streams in the county for fishing while supporting mining claims and passes thru private property, which still produce unusually large gold nuggets. The complete prohibition of small- scale mining on these historically productive streams is not acceptable.
3. The South Fork American, the river where gold was discovered has continued to produce many millions of dollars worth of gold and even during the last 30 years has provided a substantial income for many miners and recreational opportunities for many more. Hundreds of ounces of gold are taken out yearly by professional miners in this stream, on private property and mining claims. This is a known, verifiable fact. Unfortunately the riparian and aquatic habitats of this stream are severely

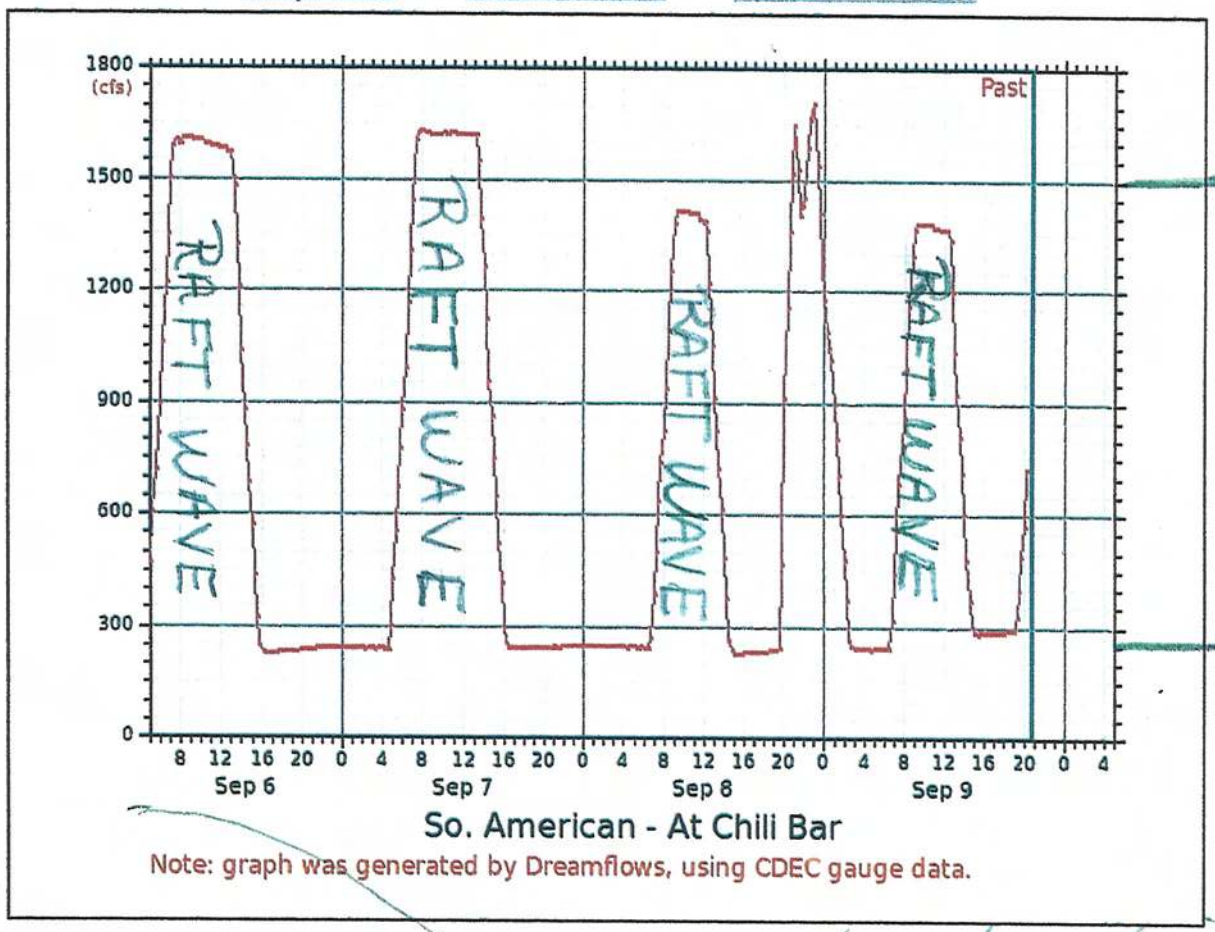
compromised due to the extreme fluctuating flows released from Chili Bar reservoir on a daily basis, month after month, through out the year. Fortunately, dredgers in this river have been, year after year, removing truckloads of trash as well as lead and some mercury inadvertently lost by the hundreds of thousands of other resource users recreating in and on this river. In 1994, DFG reduced the dredging from "Year Round" to June1 thru Oct. 15. In spite of repeated requests, DFG has yet to provide a justifiable reason for this seasonal closure, especially during the fall when this river is more safe to work, due to less drastic spikes in river flow. Unless the Calif. DFG can produce objective, fact based reasons for seasonal or nozzle size restrictions of suction dredging on this environmentally compromised river, we recommend that these professional and recreational miners be allowed to continue their culturally significant, economically valuable work, year round, whenever safe stream flows permit. Unjustified, arbitrary regulations imposed on valuable work are not acceptable.

Another issue of great concern to those in El Dorado County is your proposed rule changes affecting mining on the Consumnes River Watershed. Changes to seasonal restrictions already in place since 1994, cannot be imposed without irrefutable, science based, peer-reviewed studies supporting such changes. These proposed changes negatively impact the economic viability of many small-scale mining businesses on private property as well as Federal Mining Claims. The regulation, which only allows work between Sept.1 thru January 31, is effectively a complete prohibition of mining on affected streams. Mining becomes progressively more difficult due to extreme low water flows that occur by early fall, on the streams zoned E, that render equipment virtually inoperative. As well, rapidly cooling, seasonal temperatures make it physically impossible to work in a wet environment while in the upper reaches of the Consumnes River. ie; Camp Creek and Middle Fork Consumnes near Pi Pi Valley. Also, valuable equipment and lives will be put in peril, by the ever-present threat of flash floods which occur often in the fall of every year on the these higher elevation streams. This questionable, proposed new zoning, which imposes a fall and winter "season of operation" is not acceptable, justified or practical. This unwarranted rule change is downright hazardous to the physical lives as well as the economic well being of the productive miners in El Dorado County.

Steve Tyler
5601 Bumper Road
El Dorado Cal. 95623

enclosures

Daily Flows Realtime Flows Dreamflows Home



Show 30 Days
Show 3 Years

3,500 CFS
some days

THE DEAD ZONE

No fish, bug aquatic species or animal species can create normal life cycles in this zone, they are drowned or dried out as River drops

3,500 CFS

1,600 CFS

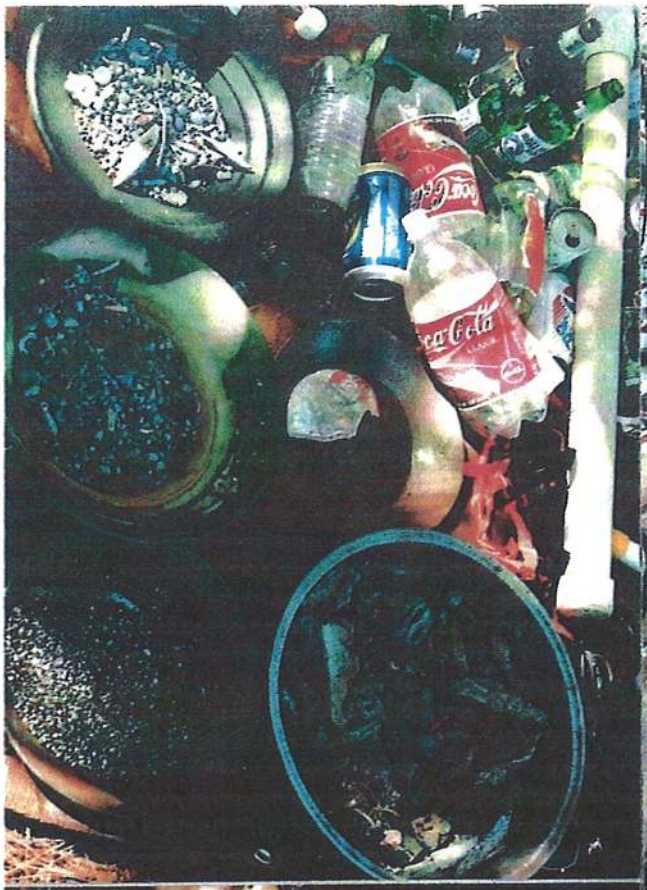
River BANK

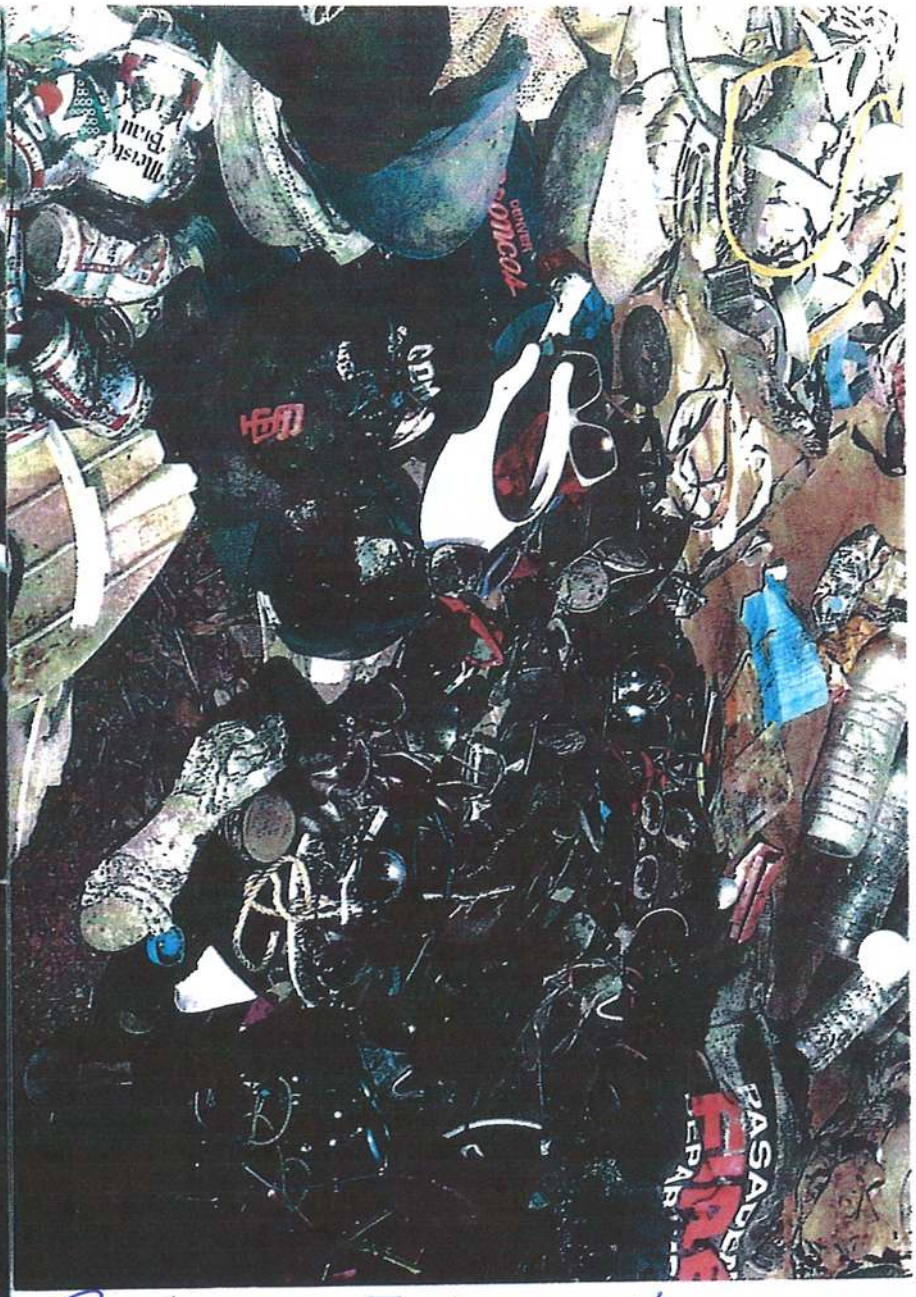
No Normal Life cycles

River BANK

River Channel

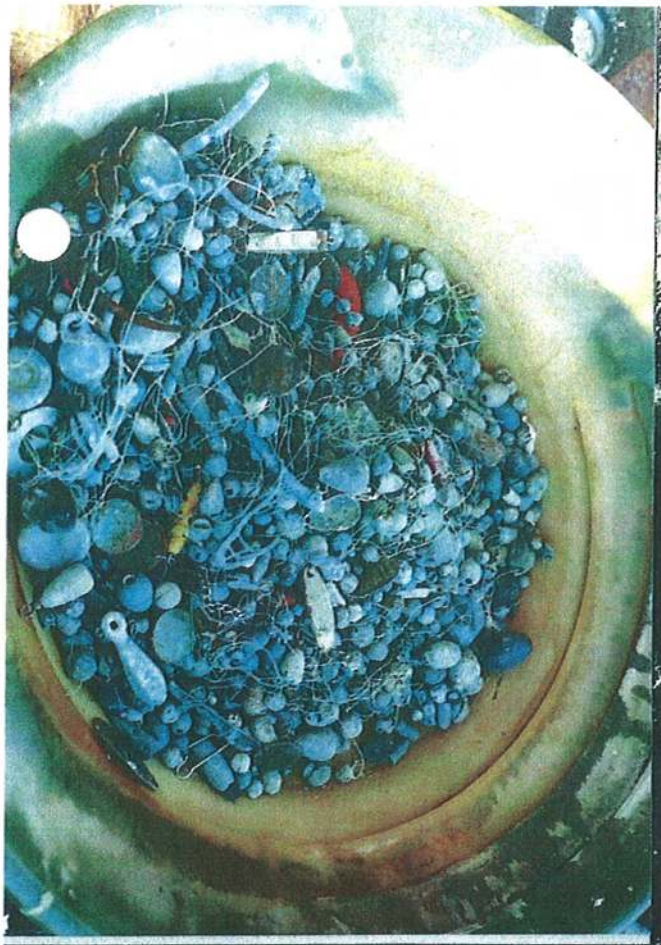
300 CFS





Boaters & Fishermen's Trash removed from the So. Fork American on the bottom of the channel.

Dredgers remove this type trash every year!



← 6 cans in 2 days

Dredgers clean the bottom of the river left there by boaters & fishermen & other users.

Mark Stopher
Suction Dredge
DSEIR Comment
March 29, 2011

In your introduction, on page 1-12, the writers of this DSEIR suggest that the socioeconomic report is flawed by memory recall problems or strategic bias on the part of suction dredge miners, industry support people and mining claim owners. I, for one, DO NOT like being labeled a LIAR. The introduction of this type of opinion as to the character of the miners in this room and throughout California is not acceptable in any type of public document. I have production logs and income tax records going back over 24 years and have contributed hundreds of thousands of dollars to the economy of Calif. You cannot suggest that those in this industry are anything less than the honest hard-working, wealth producing people that they are. These biased opinions must be eliminated from all pages of this DSEIR.

Next, Your new prohibition of dredging within 3 feet of a wetted edge of any stream is unwarranted. Responsible dredgers have, for the past 50 years, refrained from dredging into stream banks as the previous rules prohibit. This new prohibition will effectively eliminate every small stream in Calif. from the only economically viable way to produce the mineral wealth contained in them. This will affect a complete "Takings" of the "mining rights" estate contained in Federal mining claims as well as private property thru out the state with streams running thru them. This is not acceptable and will result in hundreds of millions of dollars in lost economic activity as well as a comparable amount of lawsuits based upon the property protections guaranteed by the 5th Amendment to the United States Constitution as well as the California State Constitution. Any regulations have to be reasonable and are not to conflict with the Law of the Land.

Thru out this Draft SEIR, the relative effects of naturally occurring processes have been minimized or omitted completely. Why? A conservative estimate of material moved by normal processes in Siskiyou National Forest compared to that moved by suction dredge miners in the same watershed clearly illustrates the relative insignificant effects created by said miners. Natural processes move over 14,000% MORE material. .7% of natural rates. [Cooley 1995] This fact of nature has been clearly illustrated even in the recent weeks of storms and muddy, debris filled streams and rivers. Conclusions and regulations must not be based on maybe, might, could or any other type of conjecture which seems to be the only foundation for this DSEIR.

Steve Tyler
5601 Bumper Rd.
El Dorado, Ca, 95623

November 24, 2009

Mark Stopher
California Dept. of Fish and Game
601 Locust Street
Redding CA. 96001

Mark Stopher:

I am submitting this document per your request for economic impacts of the ban of suction dredging in Calif. I have been making 30% to 70% of my income from the production of gold by using a suction dredge since 1979, 30 years ago. I have personally recovered hundreds and hundreds of ounces of placer gold during that time to help support my family in El Dorado County. I have logbooks going back to 1984 and have income tax records dating back to 1987 verifying this production. This illegal ban on mining in California has cost my family and my partners no less than $32,500 considering the present price of gold in this year alone. This can be verified from reasonable estimates based on current financial statements, log book entries for 2009, testing logs and production logs from the mining of adjacent river gravels in recent years. Not included in this estimate are the weeks of extra labor that will be required next year, to remove the many yards of gravel that will inevitably infill and erase our work from this year. This infilling will most certainly occur during the first few major storm events of the coming winter. What do you think a months extra work for two professional divers and one other experienced miner is worth these days? I would say something on the order of $9,000 is a very conservative estimate. **WE ARE NOT** recreational gold miners. Any delay in the restoration of Federally and Constitutionally protected private property and mining rights will only add to an ever-increasing debt owed to gold miners in California by those obstructing this valuable work. Your efforts to restore these rights as soon as possible and produce an accurate, unbiased, factual EIR based on indisputable peer reviewed studies would be appreciated.

Thanks for your consideration.

Sincerely,

Steve Tyler
5601 Bumper Road
El Dorado CA. 95623

Enclosures
Cc: El Dorado County Board of Supervisors
Governor Arnold Schwarzenegger
Jerold Hobbs, PLP

Amended economic losses as of May 6, 2011

In addition to losses previously documented in 2009 on my mining business caused by the ban on suction dredge mining, the legality of which is questionable, the devastating economical impacts on my lively hood and business are as follows.

1. Due to the legally questionable ban on my dredge business, in 2010 the loss of production of gold is in excess of $50,000 in value, substantiated by past production logs, income tax records and documented reserves remaining in "My" private property mineral estate.

2. Since the questionable ban on my dredge business I have been forced to liquidate over 10% of my retirement savings at a time in my life when I should be adding to it.

Your consideration of these losses to my business and the effects that your DSEIR on Suction Dredge mining will have on the private property estates of the suction dredge community is of great importance. Thank your for your objective consideration.

Steve Tyler
6501 Bumper Road
El Dorado, Ca. 95623

7

The Economic Impact of Suction Dredging in California

(Updated 3-31-2011)
by Scott Harn

It Starts With the Statistical Analysis Completed by the State of California

An Environmental Impact Report on suction gold dredging was completed by the State of California in 1994. As part of this process, the State sent out two survey questionnaires. The first questionnaire was sent to over 4,000 individuals. Nearly 2,000 were returned completed. The surveys covered dredge locations, annual spending activity, amount invested in dredging equipment, nozzle size and related questions. The second survey was sent to county Boards of Supervisors, Chambers of Commerce and mining businesses to determine the importance of suction gold dredging on local economies. A sample of 1,257 of the individual surveys was used by the State to complete a statistical analysis.

The State of California determined, "Suction dredging is an activity that requires a substantial investment."

According to the State, each dredger spent approximately $6,250 on expenses, which included groceries, restaurants, motels, camp fees and other living expenses. In addition, they reported spending about $3,000 each on gas, oil, equipment maintenance and repairs to suction dredge equipment.

The surveys also found that each permit holder spent an additional $6,000 to purchase a suction dredge and related equipment.

It Includes the Number of Suction Dredge Permits

According to the California Department of Fish & Game, 3,523 permits (2,966 resident and 557 non-resident) were issued in 2008. The State of California collected $126,055 in resident permit fees, and $93,158 in non-resident fees in 2008, for a total of $219,213.

Adjusted for Inflation

Using the CPI to adjust for inflation, suction dredge miners spent approximately $8,967 each on expenses including groceries, restaurants, camp fees and other living expenses in 2008; and $4,304 each on gas, oil, equipment maintenance and repairs to suction dredge equipment in 2008. These two expense categories combined amount to $13,271 for each permit holder.

Using the CPI to adjust for inflation, each permit holder spends approximately $8,608 on a suction dredge and related equipment.

Property Tax Collected

The County Assessors official assessment of mining claims in 6 of the 58 counties is $170,108,821. Mining claim property taxes collected in these counties in 2008 was $1,701,088.

Property tax revenue generated from mining claims was not included in the State's statistical analysis completed in 1994, though it is a matter of fact and is included in our economic impact report.

Known Economic Impacts

- A total of 3,523 suction dredge permit holders spent approximately $8,967 on expenses including groceries, restaurants, camp fees and other living expenses in 2008, for a total of $31,590,741.
- A total of 3,523 suction dredge permit holders spent approximately $4,304 on gas, oil, equipment maintenance and repairs in 2008, for a total of $15,162,992.
- A total of 3,523 suction dredge permit holders spend approximately $8,608 on a suction dredge and related equipment every four years for a total of $7,581,496 per year.
- Six out of 58 California counties collected $1,701,088 in property taxes.
- The State of California collected $219,213 in dredge permit fees.
- Gold is currently $1,431.80 per troy ounce. Just three troy ounces recovered per dredger adds $15.13 million to the economy.

Additional Economic Impacts

- Commercial retail rents for manufacturers of suction dredges, such as Keene Engineering, and suppliers and retailers of mining equipment should be added.
- Payroll and property taxes for the above business sectors should be added.
- Suction dredging is regularly conducted by more than just the license holder, but in this report only the permit holder's contributions are included.
- Three of the largest small-scale mining associations are located in California, with a combined membership of over 30,000 paying members and should be added.
- The two largest trade magazines marketed toward small-scale mining are located in California, with a combined circulation of 65,000 and should be added.
- Professional service providers; including geologists, refiners, assayers and mining lawyers should be added.
- Recreational vehicles; including RV's, 4x4's, trailers, all-terrain vehicles and motorcycles should be added.

Conclusion

The 1994 Environmental Impact Report, along with additional information provided here, proves without a doubt that suction dredge miners contribute significant wealth to the economy of California.

These conservative figures demonstrate the known economic impact of suction dredging at $71,385,530 million in 2008. The Additional Economic Impacts cited above obviously increases the total to well above $100 million.

(This report originally was published in the September 2009 (Vol. 79, No. 1) edition of ICMJs Prospecting and Mining Journal. It was authored by Rachel Dunn of Gold Pan California, Pat Keene of Keene Engineering, and Scott Harn, Editor/Publisher, ICMJ's Prospecting and Mining Journal, with the assistance of over 100 additional businesses and individuals who provided supporting documentation.)

Mark Stopher
CDFG
DSEIR Comment

April 27, 2011
Originally Submitted Spring 2010

Enclosed is documentation and pictures of an archeological find, removed from South Fork American River in the fall of 1996 and donated to the Coloma State Park Museum to Matt Sugarman, Park Ranger, by Gordon Vicini, on whose property I was mining. Had I not carefully removed this historical wooden artifact at that time it would have been obviously and completely destroyed during the flood of Jan. 1, 1997, which occurred less than 3 months after removing this interesting piece from the river. At the time when I donated this piece it was in far better condition as the sides were still together and the drum at the head was still operational though missing a few slats. It was shaped somewhat like a rocker box so I just assumed it was for mining though I couldn't quite puzzle out how it was supposed to work. Those at the museum surmised that it might be a type of wheat thresher. Maybe you have someone in your department that would know for sure. I am curious to know about this mystery artifact. We in the mining industry would be glad to help recover instream artifacts before they are completely destroyed or lost thru naturally occurring high water events. After all, suction dredge equipment, operated by experienced personel is of primary importance in any aquatic recovery project. Also inclosed is documentation of a portable grinding stone I donated to the museum in Coloma this past fall. I recently talked to Mark Michalsky, the Park Ranger who had recently received verification that this stone is actually what I presumed it to be. It had created a serious plug up in my 8 inch dredge as it was just slightly over 8 inches in one dimension. Quite a lucky find, for it could very well still be mixed in with the millions of cubic yards of rock contained in the South Fork American River.

Also sent with this documentation is an excellent dvd of the stretch of river where these artifacts were recovered on the Gordon Vicini Ranch. Fortunately we had taken a short video during the month of November 1996, not 2 months preceding the flood of Jan.1 1997. This video is very interesting and important to your present SEIR process as accurately records this same stretch of river before, during and after this significant high water event. We were still dredging in Dec. of 96 with a special permit and on Jan. 1 we went to the river to see if any of our equipment had survived. This dvd gives an accurate, real time, perspective and is a clear demonstration of the insignificance of almost all of mans activities on our river systems when compared to occasional extreme high water events. The dates recorded on this dvd are early Nov. 96, Jan.1, 97, and Jan. 8, 97. This video should be very helpful for some of your conclusions during this Seir process. I will be sending this material along with George Wheeldon for your consideration.
Thankyou
Steve Tyler
5601 Bumper Road Calif. 95623
530-677-6311

FLOOD OF 1997 SOUTH FORK AMERICAN RIVER

TWO WEEKS AFTER THE FLOOD OF 1997
SOUTH FORK AMERICAN RIVER

TWO WEEKS AFTER THE FLOOD OF 1997
SOUTH FORK AMERICAN RIVER

Mark Stopher
CDFG
DSEIR Comment

April 27, 2011
Originally Submitted Spring 2010

Enclosed is documentation and pictures of an archeological find, removed from South Fork American River in the fall of 1996 and donated to the Coloma State Park Museum to Matt Sugarman, Park Ranger, by Gordon Vicini, on whose property I was mining. Had I not carefully removed this historical wooden artifact at that time it would have been obviously and completely destroyed during the flood of Jan. 1, 1997, which occurred less than 3 months after removing this interesting piece from the river. At the time when I donated this piece it was in far better condition as the sides were still together and the drum at the head was still operational though missing a few slats. It was shaped somewhat like a rocker box so I just assumed it was for mining though I couldn't quite puzzle out how it was supposed to work. Those at the museum surmised that it might be a type of wheat thresher. Maybe you have someone in your department that would know for sure. I am curious to know about this mystery artifact. We in the mining industry would be glad to help recover instream artifacts before they are completely destroyed or lost thru naturally occurring high water events. After all, suction dredge equipment, operated by experienced personel is of primary importance in any aquatic recovery project. Also inclosed is documentation of a portable grinding stone I donated to the museum in Coloma this past fall. I recently talked to Mark Michalsky, the Park Ranger who had recently received verification that this stone is actually what I presumed it to be. It had created a serious plug up in my 8 inch dredge as it was just slightly over 8 inches in one dimension. Quite a lucky find, for it could very well still be mixed in with the millions of cubic yards of rock contained in the South Fork American River.

Also sent with this documentation is an excellent dvd of the stretch of river where these artifacts were recovered on the Gordon Vicini Ranch. Fortunately we had taken a short video during the month of November 1996, not 2 months preceding the flood of Jan.1 1997. This video is very interesting and important to your present SEIR process as accurately records this same stretch of river before, during and after this significant high water event. We were still dredging in Dec. of 96 with a special permit and on Jan. 1 we went to the river to see if any of our equipment had survived. This dvd gives an accurate, real time, perspective and is a clear demonstration of the insignificance of almost all of mans activities on our river systems when compared to occasional extreme high water events. The dates recorded on this dvd are early Nov. 96, Jan.1, 97, and Jan. 8, 97. This video should be very helpful for some of your conclusions during this Seir process. I will be sending this material along with George Wheeldon for your consideration.

Thankyou
Steve Tyler
5601 Bumper Road Calif. 95623
530-677-6311

CALIFORNIA STATE PARKS

MUSEUM COLLECTIONS

State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

Receipt of Objects

304 - IR - 135
Activity Number

Number of Attachments _____

INCOMING

Received From	Phone/FAX
GORDON VICINI, STEVE TYLER, ~~[illegible]~~	530-677-6311
Address	**City - State - Zip**
5601 BUMPER RD.	EL DORADO, CA. 95623
Date of Delivery	**Place of Delivery**
11-20-2009 MN	M.
Delivery Person's Signature	**Delivery Person's Name**
Steve Tyler	
Receiving Staff's Signature	**Receiving Staff's Name**
Mark Michalski	MARK MICHALSKI

Description of Objects (with catalog numbers if applicable): Owner's Valuation:

1 GRANITE ROCK WITH MOTOR LIKE INDENTATION
8" LONG x 5 1/4" TALL x 6" WIDE
MORTOR FOUND. FOUND AS NUGGET IN 8" dredge
IN middle of S.F.A.R. OSS opposite mouth of NORTON
RAVINE ON GORDON VICINI RANCH. FOUND
Aug 2006.

☐ **Receipt of Objects Owned by California State Parks**

California State Parks acknowledges the return of the objects described above.

☐ **Receipt of Objects Owned by Others**

I am (we are) the lawful owner(s) of the above described objects and/or have legal authority to deposit them into the custody of the California Department of Parks and Recreation for the following purpose:

Purpose: RESEARCH FOR POSSIBLE GIFT. Scheduled date of removal: MARCH 2010

I (we) have read and agree to the conditions listed on the reverse of this document.

Owner's Signature	Owner's Name	Date
X Steve Tyler		11/20/09
Agent's Signature	**Agent's Name**	**Date**

DPR 927 (Rev. 4/99)(Front)(Excel 1/8/2000) Distribution: ☐ Park Files ☐ Statewide Records ☐ Depositor

CALIFORNIA STATE PARKS

MUSEUM COLLECTIONS

State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

Receipt of Objects

309 - IR - X
Activity Number

Number of Attachments 0

INCOMING

Received From: GORDON VICINI, STEVE TYLER, GREG DEAN — Phone/FAX: 530-677-6311

Address: 5601 BUMPER Rd. — City - State - Zip: EL DORADO, CA. 95623

Date of Delivery: OCT 1996 — Place of Delivery: Steve Tyler - MGOSHP.

Delivery Person's Signature: Steve Tyler - STEVE TYLER — Delivery Person's Name

Receiving Staff's Signature: MARK MICHALSKI 11-20-2009 Given TOO. — Receiving Staff's Name: MATT SUGERMAN Matt Sugerman

Description of Objects (with catalog numbers if applicable): — Owner's Valuation:

ROCKER BOX SHAPED ARTIFACT with ROLLER ON UPPER END. VERY UNUSUAL UNABLE TO I.D. FUNCTION.

FOUND IN center of river with weathered handle protruding BARELY above gravel level. Found approx 150 YARDS above the mouth of BURNT SHANTY creek on Gordon VICINI RANCH.

FREE

THIS FORM SIGNED TODAY 11-20-2009 - DONOR CHECKING ON STATUS FOR AN ARTIFACT GIVEN IN. OCT. 1996

☐ Receipt of Objects Owned by California State Parks

California State Parks acknowledges the return of the objects described above.

☒ Receipt of Objects Owned by Others

I am (we are) the lawful owner(s) of the above described objects and/or have legal authority to deposit them into the custody of the California Department of Parks and Recreation for the following purpose:

Purpose: GIFT TO PARK. — Scheduled date of removal: _____

I (we) have read and agree to the conditions listed on the reverse of this document.

Owner's Signature: X [signature] — Owner's Name: STEVE TYLER — Date: 11/20/09

Agent's Signature — Agent's Name — Date

DPR 927 (Rev. 4/99)(Front)(Excel 1/6/2000) Distribution: ☐ Park Files ☐ Statewide Records ☐ Depositor

RECEIPT OF OBJECTS -- INCOMING

Conditions Governing the Receipt of Objects Deposited with the California Department of Parks and Recreation

Description of Objects

Attributions, dates, valuations, or other information described on this receipt are those given by the owner/depositor unless otherwise specified. The absence of notations regarding the condition of the objects does not mean that the objects were free of defects at the time of receipt.

Removal of Objects

The owner/depositor agrees to remove the objects from the custody of the California Department of Parks and Recreation (hereinafter referred to as DPR) within thirty (30) days from the date of deposit, or upon DPR's request, and at no expense to DPR. Title to the objects listed on this receipt may become vested in DPR if the objects remain unclaimed for an extended period of time and the owner fails to follow prescribed procedures to preserve the owner's interest in the property. *See California Civil Code Section 1899 et seq.*

Standard of Care

DPR will safeguard the objects itemized on this receipt in the same manner as its own property of similar nature.

Alterations and Hazards

DPR will not alter, repair, conserve, or dispose of the objects listed on this receipt without the permission of the owner/depositor, unless a) immediate action is required to protect the objects or other property under DPR's custody, or b) the objects have become a health or safety hazard. *See California Civil Code Section 1899.6.*

Research and Photography

DPR and its agents are authorized to photograph and/or examine by non-destructive means any object listed on this receipt. DPR and its agents may reproduce, distribute, modify, display, publish or otherwise use and reuse the resulting images and/or documentation in any medium for archival, educational, research, exhibition, and/or publicity purposes, but are not obligated to do so. Resulting images and/or documentation will not be made available for other purposes without prior authorization of the owner/depositor.

Release from Liability

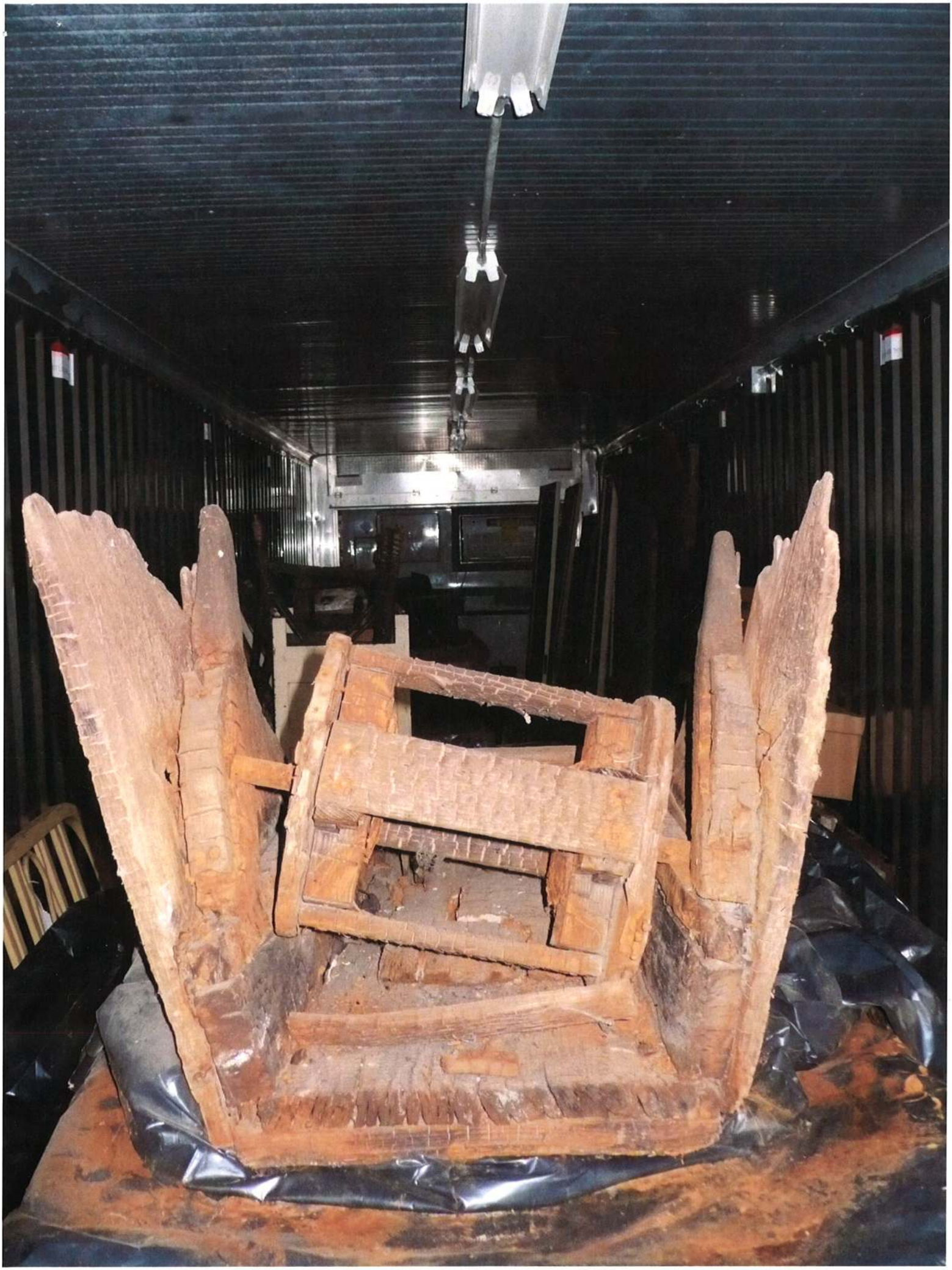
The owner/depositor releases DPR, its employees, agents, and contractors from and waives any claims against them for liability or claims arising out of or related to any loss of or damage to the objects listed on this receipt.

Change of Addresss or Owner

The owner/depositor will notify DPR promptly in writing of any change in address, or change in ownership of the objects listed on this receipt (whether by reason of death, sale, insolvency, gift or otherwise). The terms of this receipt shall be binding upon the heirs executors, administrators, representatives, successors, agents and assigns of the owner/depositor.

Other Agreement Forms

In case of any difference between this receipt and the agreement forms of the owner/depositor, which DPR may complete upon request, the conditions of this document will control.



Joseph A. Albrecht

PO Box 1674, Helendale, CA 92342…. phone: hm 760-952-1057 cell 760-985-5213

May 8, 2011

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

Subject: Three Foot Setback Rule vs Reality

TO: Mark Stopher,

I present the arguments below in opposition to proposed F&G Code 228 (k)(3).

> *No person may suction dredge within three feet of the lateral edge of the current water level, including at the edge of in stream gravel bars or under any overhanging banks.*

There is a Big Red Line you have to cross when making the leap of faith from PREDICTING **===to===** PROVING something has a "Significant" impact.

That Big Red Line is called….. **REALITY !**

I would like to offer DFG a Reality Check on their Prediction that… only a three foot setback rule can adequately protect fish and frogs and their habitat, from the alleged significant impacts of dredging.

PREDICTION 1

I can accurately predict that you will be killing fish and frogs on your next fly fishing trip. How can I do this? Because I know you will be wading in the shallows while you are fishing, not looking down to see if you are stepping on juvenile fish or frogs, or dislodging or crushing egg masses, or smashing and killing invertebrates (fish food) while tearing up their habitat with your large wader boots. The fact is, you will likely impact more habitat in one day of fly fishing, than any other user group on the river.

REALITY 1

No one who is thinking clearly and knows fly fishing can say that this Prediction is not highly probable.

Did you have a “Significant” Impact on fish and their habitat?

Anyone would have to say…Yes, when looking at your activities in this focused way.

Yet, can DFG stop you from doing exactly what was described? Or would they?

The answer is NO! The reason is, DFG will say they consider your impact to be ‘Less Than Significant’. Even though there are over 1 million of you licensed to fish in just this way, and maybe 100,000 fly fishermen doing it at any time of the year, in every river and stream in CA with fish to be caught.

PREDICTION 2

DFG believes dredging within three feet of the edge of a stream or river will cause a “Significant” Impact on the species and habitat in that area. Regardless of how small the work area is.

REALITY 2

In comes the dredger, with his very non-portable 2” dredge, to work a 5ft by 5ft area of the shallow waters for a day. The dredge itself is confining any potential damage, if any, to the habitat in that immediate tiny area being worked. The dredger is not walking up and down the stream perimeter for 100yds or more in both directions, like fishermen in waders, trampling anything that happens to be beneath their feet. Unlike the fisherman, the dredger is not killing small creatures or damaging their habitat, never looking down to see what might be there. No, the dredger is down there very close to the water and that shallow habitat, eyes peeled on the very streambed he is impacting as he works the gravels, slowly and methodically.

Who is likely to cause more species and habitat damage? The person focused on that deep pool 20-30 yards way as he carelessly walks along the stream bed. Or, the person who is intimately close to the streambed, staying in one place and focused on the potential habitat while operating his dredge? Lest we not forget also, there are under 4000 dredgers in CA, and probably less than 25% own a small 2” dredge suitable for very shallow water work. So let’s see, 25% of 4000 equals 1000 dredgers in only gold bearing streams. Versus 100,000 fishermen wading in the shallows of nearly every prime fish and frog habitat in CA. Who do you suppose will do the most damage?

The answer should be clear! The solution is also!

SOLUTION

DFG should provide proper guidelines for dredgers and fishermen to follow to avoid impacting certain important biological resources like fish or frog egg masses. This should be covered in a Best Management Practices manual. It should not be put into a new regulation that shuts down large numbers of gold bearing streams indiscriminately. Such a regulatory closing of this magnitude, statewide, would be considered an 'extreme over reaction' to a perceived yet unproven alleged "significant" impact. It is not hard to imagine any court of law would not find such a broad based regulation, with little or now real scientific proof or studies to back it up, as "unwarranted" and therefore "invalid".

RECOMMENDATION

Drop the 3 foot setback regulation 228(k)(3) and incorporate any species or habitat protection ideas in a BMP manual. Thereby, not forcing closure of the majority of small (less than 6 foot wide) gold bearing streams for reasons that are 'not applicable' to that stream or stream segment, and where these perceived impacts would never actually happen.

OR, in the Alternative.

DFG can use their regulatory authority to Prohibit all fisherman, and all the other individual users of CA's waterways (undoubtedly in the 100 million range), from stepping in or otherwise impacting in any way the 3 foot perimeter of every stream and river in CA.

It should be safe to assume that DFG will not go with the Alternative offered here for fear of appearing delusional in use of their Regulatory powers. Such a simple deduction really, that puts this all in perspective and shows how inappropriate this new regulation truly is.

CONCLUSION

DFG has failed to provide any proof of Significant Impact, backed up by a valid scientific field study, proving that suction dredging in the three foot margin of any streambed is an activity requiring statewide regulation. Further, DFG has thus failed to make the considerable leap from "Predicting to Proving" any Significant Impact from suction dredging in this regard.

Submitted for your consideration,

Joseph A Albrecht

Subject: In favor of dredge mining

Date: Sunday, May 8, 2011 4:02:21 PM PT

From: kb

To: dfgsuctiondredge@dfg.ca.gov

There are few legal pleasures left for people in the out of doors. Without evidence this destroys a needed piece of the environment the good that comes from allowing people to mine should not be inhibited. It is up to those in opposition to prove permanent damage and not up to enthusiasts to prove it doesn't.

James Andrews

Subject: Support all sizes of dredges

Date: Sunday, May 8, 2011 6:27:36 AM PT

From: Scott Baker

To: dfgsuctiondredge@dfg.ca.gov

I would like to see all size of dredges up to 15 inch hose size be allowed without NOI or POO . We are preparing with litigation if the current outlines offered become final.

Subject: Please re-instate 1994 Dredging Regulations - stop government from eroding rights
Date: Sunday, May 8, 2011 9:59:39 PM PT
From: Wesley Bauerle
To: mstopher@dfg.ca.gov

Hello,

Although I do not suction dredge, nor do I own a dredge, I am increasingly alarmed at how much the government is taking land use rights away from the citizens. Today's prospectors with very few exceptions are highly conscious and considerate of the environment. I metal detect and carry out all garbage I find and dispose of it properly, most dredgers are very careful not to make a lasting impact on the environment. In fact some studies show that dredging which stirs silt is GOOD for the fish and plants! Please stop allowing the government to outlaw prospecting, hunting, fishing and everything they can get their hands on. Especially in times like now and in the future when it is hard to find work, we need to be guaranteed the freedoms to pursue not only the hobby of gold prospecting but the alternative of trying to make a living in these hard economic times.

Please stop eroding our rights!! Fix suction dredging laws in CA back to the way it used to be or even more liberal freedoms if possible.

Sincerely

Wesley Bauerle
wbauerle@gmail.com
530-262-0013
2600 Lupine Street
Anderson CA 96007

Subject: dredging

Date: Sunday, May 8, 2011 9:28:39 PM PT

From: Leona & John

To: dfgsuctiondredge@dfg.ca.gov

Dear Mr. Stopher,
I am writing in reguards to your proposed new regulations on mining in California. I find them to be overly restrictive,
based on speculation, verses fact, and leaning towards liberal ideology. I am disappointed that the DFG would think of
moving dredging to the winter months which would completely prohibit dredging due to the weather,expecially in Northern
California. I buy hunting and fishing licenses in addition to paying taxes to manage and maintain our forests and natural
resourses. How much money do the environmentalists add to your department?

After talking to many of my colleges that also enjoy mining and the outdoors, we have three points we would like you
to consider. Many of us hobby/weekend, and professional dredgers would like the regulations to be as they were before
the moratorium, do to the scientific proof it does not harm the fish, or aquatic life.

Secondly mining in the winter months in the Mother Lode would be impossible. Not only would it impact the revenue from
the miners, but also the monies their families generate enjoying the outdoor activities common to summer.

Lastly the dredging in the Mother Lode is mostly above Dams, and has zero impact on the Samon population.

I would like to attend your meetings to present our concerns but find the time of the meetings incompatable
to the majority of tax payers that are employed. I would be very intrested in communicating with your department
to resolve this very important issue impacting the Mother Lode area. I can be reached at 530-632-3528.

Sincerely,
John Behrend

Subject: Dedge Permit
Date: Sunday, May 8, 2011 9:52:28 PM PT
From: Robert Blackwell
To: dfgsuctiondredge@dfg.ca.gov

Mr. Stopher,

I attended the meeting in Santa Clarita and did speak about the impact on my hobby. you stated there had been around 3600 permits issued in years 2008,2009. I did some research on the miles of rivers that are dredged. There is about 3000 plus miles not counting the creeks and if the trend stayed the same and if every person that got a permit operated at the same time they would be at least a mile apart and that would be just on the rivers.

I think you can see where it would be very hard to impact the spawning since dredging is not done at the same time by the permit users. If you add the creeks then at any one time the dredge operations are miles apart if not tens of miles apart.

I ask you not to bow to pressure and restrict the hobby any more then 1994, where a true Impact report was done with the observation of the dredge operation.

Thank you, for your time. Robert Blackwell

Subject: Draft SEIR
Date: Sunday, May 8, 2011 11:24:48 PM PT
From: Barry Calica
To: dfgsuctiondredge@dfg.ca.gov

Mark,

I disagreed with the limit number of permits that can impact on economic in long terms. Individual either small scale miner probably do suction dredge in few days or whole weeks. However, suction dredge season run from June thru October in short term. We, people can guarantee and take of care with environmental protection. My understanding is that environmental is most priority for quantity of water as general. Thank you for listening.

Sincerely,
Barry Calica

Mark Stopher
California Department of Fish and Game
601 Locust Street
Redding, CA 96001 dfgsuctiondredge@dfg.ca.gov

Subject: RE: Comments regarding SEIR and Proposed Regulations for suction dredge mining in California in Favor of Maintaining 1994 Regulations in place before the Current Moratorium.

Dear Sir:

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

My name is Mark Chestnut. I am a professional suction dredge miner. I am recognized in the suction dredging industry as a successful professional suction dredge miner.

I have been employed in the suction dredging industry;

As an instructor for an international school of underwater mining techniques;

As a director of manufacturing for a major mining equipment manufacturer;

As an operations manager for one of the largest suction dredge operations in the state of California prior to the 1994 EIR and dredging regulations adopted by CDF&G;

As a mining expert hired to perform professional services such as locating placer deposits of gold in some of the most remote overseas jungle locations on this planet;

And recently providing professional expertise in the field on a BLM & USGS study to see if modern 8" suction dredges could be used to clean up the most highly mercury contaminated stream in the state of California.

First, may I say I am very disappointed in the *extreme* changes in suction dredging regulations that are proposed as a result of this DSEIR.

I do not believe that the proposed regulations are based on sound scientific study using proper scientific methodology as is required of CDF&G by California law but rather are based on political agendas and professional opinions that contradict the currently accepted scientific studies done to date on suction dredging and it effects that do stand up to peer review and were performed using proper scientific methodology that have determined the environmental impacts of suction dredging as it was being regulated by the 1994 regulations had only minimal impacts on fish and wildlife.

It is legally obvious that the original court case ordering CDF&G to conduct this SEIR was issued by a Judge who understood that CDF&G could not provide ANY scientific proof acceptable in a court of law that would uphold the opinions of some very vocal experts including Mr. Moyle that the current regulations adopted in 1994 were causing harm. It was also ordered by that same Judge that the current 1994 regulations remain in place until CDF&G performed a new Environmental Impact Study that showed legally acceptable scientific proof that new regulations were even needed.

CDF&G has failed in this DSEIR to provide any legally acceptable scientific proof that suction dredging as it was regulated by the 1994 regulations was indeed causing harm to any protected specie of fish or game. Instead, the proposed extreme new regulations are based on trying to protect based on the POSIBILITY of harm, which is in violation of law.

I also find it insulting and possibly criminal that CDF&G has chosen in this new DSEIR to use "no dredging" as a baseline in this SEIR, when the original court order for this updated EIS was to see if there could be any new scientific proof found that the current 1994 regulations were causing harm to a protected specie. The baseline used should have been the proposed activity as it was being performed prior to the moratorium issued by the state legislature. That moratorium was based on political ideology and political pressure, not sound science. While this may be legal for the legislature to do, CDF&G imposing any new regulations upon suction dredging based on political ideology or political pressure or professional opinion instead of sound science is illegal and a total breach of the legal purpose that the California Fish and Game Commission was created for to properly serve the people of the state of California.

At this point in this paper, I would like to quote President Obama, from the press release he had when he made the Presidential ***MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES*** on the subject of scientific integrity.

Quote;

"That is why today, I am also signing a Presidential Memorandum directing the head of the White House Office of Science and Technology Policy to develop a strategy for restoring scientific integrity to government decision making. To ensure that in this new Administration, we base our public policies on the soundest science; that we appoint scientific advisors based on their credentials and experience, not their politics or ideology; and that we are open and honest with the American people about the science behind our decisions. That is how we will harness the power of science to achieve our goals -- to preserve our environment and protect our national security; to create the jobs of the future, and live longer, healthier lives." Quote, President Obama.

It is imperative that CDF&G remember and be reminded that the mining of mineral deposits on Federal mining claims is a federally granted RIGHT, supported by our Federal Congress and numerous federal lawsuits and is not a privilege to be allowed or not allowed by CDF&G through regulation. Federal legal precedent has been made and it is a well established fact that CDF&G does not have the legal right to prohibit the

proposed mining activity through excessive regulation.

Another serious issue that is contrary to the views sated in this DSEIR is that outright banning suction dredging from numerous effected mining claims by these new regulations is not a "property taking" because there are other mining methods available. This is an outright falsehood, and ignores all knowledge of current state and federal environmental regulation and permitting and also ignores Federal legal precedence of CDF&G may not ban the proposed mining activity by regulation. There is no other mining method available to be able to safely remove a precious metal placer deposit located in an active waterway at a profit with a minimal impact to the environment that does not cause a significant surface disturbance. So contrary to the statement made in the DSEIR, by prohibiting suction dredging on thousands of mining claims, CDF&G is removing the ONLY method of mining that is available to a claim owner. Also it is not within the legal right of CDF&G to determine how a mining claim holder removes his/her mineral deposit anyway. It is only within CDF&G's legal right to regulate the proposed activity to MINIMIZE the environmental impacts of the proposed activity.

The proposed 3 foot ban from the edge of the current flowing water is also a "taking" as is the new thermal refugia ban.

There has been no scientific study performed that proves that a suction dredge operating in a river bed that the water level fluctuates up and down drastically from season to season is causing a significant surface disturbance just because the dredge is being operated within three feet of the edge of the current flowing water. There is no basis in science or common sense that this proposed regulation would protect any stream bank except in a waterway that the water flow rate has almost zero fluctuation. Imposing this regulation on all waterways of the state of California ignores science and common sense and is therefore in fact a "taking" of any precious metal deposit located within this three foot area. The foolishness of this regulation is simple to understand when put this way; this year I can't mine right here, next year because of increased water flow, I can. Even in the same year, the allowed mining area will be reduced as water flows normally reduce in volume, to a point that the area I mined at the start of the season will be the current bank before the end of the season. Where is the sound scientific principle that could uphold such a ludicrous concept?

As for the thermal refugia ban, there is no scientific study that has been performed using proper scientific methodology that would stand up to peer review that has actually studied operating suction dredges in thermal refugia areas and determined that an operating suction dredge actually disturbs any fish holding in that refugia. This whole concept is just an **opinion** of someone who has credentials. This **opinion** is nothing more than a *hypothesis* until there is a proper scientific study done that upholds or discredits the *hypothesis*. The conclusions of most scientific studies do not uphold the original hypothesis, but rather find that there are too many uncontrollable variables to make such black and white opinions as many fish biologists and environmental zealots like to do.

Since some regional water boards have taken it upon themselves to already pass bans on dredging in thermal refugia areas without any proper scientific studies being done, it is duplicity of regulation for CDF&G to also create such a ban. At a minimum, CDF&G should allow the legality of these politically motivated thermal refugia bans imposed by these water boards to be upheld in court as valid and ruled not a taking of property before CDF&G imposes them also.

The comment in the DSEIR that many of the new regulations are to bring California inline with regulations in other states is another misleading and false statement. The new regulations in Oregon that ODEQ has imposed on suction dredging in that state are being legally challenged and because they are new should not be considered as an industry standard. There was a politically motivated attempt to try and impose the very same regulations in Idaho that completely failed. It is unbelievably wrong for CDF&G to say those regulations are an industry standard when the true industry standard is the regulations adopted in 1994 in California, and the current regulations in Alaska and Idaho. The new regulations in Oregon and Washington are not the industry standard and are very obviously politically motivated by a large voter block that is overly environmentally cautious.

The extreme reduction in dredging seasons, the complete banning of dredging in numerous waterways, and the reduction from eight inch and six inch nozzles to four inch nozzles will make most affected claims valueless and has a very high chance of being determined in a federal court to be a taking of mineral property.

How can CDF&G say that an eight inch suction dredge operating on the main stem of the Klamath river in November has a detrimental impact on salmon when CDF&G has publicly stated that no salmon spawn in this stretch of the Klamath? There is no way that CDF&G has performed any properly conducted scientific study since the ordering of this SEIR because there has been no running dredges to study.

That is the main flaw of this DSEIR compared to the 1994 EIS. The 1994 EIS studied running dredges; this DSEIR has not studied one single operating dredge.

In Chapter 4.2, WATER QUALITY AND TOXICOLOGY of the DSEIR, the determination has been made that the effects of mercury resuspension and discharge are significant and unavoidable. How has such a determination been made in a DSEIR that performed no studies on any running suction dredge? This determination is not based on sound science but rather has to be based on opinions that contradict the few known scientific facts on this subject that have been gathered using proper scientific methodology actually studying an operating suction dredge. The DSEIR states that there have been few studies done on this subject.

I would like to offer the following facts and some common sense as to why this is.

First, the EPA had a study performed in 1999 on the impact of suction dredging on water quality, benthic habitat, and biota**.** This study followed proper scientific methodology and has stood up to ten plus years of peer review. The section on mercury studied large dredges running in mercury contaminated material and found that the readings of elemental mercury downstream from the dredge were actually lower than upstream of the dredge and that the discharge from the dredge was well within the natural variation of that stream. Prussian, Royer, Minshall, 1999

It is hard to refute properly conducted scientific evidence. That is why there have not been many studies on this subject, and the few that have been performed since have not used proper scientific methodology to reach the very biased conclusions that they have reached.

Humphries did not use proper methodology in his study, and he allowed to many variables to go uncontrolled that should have been controlled which has resulted in his study not standing up to peer review, and yet no matter how flawed the study, he found a dredge catches over 98% of the mercury that passes through it. He used a crash box header in that study, which is old suction dredge technology. The current dredges use flare tubes and are far more efficient in fine gold recovery, and therefore common sense would say they are far more efficient in fine mercury recovery also. This is because a flare tube does not cause the violent mixing of bottom sediment that the old crash box style headers do. So the question to be asked about this study is, if it had been performed using proper scientific methodology and had this study used current equipment instead of old outdated recovery technology, just how much improved would the recovery of that dredge had been? 1% possibly, which would have raised the recovery rate of that dredge to over 99% of the mercury that passed through it. As I said, there is no substitute for sound science.

A far more recent study was performed that I was personally involved in. **The Effects of Sediment and Mercury Mobilization in the South Yuba River and Humbug Creek Confluence Area, Nevada County, California:**
Open-File Report 2010–1325A
http://pubs.usgs.gov/of/2010/1325A/

The conclusions reached in this study are way off base, and in no way are based on sound science using proper scientific methodology. The press release from this study attacking recreational dredging is based only on personal opinion and ignores the very few scientific facts this study actually did produce. The conclusions of this study are based on a scientific concept that will not and does not stand up to peer review. That concept is that there is a layer of mercury laden clay slikens that is immune from the natural effects of erosion and flooding and is only being disturbed by suction dredges. This concept ignores the simple common sense fact that erosion and flooding are what have placed that mercury where it is today and erosion and flooding will continue to move that mercury. The study only took three year flood events into consideration to prove and justify the validity of this “concept”. This study failed to mention or consider flood events that

occur every twenty to one hundred years that will obviously move any "theorized safe layer of mercury contaminated slikens as conceptualized in this study", all the way to the SF Bay Delta area in one single flood event. Worst yet, this study failed to mention the 100 to 200 year flood events that will without a doubt scour this river valley from one side to the other. These major flood events are a very real fact. It is only a matter of time before the next one occurs and once again scours this river bed in a way that this study never even considers. The flood of the winter of 1861 and 1862 is a scientific fact and matter of record, and will repeat itself. For this study to try and use the concept of a mercury contaminated slikens layer that is safe from the natural forces of erosion and flooding is a huge mistake in the scientific integrity of this report on dredging and mercury effects, especially in light of the study this very same government agency, USGS, has put together on this exact flood scenario called ARkStorm. Not only did this study fail to consider very real flood events that have and will occur, it also failed to even locate the layer of mercury laden slikens anywhere within the flowing riverber of the South Fork of thezYuba River. There are many other issues with how the conclusions of this study do not do not meet the intent of the standards of the USGS Fundamental Science Practices.

In the only actual testing of turbid discharge water below an actual operating suction dredge in highly mercury contaminated river material, the above study stated quote;

"Dredging appeared to have no major effect on pMeHg concentrations in the South Yuba River during the dredge Operations."

"Concentrations of fMeHg were all below the method detection limit (MDL) of 0.040 ng/L except for one sample that was just above the MDL at 0.041 ng/L; however, this variation may not have been directly attributable to the dredge operations. Similarly, all samples for pHg(II)$_R$ analysis were below the MDL (table 4)."

Do not miss this point. The amount of methyl mercury and reactive mercury in the turbid discharge plume of a 3" suction dredge operating in the highly mercury contaminated SF Yuba river below the confluence of Humbug creek was so small it could not even be measured with the extremely sophisticated laboratory equipment used by one of the leading, if not the leading USGS mercury testing laboratory.

This fact 100% reinforces all the past studies that show the effects of suction dredging are *de-minimus*. It also shows that the turbidity that everyone is concerned about having a potential of moving measurable amounts of mercury that become methyl mercury are unfounded and uncalled for. The fact that a running 3" suction dredge in one of the most highly mercury contaminated rivers in this state created a turbidity plume that the amount of reactive and methyl mercury could not even be detected cannot be ignored or refuted.

Let me repeat this fact, in the only scientific test of a three inch dredge operating in the most highly mercury contaminated stream in California, using proper scientific methodology, the amounts of reactive mercury and methyl mercury in the turbidity plume of that suction dredge were to small to be measured using the extremely sophisticated equipment in one of the, if not the most, advanced USGS mercury testing laboratories in this country. Therefore, for CDF&G to state in this DSEIR anything that contradicts this

fact or contradicts the scientific facts from the 1999 EPA Alaska study on water quality proves that CDF&G has chosen to believe OPINIONS instead of scientific facts and these regulations are politically motivated instead of being based on sound science as is required by law.

I do not agree with the need for suction dredging permits to become limited entry. Suction dredging is not an operation that CDF&G grants mine owners the right perform, like commercial fishing. At a minimum, CDF&G should make permits available to all past permit holders from the creation of the 1994 regulations first before offering any new permits to the general public that opponents of dredging may try to obtain. The Federal mining law of 1872 as amended is what grants claim owners the legal right to remove mineral deposits located on those claims, and CDF&G only has the legal right to regulate any proposed mining project to minimize the negative impacts of the proposed mining activity. CDF&G does not have the legal right to prohibit this proposed mining activity through regulation as these new regulations proposed by this DSEIR will do, and restricting the number of suction dredging permits will do.

The new permit should be issued to a person, who only has to be present onsite for anyone to be able to operate any part of that person's suction dredge, not a nozzle operator's permit like in the past. California is the only state that issues a nozzle operator's permit and this is one area that California has never been in line with the industry standards from other states.

Also, the listing of actual dredges to be used is something that there is no legal need or requirement for. A suction dredge miner should be able to use any suction dredge he/she wishes that is of a legal allowed nozzle size. Dredges break and are replaced or other miners may loan one until another could be obtained. Sometimes one person may operate on another persons dredge. The requirement to list the actual dredge used on the permit is obviously unneeded over regulation that there is no harm impact associated to fish or game species and is therefore outside of CDF&G authority to regulate. Once again, mining mineral deposits is a Federal Granted Right, not a special privilege allowed by CDF&G at it's discretion like sport fishing and hunting or commercial fishing.

It is imperative that CDF&G realizes that the attack the Karuk Indians have made against suction dredging is based only on opinions that contradict all scientific studies done about the effects of suction dredging as it was being regulated under the regulations CDF&G adopted in 1994 from an environmental impact study that actually studied operating suction dredges. This DSEIR has not studied one single operating suction dredge yet the recommended regulation changes are extreme and will make suction dredging for mineral deposits on many Federal mining claims illegal.

This is a letter I obtained that is being forwarded to environmentalists on this DSEIR. It is full of outright lies and is emotionally misleading and full of fear mongering. There is not one single scientifically truthful statement made in this letter. Below is a copy.

Suction dredge mining has been a scourge on California waterways for years and now the state of California is poised to open up our precious waterways to mechanized mining again. Please send a message to the California Department of Fish and Game and tell them to reject mining in our rivers and protect fish and wildlife.

Suction dredge mining can turn a clear-running mountain stream into a murky watercourse unfit for swimming in -- much less living in. Yet suction dredge mining has been proposed in supposedly safeguarded habitat for the federally protected Coho and Chinook salmon, steelhead, Pacific lamprey and green sturgeon.

Adding insult to injury, the California Department of Fish and Game has been using taxpayer money to subsidize suction dredge mining, spending more money processing new permits than it receives in revenue.

Suction dredge mining is a net loser for the state of California: It destroys our waterways, harms endangered fish and wildlife and wastes taxpayer money. Take action today and tell the Department of Fish and Game to protect California rivers and aquatic wildlife.

California waterways are critical to our fish and wildlife and the lifeblood for all Californians. 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.

State wildlife agency experts and scientists have testified that suction dredge mining harms our waterways and endangered fish. The mechanized mining process to collect small amounts of gold reintroduces mercury from historic mining and churns up mud and silt that deteriorate water quality. Suction dredge mining also destroys aquatic life, harming endangered salmon and impacting the food chain.

In a time of economic crisis, eliminating suction dredge mining is even more important. The state of California historically spends more money processing new suction dredge mining permits than it receives in revenue, wasting valuable taxpayer money on a destructive program. When budget cuts result in insufficient wardens in the field to enforce the suction dredge regulations, the practice must not be allowed.

At a minimum, the regulations must be revised to prohibit suction dredge mining in all rivers and streams that provide critical habitat and future recovery areas for threatened and endangered fish and wildlife. All mercury-impaired rivers and streams, wild and scenic rivers, wild trout streams, and national parks must also be closed to suction dredge mining to protect water quality, human health, fish and wildlife, and cultural resources.

Suction dredge mining is a net loser for the state of California: It destroys our waterways, harms endangered fish and wildlife and wastes taxpayer money. A 21st-century California doesn't need this relic of our careless past. Reject suction dredge mining in California waterways and leave it in the dustbin of history where it belongs.

I addressed this very same attack made back on December 26, 2008, when a few leaders of the Karuk Indians petitioned CDF&G to impose an emergency closing of suction dredging. I feel that those comments are still directly related to this DSEIR because it is obvious to me that the new regulations proposed by this DSEIR are the same regulations that CDF&G tried to impose on suction dredging reached with the Karuk Indians without any involvement from suction dredge miners and the resulting lawsuit is why the Honorable Judge Bonnie L Sabraw ruled that CDF&G had to perform an updated EIS. This was because in that lawsuit, both the Karuk Indians and CDF&G were unable or

unwilling to provide ANY legally acceptable scientific evidence to justify any need for these radically extreme changes in suction dredging regulations. I will include my comments and request and wish them to be included as very pertinent to this DSEIR.

And now, at this point in time, without studying one single operating suction dredge it has been determined in this DSEIR that the personal opinions of the Karuks will supersede all properly conducted scientific studies on suction dredging and the determination of minimal impacts and instead that the regulations the Karuks wish for will be imposed on suction dredging anyway.

I can't help but feel this whole thing has been nothing more than a dog and pony show with the outcome predetermined.

Recovery of precious metals on Federal mining claims is not a relic of our careless past that needs to be left in the dust bowl of history, it is a federally granted right supported by legal precedence and our national congress as vitally important to the economic wellbeing and security of our nation. Suction dredging is the ***only scientifically sound method*** of removing minerals authorized to be removed from public land located within an active waterway with a minimal impact to the environment and protected species of fish and wildlife that does not even create a significant surface disturbance to the land upon which this form of mining is conducted.

In closing, I will make this statement that CDF&G has heard before but is very true. CDF&G does not have any evidence that suction dredging following the regulations imposed upon it in 1994 by CDF&G has resulted in the death of one single protected salmon while in the same amount of time sport and commercial fishing has killed millions of the protected fish.

Sincerely,

Mark Chestnut

PO Box 9169
Apache Junction, AZ 85178

2008 COMMENTS TO BE INCLUDED AS 2011 DEIR COMMENTS

DON KOCH
DIRECTOR
CALIFORNIA DEPARTMENT OF FISH AND GAME
1416 NINTH STREET
SACRAMENTO, CA 95814

Subject: Comments on petition for adm. rulemaking by Karuk Tribe and others.

Dear Mr. Koch,

Please consider this information I am submitting to you as you consider the petition submitted to you dated December 26, 2008, authored by the Karuk tribe of California, California Trout, Friends Of The North Fork, and the Sierra Fund, requesting Administrative Rulemaking, ie: changing the current California Department of Fish & Game suction dredging regulations, specifically Title 14, Sections 228.6 and 228.7, and the request that this need of regulation change be considered as emergency in nature.

I disagree with this petition in whole, and will state substantial specific scientific and legal evidence that your department should consider and use in your decision to deny the above mentioned petition, and notify the petitioners of that denial of their petition in a time and manner as required by Gov. Code.

1.) The above petitioners are trying to circumvent a valid court order that mandates that your department perform an EIR before your department implements new changes or regulations that limit or abolish suction dredge mining concerning the reasons stated by the petitioners. In the lawsuit, the Honorable Judge Bonnie L Sabraw ruled that the plaintiffs proved that there "may" be additional information that "might" show suction dredging as currently regulated by your department, "might" cause harm to a protected species since the EIR your department performed in 1994 used to implement current regulations. The Judge's ruling was because the plaintiffs failed to provide any scientific proof that the possible harm was of a level or impact that was in violation of any protected species regulations. Judge Sabraw's ruling shows that regardless of the statements made by DFG Deputy Director Banky Curtis and Mr. Neil Manji on Oct. 2, 2006, the failure to provide ANY scientific evidence to back up their statements did not create an "emergency" need for rule or regulation change, but rather the ruling was to wait for scientific evidence that "might" come from a new EIR. Also, remember that Mr. Manji also made a statement on January 26, 2006 in which he stated that the suction dredging regulations in effect at that time protected salmoniods, reds and fry. Once again, there was no scientific evidence offered to show why he changed his personal opinion from Jan. 2006 to Oct. 2006. If in fact it is the departments stance that CDF&G believes that suction dredging as currently regulated is having a deleterious effect on Coho salmon, then you as the Director of that department should make a statement as to the same, and provide the public with the scientific facts that would back up that stance. It is almost criminal to make such statements and then refuse to provide the scientific

evidence to show why CDF&G changed it's stance on this issue. (Karuks vs. CDF&G, Alameda Superior Court, May 6, 2005.)

2.) The petitioners have tried to circumvent that court order by getting AB1032 passed through the California Legislature, but that bill was vetoed by Governor Arnold Schwarzenegger, and in his veto statement, he made it clear that he felt that your department's current suction dredging regulations were based on scientific evidence and protected the species in question. Furthermore, Governor Arnold Schwarzenegger stated the following quote:

"It is unclear why this bill specifically targets a number of specific waterways for closure or further restrictions. The listed waterways represent only a small fraction of the waters in our State where suction dredging is occurring. The benefit or protection from such a minor closure is negligible and supports the notion that scientific environmental review should precede such decisions.".
(Governor's Veto of AB 1032, Oct. 13, 2007)

I cannot overstate how well informed the Governor was on this issue before he made those comments. The Governor had to consider all the scientific and legal items on this issue. He was well aware of the reductions in salmon returns in recent years. It is obvious that he also did not feel this was an "emergency" issue.

3.) That the listing of Coho Salmon in the Klamath watershed by the US EPA as "threatened" not "endangered was May 6, 1997. That even though the Coho and other salmon had not been listed by CEPA yet, all Federal and State regulatory agencies have had to give considerations and follow protections required by United States EPA Codes since that and other Federal salmon listings in 1997.

That a study of the environmental impacts of dredging was performed for and paid for by the US EPA during 1997 and 1998, after the Federal listing of salmon as "threatened" and "endangered". That the results of that study reinforced the results of CDF&G's 1994 study that suction dredging poses no measurable long term environmental impact, as currently regulated.

4.) That the 1997, 1998 EPA dredging study was performed on streams with very active suction dredging occurring at the time of the study and that the area had very intense mining during the 1800's.

One area of that study included an area claimed by a club with above normal suction dredging activity. Quotes from the study:

"Recreational dredges are smaller and typically have intake lines of 2-6 inches in diameter. Despite the relatively small size of the dredges, streams that are popular with hobbyists may experience a more intensive mining disturbance than do larger rivers because of the concentrated

and repetitive nature of the mining in these areas." (Prussian, Royer & Minshall,1999)

"The sites presented here represent the best examples of concentrated mining activity we could find and should be considered "worst-case" scenarios because both streams receive considerable mining activity and have relatively well-defined downstream boundaries." (Prussian, Royer & Minshall,1999)

The conclusion of this part of the study was simple and to the point.

"Together with the results of other studies, we suggest that the impacts by small-scale dredging activity, (2 - 6 inch dredges), are primarily contained within mined areas and persist for about one month after the mining season." (Prussian, Royer & Minshall,1999)

5.) That the US EPA 1997 & 1998 suction dredge study also included areas were the common dredges were larger, with intake nozzles of 8" and 10" in diameter, and these observations were made.

"even though suction dredging is a very intense, local disturbance to benthic organisms. the biological and chemical effects of suction dredging do not appear to extend for more than a year." (Prussian, Royer & Minshall,1999)

"suction dredge mining clearly reduces macroinvertebrate densities, diversity, BOM, and periphyton immediately below dredge activity regardless of the background conditions, though these effects are local and short lived." (Prussian, Royer & Minshall,1999)

"The results from this sampling revealed a relatively intense, but localized, decline in water clarity during the time the dredge was operating." (Prussian, Royer & Minshall,1999)

"Recovery of macroinvertebrate diversity at Site 2a was nearly complete one year after dredging with approximately 20 taxa at each of the transects (Fig. 26). One year after dredging with a 10 inch dredge at Site 2a, macroinvertebrate density, richness, and number of EPT taxa also had recovered to pre-mining conditions" (Prussian, Royer & Minshall,1999)

"The sampling conducted in 1998 indicated substantial recovery at Site 1 from the dredging that occurred in 1997, in terms of macroinvertebrate diversity. Diversity was notably reduced downstream of the dredge in 1997 but in 1998 the difference in diversity among the four transects was minimal. For example, at the location 20 m downstream of the dredge macroinvertebrate diversity was approximately 6 taxa in 1997 but 17 taxa in 1998. A similar increase in the number of

taxa was observed at all Site 1 transects that were sampled in both 1997 and 1998. Macroinvertebrate density and the number of EPT taxa also increased after one year " (Prussian, Royer & Minshall,1999)

The above quote shows that macro invertibrates increased in type and numbers one year after dredging.

"After one year, chlorophyll-a concentrations and periphyton standing crop biomass in the mined area had returned to values near those from the unmined reference location, indicating that periphyton is unaffected by dredging the previous year at this location" (Prussian, Royer & Minshall,1999)

"Mean amounts of benthic organic matter (BOM) were greater within the mined area (10 g/m2) than within the reference area (6 g/m2) or the 50 and 100 m areas (7 g/m2 each) ." (Prussian, Royer & Minshall,1999)

Note that this report states there is an increase in BOM in an area suctioned dredged the year before, and that periphyton is unaffected by dredging the previous year.

"Values of dissolved mercury actually were greater upstream of the dredge, suggesting that any effect of the dredge was likely within the range of natural variation." (Prussian, Royer & Minshall,1999)

This quote states that there were no increases in measured mercury levels below the dredge sampled, even though there was visible mercury in the material being dredged.

These are some interesting scientific facts showing dredging has minimal impact on the environment, and that there are benefits to the ecosystem from dredging. This study was not done on the Klamath river, and results would vary, but there is no reason to assume that results of a study done on the Klamath river would significantly vary from the other scientific studies done to date. Actually, because the EPA study was done in Alaska, and the waterways mentioned by the petitioner's are located in California, recovery of the ecosystem from the minimal effects of suction dredging should be of a shorter time duration because the waters are warmer in California and aquatic macroinvertebrates would be more active in warmer water. These results are typical of past studies performed by the US Army Corps of Engineers and your own department, and various other unbiased scientific studies.

6.) The above facts make it clear that the proposed rules and regulations the petitioners are requesting are not of an emergency nature. The petitioners fail to link any scientific study proving harm to a protected specie, instead using misinformation and opinion to raise the notion of possible harm. CDF&G was aware of salmon in the Klamath river during the 1994 EIR, and yes it is possible that there may be some new scientific finding that would support changing suction dredging regulations, however, the petitioners have failed to provide any scientific evidence to support their claim of "take" or "harm" of a protected species by suction dredging to the Alameda Superior Court, to the Governor of

the State of California, and in this petition to your department. If the petitioners would have produced scientific evidence of a "taking" or "harm" of a protected species in the specific geographical areas listed, it would have created an emergency need for regulatory change in that area. Judge Sabraw or Governor Schwarzenegger would have had to agree to the regulation changes in order to follow the requirements of US EPA and CEPA regulations pertaining to protected species. The petitioners have tried to prove their case against dredging by using personal opinions that were not backed up with any scientific proof, and using information gathered from studies that were never performed with proper scientific method and/or were biased and/or performed by parties interested in a specific outcome. Since the petitioners have been trying to achieve these regulation changes since 2005, this is just a continuation of their agenda against suction dredging.

7.) The mention of suction dredging having a deleterious effect on fish by the petitioners, based on the quoted 1998 report offered as exhibit "C" because fish fry were observed in vacant mining holes and were trapped and would die, doesn't show a need for new regulations, rather it shows the need to enforce current regulations as mining holes above the active waterway are to be filled in to a natural contour after cessation of mining as required by the BLM and USFS on federal lands open to mineral entry. Those fish trapped because of a miner high banking who had a lack of disregard for current regulations does not make the suction dredging operations of law abiding miners deleterious to fish.

I for one find it interesting of the listed "conclusion" by the petitioners of this study, and question how the conclusion of more dredging regulations are needed to protect the frogs in question when they were found to be abundant in a river and stream that has had dredging occurring for more than thirty years. How is it possible that the yellow legged frogs have increased in numbers if dredging as regulated is having a deleterious effect on them?

8.) The issue of thermal refugia as being important to spawning salmon and salmon fry as a cold water holding area is not contended by me. However, once again, the petitioners fail to offer any scientific evidence that a suction dredge operating in a thermal refugia creates any "take" of or harm to a protected species. I would make the point that all the substantial scientific evidence and facts I listed in item 5 would show the opposite.

" In stream ecosystems, aquatic macroinvertebrates have become the primary assessment tool for resource managers" (see Barbour et al. 1996, Cairns and Pratt 1993).

" algal (periphyton) standing crop, and benthic organic matter (BOM) standing crop form the food base for stream herbivores and detritivores and are vital to the production and recovery of aquatic macroinvertebrates." (Prussian, Royer & Minshall,1999)

Even though dredging disturbs macroinvertebrates, periphyton and BOM, studies have shown that all recover to levels equal to or greater than their numbers were prior to the

area being dredged. This suggests more food for the salmon fry which hold in thermal refugias, and the fry would possibly benefit from suction dredging in those areas. The fact that a dredge does entrain macroinvertebrates is inarguable. However, the following study shows why that is a moot point.

" Those organisms that are entrained by the dredge will not necessarily be killed. For example, Griffith and Andrews (1981) examined >3,600 organisms and reported less than 1% mortality for macroinvertebrates entrained through a 3-inch suction dredge." (Prussian, Royer & Minshall,1999)

Suction dredges do not entrain fish. Not adult fish or fry. This is a fact of knowledge by every suction dredge operator, and hundreds of letters could be penned to back up that statement. I dare anyone to try and catch a fish with the nozzle of a running suction dredge located in an active river or stream. It can't be done. Dredgers don't harass fish. Adult salmon or salmon fry in a thermal refugia that had an operating suction dredge in it would swim around just like they always do. Nothing more, nothing less. The notion made stating that fish in thermal refugias are disturbed or bothered by suction dredging has no qualified scientific evidence to back up that opinion, and substantial current scientific evidence actually would lead one to conclude there are benefits from suction dredging.

9.) The issue of turbidity. I would dare the petitioners to take me to a place that the suction dredging makes the water unfit for swimming. The operators of those dredges are in that very water swimming. This is an absurd remark based on observation and stretched for an emotional response. Sensationalism at it's best without any fact or evidence to back up the claim. The level of turbidity a suction dredge creates does not exceed the natural range of turbidity variation in a given waterway. It is only pollution if the water or sediment that is disturbed annually by nature every year is polluted in that waterway. Dredging adds nothing to a river, it only takes heavy elements out of a river. As far as turbidity is concerned, how do the specie survive the range of natural turbidity variation if they are so sensitive to turbidity?

10.) The petitioners note in their petition that "*Although the proposed regulatory amendments may impose some potential costs to recreational miners, these costs would be minor in comparison to those already being born by the tribal, commercial and recreational fisheries and related economies.*".

The first point of error in this statement by the petitioners is the fact that all the other groups mentioned "take" salmoniods. There is no scientific evidence that suction dredging as currently regulated creates any "take" of any of the mentioned species in the petition. As a matter of fact, there is no proof that a suction dredge has ever killed a single fish!

The second point of error in this statement is that there "*may be some potential costs to recreational miners*". The petitioners are in error thinking that the

regulation changes will only affect recreational miners. All suction dredgers in the areas mentioned in the petition will be affected, regardless of whether or not they are professional or recreational. Also, the petitioners fail to mention the negative financial impacts that will affect businesses, both small and large, tax revenue to the State of California and the counties and municipalities in the areas mentioned, and less revenue to your own department because the petition seeks to close many waterways, therefore no suction dredging permit fees would be collected in those areas. I also believe that the petitioners have greatly underestimated how large those impacts will be.

The third point of error in this statement is that suction dredgers have a "statutory right" to remove the minerals off their mining claims. Your own departments regulations imposed on claim holders may not restrict to the point of preventing the extraction of minerals or those restrictions become a "taking of real property". Because the petitioners fail to prove there is a "taking" of a protected specie, their request to restrict seasons and close waterways, therefore preventing the extraction of minerals by regulation, will result in these changes being a "taking of real property" as has been upheld in court. The cost to the State of California to settle the numerous lawsuits that will result from the proposed regulation changes will be in the millions of dollars, and these will be dollars that the State of California will be unprepared to spend.

This is why I feel that the financial impact of the proposed changes has been extremely underestimated by the petitioners and the proposed regulatory changes will have an "extreme" negative impact on both private individuals and businesses and the local and state governments in question.

11.) The statements made by the petitioners about sections 402 & 404 of the Federal Clean Water Act are of no concern to your department. Enforcement of those regulations is not the responsibility of CDF&G and furthermore, CDF&G cannot issue 402 or 404 permits. Because the US EPA and the US Army Corps of Engineers have determined that suction dredging has only minimal impact on the environment, this issue is a moot point that has no influence with CDF&G suction dredging permit regulations.

Conclusion.

Based on the facts and substantial scientific evidence listed above, the petitioners have failed to prove a "taking" or harm of any of the protected species listed in their petition.

Furthermore, the petitioners have failed to provide any new evidence or scientific facts that were not presented to the Judicial branch of the State of California or the Executive

branch of the State of California, and the evidence presented was not sufficient for either branch to determine that the petitioners proved a case of "emergency". Both branches of government stated that the proposed rules and regulatory changes should not occur until an unbiased scientific study proves there is scientific evidence presented that would go against the legally established facts that are:

1.) There is no "taking" or harm caused to any protected species by suction dredging as currently regulated that is in violation of EPA or CEPA regulations.

2.) That the United States Environmental Protection Agency, The United States Army Corps of Engineers and the California Department of Fish and Game have determined through unbiased scientific study that suction dredging as currently regulated has a minimum impact on the environment, and is not deleterious to any protected species listed by the petitioners.

3.) That there is substantial evidence supporting the fact that suction dredging as currently regulated provides many environmental benefits that may in fact be beneficial to the species listed by the petitioners.

4.) That the petitioners have failed to recognize the extreme negative financial impacts the regulation changes would cause.

That the petitioners have failed to provide the substantial evidence necessary to form their conclusions per Title 14. California Code of Regulations, Chapter 3. Article 20. Section15384, within their petition. Therefore there is no need for your department to proceed with rule or regulation changes as per section 11340 of the Government Code, specifically with section 11346 in regards to an "emergency" situation, therefore you should deny their petition and notify the petitioners as required by Government Code.

Thank you for your time and effort in considering these comments.

Sincerely,

Mark Chestnut
PO Box 9169
Apache Junction, AZ. 85178
Literature cited.

1.) California Code of regulations

2.) Court documents from Karuks vs. CDF&G, Alameda Superior Court, May 6, 2005

3.) Governor's veto of AB 1032, October 13, 2007

4.) Prussian, Royer & Minshall, 1999. Impact of suction dredging on water quality, benthic habitat, and biota in the Fortymile River, Resurrection Creek and Chatanika River, Alaska. Prepared for US EPA.

5.) Barbour, M.T., J. Gerritsen, G.E. Griffith, R. Frydenborg, E. McCarron, J.S. White, and M.L. Bastian. 1996. A framework for biological criteria for Florida streams using benthic macroinvertebrates. Journal of the North American Benthological Society

6.) Cairns, J., Jr. and J.R. Pratt. 1993. A history of biological monitoring using benthic macroinvertebrates. Pages 10-27 in (D.M. Rosenberg and V.H. Resh, editors) Freshwater Biomonitoring and Benthic Macroinvertebrates, Chapman & Hall, New York.

Subject: Suction dredging
Date: Sunday, May 8, 2011 7:17:08 PM PT
From: Edward
To: dfgsuctiondredge@dfg.ca.gov

I am a life time resident of Yuba County.

I think that the harm to fish and fish habitat caused by suction dredging outweighs any benefit derived by a few gold miners. Let the gold miners work their claims the old fashioned way: by hand with their pans and sluices.

ET Ford

Subject: Gold Dredging
Date: Sunday, May 8, 2011 8:35:07 PM PT
From: RGendrich@aol.com
To: dfgwebcontent@dfg.ca.gov

Hello

Will there be recreational gold dredging permitted in California this year?

Ronald Gendrich

Jon B. Grunbaum
219 East Fork Indian Creek Road
PO Box 727
Happy Camp, CA., 96039
530.598.0404
jbgrunbaum@gmail.com

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

May 8, 2011

Subject: February 2011 California Department of Fish and Game suction dredge permitting program DSEIR and alternatives.

Dear, Sir

Please consider my comments as you refine the Final SEIR for the suction dredging permitting program.

In relation to fish populations, aquatic habitats, water quality, and the potential for deleterious effects to fish populations from suction dredging I have the following background. I am a Federal Fish Biologist who is intimately familiar with the Klamath system from Iron Gate dam to the Trinity River from over 17 years of working in these in watersheds and steams. For five years before that I was employed by a federal agency as a technical and field coordinator to conduct research on the effects of land use on aquatic habitats and fish populations. I have a BS and a MS in Fisheries Science. I am still employed as a Federal fisheries biologist , however, **the comments in this letter are my own opinions from over 20 years of field experience in streams where was dredging, or no dredging, was occurring.**

Comments and Recommendations on DFG 2011 Suction Dredge Permitting Program DSEIR

The comments and recommendations in this letter primarily concern the potential effects of the Department of Fish and Games' (DFG) DSEIR alternatives for the suction dredging permitting program on fish species that occur in the Klamath Basin that are listed under Federal and/or State Endangered Species Act (ESA-listed), that are a candidate for Federal ESA-listing, and/or that have been determined by one or more government agencies to be "at-risk" of becoming ESA-listed or going extinct. The sensitive runs of these fish species are generally considered "rare". The Klamath River fish species of particular concern regarding DFGs' suction dredging permitting program are: (1) Southern Oregon/Northern California coastal coho salmon which are listed as 'threatened" under State and Federal ESAs, (2) Upper Klamath/Trinity Rivers Chinook salmon which are "Candidate" for ESA-listing by the National Marine Fisheries Service (NMFS), is a Forest Service Species of Concern, and is a DFG Species of Special Concern - primarily due to reduced distribution and weakness of remaining stocks particularly the spring-run, (3) Klamath Mountains Province steelhead

trout which are a Forest Service Species of Concern and a DFG Species of Special Concern - primarily due to reduced distribution and weakness of remaining stocks particularly the summer-run, (4) the northern distinct population segment of green sturgeon which are a DFG Species of Special Concern, a NMFS Species of Concern, considered "vulnerable" by the American Fisheries Society, and considered "near threatened" by the International Union for the Conservation of Nature, and (5) Pacific lamprey which are a US Fish and Wildlife Species of Concern and considered vulnerable by the American Fisheries Society. All these species are in the Klamath streams at all times of year in various life history stages. These five fish species are of special economic and/or cultural importance in the Klamath Basin and/or regionally, and millions of dollars have been spent protecting and restoring salmonid habitat in Klamath watersheds. These comments and recommendations also concern the mollusks, crustaceans, and other aquatic animals and plants critical to maintaining water quality and the aquatic food web that can be adversely affected by suction dredging.

Below are my concerns on how DFGs suction dredging permitting program alternatives are likely to affect ESA-listed, candidate, and at-risk fish species in the Klamath System from Iron Gate Dam to the Trinity River, and recommendations on how the Reduced Intensity, the Water Quality, and Proposed alternatives could be modified to provide minimum protection so that suction dredging is not likely to significantly reduce the viability of ESA-listed, candidate, and at-fish fish species.

Comment: The preponderance of the best available science concerning the effects of suction dredging on salmonids (such as the compilations in: Effects of suction dredging in streams: a review and evaluation strategy by Harvey and Lisle, 1998; and Small-scale Mineral Prospecting White Paper by Washington Department of Fish and Wildlife, 2006, conclude that (1) local studies are needed for reliably assessing impacts to fish and (2) in the absence of availability of local studies fish managers should suspect adverse effects to fish.

Not enough is known about local effects of suction dredging on fish and other aquatic organisms in the Klamath System. In the Klamath Mountains there has been little research and monitoring studies on suction dredging effects in general and particularly in the last 20 years as controversy over suction dredging effects on declining salmonid species and other fish has intensified. DFG has not collected sufficient local monitoring and research data to be able to predict how suction dredging affects fish and other aquatic life in Klamath Mountain streams, and it is uncertain that DFG and other agencies will have sufficient future funding and personnel resources to research and monitor suction dredging activities before adverse effects could occur. The only study on the effects of suction dredging on salmonids in Klamath Mountain tributaries that has been conducted in the last 15 years (Harvey and Lisle, 1999) concluded that suction dredging can adversely affect the incubating eggs and alevins of coho and Chinook salmon (see comment below). For these reasons, the No Program would be the best alternative to protect fish and other aquatic organisms in the Klamath system and other California streams from suction dredging for which little research and monitoring data exists.

Comment: The DSEIR provides no scientific evidence in support of the claim that the requirement for dredgers to level all tailings piles will minimize the potential for fish to spawn on unstable substrate. Harvey & Lisle (1999) indicate that "where managers determine that unstable dredge tailings may lead to unacceptable effects on spawning success, these effects could be reduced or eliminated through regulations that require that tailings piles be redistributed to restore the original bed topography and particle size distribution". However, the permitting

alternatives do not require restoration of original particle size distribution as the best available science indicates is necessary to reduce unacceptable effects on spawning success, and is not possible in most situations. As such, the best available science suggests that this regulation may be insufficient to minimize adverse impacts and potential deleterious effects to ESA-listed, candidate, and at-risk fish species.

Comment: The Proposed alternative on page 14 states that "No person may suction dredge within three feet of the lateral edge of the current water level, including at the edge of instream gravel bars or under any overhanging banks". That statement needs clarifying – does the statement mean that (1) suction dredges must operate only within current stream water level no closer than three feet to the streams wetted edge or does the statement imply that (2) suction dredging could occur three feet beyond the streams current wetted edge? I support case (1) over case (2) because wetted edges and streambanks would be protected from suction dredging. Streambanks are already being eroded and degraded in "high-banking" mining operatons.

Comment: The DSEIR created a very high standard for dredging impact to be considered "deleterious effects" to fish and did not consider impacts to individual members of a population to be significant, unless the species was extremely rare. This definition is less protective than the Federal Endangered Species Act which prohibits the "take" of threatened or endangered species with more stringent protection of individuals and habitat: "Take may include significant habitat modification or degradation that actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering".

Comment: The DSEIR does not adequately substantiate the legislative history of the DSEIR definition of 'deleterious effect' to fish as: "one which manifests at the community or population level and persists for longer than one reproductive or migration cycle". **However**, assuming that the DSEIR definition is substantiated in the FSEIR, there are stream segments, such as the Klamath, Scott, and Salmon mainstems that have impaired water quality **and** ESA-listed, Candidate-listing ESA listing, and/or at-risk fish species, **but** little to no local research data to necessary to adequately assess effects of suction dredging. The DSEIR must consider cumulative effects and without local studies must assume that any additional disturbance from suction dredging in these impaired waters will adversely affect the viability of these rare fish species.

Comment: Watersheds that that the Forest Service has designated "Key" watersheds for the conservation and restoration of at-risk fish salmonid species under Federal Forest Plans should be closed to suction dredging. These waterbodies include the entire Salmon River including Wooley Creek; Dillon Creek, and Red Cap Creek, which were not included in the list of Class A streams in any of the alternatives. All of these Federally-designated Key watersheds should certainly be included in the list of Class A streams, however, to ensure protection of the viability of ESA-listed, candidate, and at-risk fish species, all stream segments that still provide habitat for these fish species should be considered refugia for the preservation and restoration of these species, and should be closed to suction dredging (Class A).

Comment: The DSEIR permitting alternatives should include suction dredging density limitations (in addition to the 500 foot distance stipulation in the DSEIR for thermal refugia in the Klamath

system) in open waters according to species-at-risk and existing condition in each stream. In the Klamath Region, dredge density in open waters should be limited for the following reasons:

- The preponderance of suction dredging research is agreement that as suction dredging density increases so do potential for deleterious effects on water quality, the aquatic and riparian environment, and aquatic species.
- As suction dredging density increases more and more roads and encampments have been established in stream buffers to access mining claims. Mining roads reduce shade to streams and increase stream temperatures by directly destroying riparian vegetation or retards temperature recovery by preventing trees from growing due to motorized vehicle use and compaction. In the Klamath Region, more roads are being constructed or reconstructed by miners often with no notification to agencies and/or the agencies have limited authority to prevent or have much control over the mining access.
- As suction dredging density increases so do conflicts with other recreationists such as hikers, campers, naturalists, photographers, and swimmers. Complaints about suction dredgers from other recreation users cite issues related to access barriers, intimidation, noise, aesthetics, level of development, degraded ecological conditions and safety hazards. Suction dredgers and their associated campsites may conflict with other recreation user's expectations and enjoyment of quiet settings and natural areas as a result of aesthetics, sanitation, noise, garbage and air pollution concerns.

Comment: DFG should consider the recommendations of the 2010 US Fish and Wildlife Services' *Pacific Lamprey Conservation Initiative Best Management Practices* when drafting suction dredge mining regulations because some of the Best Management Practices restrict dredging in lamprey habitat.

Comment: DFG fails to adequately describe how the use and number of dredges (density) affects the potential for aquatic invasive species to be introduced to the Klamath River system.

Comment: Evaluate risk to public created by dredging excavation pits. Dredging often leaves behind deep under water pits excavated by the dredge. Although the Proposed alternative requires dredgers to fill in pits, this rule will not likely completely address this concern. The material excavated from the pit often washes downstream and is therefore not available to put back in the pit.

THE FOLLOWING COMMENTS ARE ORDERED BY COUNTY AND THEN STREAM:

Humboldt County: Klamath River mainstem from Salmon River to Trinity River

Comment: The lower Klamath River from Ishi Pishi Falls (just upstream from the Salmon River) to the Pacific Ocean be added to the list of streams closed to suction dredging (Class A) in order to protect ESA-listed, candidate, and at-risk salmonids, and at-risk green sturgeon, from the disturbance and habitat alteration associated with suction dredging.

All year closure of the Klamath River from Ishi Pishi Falls to the mouth is recommended to eliminate risk of deleterious effects from suction dredging to ESA-listed, candidate, and at-risk fish

species. In the Klamath River mainstem, turbidity and disturbance from suction dredging is likely to have adverse impacts to ESA-listed, candidate, and at-risk salmonids due to the synergistic effects of these disturbances occurring during low-flows in a water quality impaired river system where salmonids are already adversely affected by excessively high water temperature, poor water quality, toxic algae, and high incidence of pathogens. Green sturgeon enter the Klamath system between late February and late July and spawn from March through July. Green sturgeon enter an embryo and larval stage after hatching and have no or very poor swimming ability during this developmental period which can last into September. Green sturgeon juveniles rear in freshwater for as long as 110 days before large-scale downstream migrations begin to overwinting areas. Green sturgeon juveniles are largely nocturnal in their first 10 months of life and generally remain concealed in the substrate during the day (Kynard 2005) when suction dredging would be occurring. Closure of the Klamath River mainstem will eliminate the risk of entrainment, entrapment, loss of cover, or other deleterious effects of suction dredging on juvenile green sturgeon. Closure of the Klamath River mainstem would also eliminate risk to lamprey, mollusks, crustaceans and other aquatic plants and animals critical for maintaining water quality and the aquatic food chain.

Short of closing the Klamath River below Ishi Pishi Falls to eliminate risk of suction dredging effects to ESA-listed, candidate, at-risk salmonids, and green sturgeon; a density limitation on the number of suction dredges allowed to operate in open sections of the Klamath River needs to be established in order to minimize potential for deleterious effects not just to fish species viability but on other multiple use values as well. Based on insufficient local monitoring data and research, it is arbitrary to suggest that any suction dredging would not have deleterious effects on ESA-listed, candidate, and at-risk fish species in the water quality impaired Klamath River mainstem. However, suction dredging effects that could deleteriously affect the viability of these fish species would likely be negligible if the density and distribution of suction dredging in the Reduced Intensity, the Water Quality, and the Proposed alternatives is restricted to no more than two suction dredge operations per mile in open sections of the Klamath River mainstem that provide habitat for ESA-listed coho salmon and/or at-risk runs of spring Chinook salmon and/or summer steelhead trout. Limiting the density of dredges would also provide some protection for lamprey, mollusks, crustaceans, and other aquatic animals and plants critical for maintaining water quality and the aquatic food chain.

Humboldt County - Klamath River tributaries from the Salmon River to the Trinity River:

Comment: To eliminate risk of deleterious effects to ESA-listed, candidate, and/or at-risk salmonid populations from the disturbance and habitat alteration associated with suction dredging in Klamath River tributaries, all Klamath River tributaries and tributaries to Klamath River tributaries that provide habitat for ESA-listed coho salmon and/or at-risk populations of salmonids, specifically spring-run Chinook and summer-run steelhead should be closed to suction dredging.

I applaud the Class A designation of the Klamath River tributaries listed on page 27 of the Proposed Alternative because these streams protect important habitat for ESA-listed, candidate, and at-risk salmonid species, however, two additional tributaries, **Slate and Red Cap Creeks**, are just as important for the conservation and restoration of ESA-listed coho salmon and at-risk summer steelhead but are not included on the list of proposed Class A streams. To provide minimum protection for the viability of these fish species, the Reduced Intensity and the Water Quality and the

Proposed alternatives should include **Slate and Red Cap Creeks** in the list of Class A streams in Humboldt County. In addition, all streams that support ESA-listed coho salmon and/or at-risk spring- and summer-runs of Chinook and steelhead that are tributaries to these Class A Klamath River tributaries also be designated Class A.

Siskiyou County - Klamath River from Iron Gate Dam to Salmon River near Ishi Pishi Falls:

Comment: The Klamath River from Iron Gate Dam to Ishi Pishi Falls (just upstream from the Salmon River) should be added to the list of streams closed to suction dredging (Class A) in order to protect ESA-listed, candidate, and at-risk salmonids from the disturbance and habitat alteration associated with suction dredging.

All year closure of the Klamath River from Iron Gate Dam to Ishi Pishi Falls is recommended to eliminate risk of deleterious effects from suction dredging to ESA-listed, candidate, and at-risk salmonid species. In the Klamath River mainstem, any increase in turbidity and disturbance from suction dredging is likely to have adverse impacts to listed and at-risk salmonids due to the synergistic effects of these disturbances occurring during low-flows in a water quality impaired river segments where salmonids are already adversely affected by excessively high water temperature, poor water quality, toxic algae, and high incidence of pathogens. Closure of the Klamath River mainstem would also eliminate risk to lamprey, mollusks, and other aquatic plants and animals critical for maintaining water quality and the aquatic food chain.

Short of closing the Klamath River from Iron Gate Dam to Ishi Pishi Falls to eliminate risk of suction dredging effects to ESA-listed, candidate, and at-risk salmonids, a density limitation on the number of suction dredges allowed to operate in open sections of the lower Klamath River is needed in order to provide minimum protection to protect viability of ESA-listed, candidate, and at-risk fish species from the deleterious effects of suction dredging. Based on insufficient local monitoring data and research, it is arbitrary to suggest that any suction dredging would not have deleterious effects on ESA-listed, candidate, and at-risk fish species in the water quality impaired Klamath River mainstem. However, suction dredging effects that could deleteriously affect the viability of these fish species would likely be negligible if the density and distribution of suction dredging in the Reduced Intensity, the Water Quality, and the Proposed alternatives is restricted to no more than two suction dredge operations per mile in open sections of the Klamath River mainstem that provide habitat for ESA-listed coho salmon and/or at-risk runs of spring Chinook salmon and summer steelhead trout. Limiting the density of dredges would also provide some protection for lamprey, mollusks, crustaceans, and other aquatic animals and plants critical for maintaining water quality and the aquatic food chain.

Siskiyou County - Klamath River tributaries from the Iron Gate Dam to Salmon River

Comment: To eliminate risk of deleterious effects to the viability of ESA-listed, candidate, and/or at-risk salmonid populations from the disturbance and habitat alteration associated with suction dredging in Klamath River tributaries, all Klamath River tributaries and tributaries to Klamath River tributaries that provide habitat for the most vulnerable runs of

ESA-listed, candidate, and/or at-risk populations of salmonids (specifically coho salmon, spring-run Chinook and summer-run steelhead trout) be closed to suction dredging.

I applaud the Class A designation of the Klamath River tributaries listed on page 59-60 of the Proposed Alternative because these tributaries protect important habitat for ESA-listed, candidate, and at-risk salmonid species. However, 13 additional tributaries (**Beaver, Cade, China, Dillon, Fort Goff, Little Grider, Little Horse, King, Portuguese, Stanshaw, Titus, Ukonom, and Walker Creeks)** are just as important for the conservation and restoration of one or more of the ESA-listed, candidate, and at-risk salmonid species but are not included on the list of proposed Class A streams. To provide minimum protection so that the viability of ESA-listed coho salmon, candidate, and at-fish fish species would likely be negligibly affected by suction dredging , the 13 Klamath River tributaries listed above should be included in the list of Class A streams in Siskiyou County. In addition, all streams that support ESA-listed coho salmon and/or at-risk spring- and summer-runs of Chinook and steelhead that are tributaries to Class A Klamath River tributaries should also be designated Class A.

<u>Siskiyou County – Klamath River Thermal Refugia from Iron Gate Dam to Ishi Pishi Falls:</u>

Comment: There should be larger in-stream buffers around specific Klamath River thermal refugia in order to provide full benefit to ESA-listed, candidate, and at-risk salmonid species, and to be consistent with the Klamath River TMDL Action Plan and Basin Plan Amendment - September 2010.

1. Some of the thermal refugia associated with Klamath River tributaries require larger downstream buffers than the (effective) 500 feet in the Proposed alternative because cold water plumes from these tributaries persist further than 500 feet downstream in the Klamath River thereby providing useable areas of thermal refugia for 1500 feet or more downstream from these tributary confluences. The Reduced Intensity, the Water Quality and the Proposed alternatives should be modified to provide 1500 foot in-stream buffers downstream from the following tributaries to provide adequate protection for Klamath River thermal refugia and to be consistent with the Klamath River TMDL Action Plan and Basin Plan Amendment-September 2010: **Aubrey, Beaver, Clear, Dillon, Elk, Grider, Horse, Indian, Rock, Swillup, Thompson, Ukonom.**
2. Some of the thermal refugia associated with Klamath River tributaries require larger buffers in the tributary streams upstream from their confluence with the Klamath River than the 500 feet in the Proposed alternative because ESA-listed, candidate, and/or at-risk salmonid species can swim further than 500 feet up these cool tributaries to utilize cool water for thermal refugia. The Reduced Intensity, the Water Quality and the Proposed alternatives should provide 3000 foot in-stream buffers in tributaries upstream from the mouths of the following tributaries to provide adequate protection for ESA-listed, candidate, and/or at-risk fish species, and to be consistent with the Klamath River TMDL Action Plan and Basin Plan Amendment -September 2010: **Aubrey, Beaver[2], Clear[1], Dillon[2], Elk[1], Empire, Fort Goff[2], Grider[1], Horse[1], Indian[1], King, Little Horse, Little Humbug, Mill, Nantucket, O'Neil, Portuguese, Reynolds, Rock, Sandy Bar, Seiad[1], Stanshaw, Swillup, Thompson[1], Ti, and Titus.**

   [(1)] = these streams are Class A under the proposed regulation so would be closed to dredging anyhow;

[(2)] = These streams are recommended to be designated Class A in a previous comment..

Siskiyou County - Salmon River Mainstem and Tributaries:

Comment: In order to eliminate potential deleterious effects of suction dredging on ESA-listed, candidate, and at-risk salmonid species and green sturgeon, the KNF recommends closure (Class A) of the Salmon River and all tributaries to the Salmon River that provide habitat for ESA-listed coho salmon and the most vulnerable runs of at-risk salmonid species - spring Chinook and summer steelhead, and that provide habitat for green sturgeon.

The Salmon River including all subbasins is designated a Forest Service "Key" watershed for protection and restoration of ESA-listed and at-risk fish species. Turbidity and disturbance from suction dredging in the Salmon River is likely to have adverse impacts to ESA-listed, candidate, and at-risk salmonids due to the synergistic effects of these disturbances occurring during summer low-flows in an impaired river system where salmonids are already adversely affected by excessively high water temperature in summer. To provide full protection for ESA-listed, candidate, and at-risk salmonid species the closure (Class A) of all segments of the Salmon River and tributaries to the Salmon River that provide habitat for ESA-listed coho salmon or at-risk spring Chinook salmon or summer steelhead trout is recommended. The Salmon River closure would also protect green sturgeon that spawn and rear in the lower mainstem Salmon River from Freight Train Rapid to the mouth. Green sturgeons enter the lower Salmon mainstem between late February and late July and spawn from March through July. Green sturgeon enter an embryo and larval stage after hatching and have no or very poor swimming ability during this developmental period which can last into September. Green sturgeon juveniles rear in freshwater for as long as 110 days before large-scale downstream migrations begin to overwinting areas. Green sturgeon juveniles are largely nocturnal in their first 10 months of life and generally remain concealed in the substrate during the day (Kynard 2005) when suction dredging would be occurring. Closure of the Salmon River mainstem would eliminate the risk of entrainment, entrapment, loss of cover, or other deleterious effects of suction dredging on juvenile green sturgeon.

Short of closing Salmon River streams known to provide habitat for ESA-listed, candidate, at-risk salmonids and green sturgeon, there needs to be a density limitation on the number of suction dredges allowed to operate in open sections of the Salmon River mainstem and the North and South forks in order to provide minimum protection for the viability of ESA-listed, candidate, and/or at-risk salmonids, and/or green sturgeon. Based on insufficient local monitoring data and research to date it is arbitrary to suggest that any suction dredging would not have deleterious effects on ESA-listed and at-risk fish species in the water quality impaired Salmon River mainstem and North and South Forks of the Salmon. However, limiting the density and distribution of suction dredging in the Reduced Intensity, the Water Quality, and the Proposed alternatives to (1) no more than one suction dredge operation per mile in the Salmon River mainstem and in the North and South Forks of the Salmon River and (2) to close all other tributaries that provide habitat for ESA-listed coho salmon and/or at-risk runs of spring Chinook salmon and summer steelhead trout would not be likely to have significant deleterious effects on the viability of these fish species. Limiting the density of dredges would also provide some protection for lamprey, mollusks, crustaceans and other aquatic animals and plants critical for maintaining water quality and the aquatic food chain.

Siskiyou County - Salmon River Thermal Refugia:

Comment: Short of closing all Salmon River streams known to provide habitat for ESA-listed, candidate, and at-risk salmonids and green sturgeon, the Reduced Intensity, the Water Quality, and the Proposed alternatives should include the following Salmon River tributaries in the list of Special Closures for Thermal Refugia in the Salmon River Watershed because these are some of the most important thermal refugia in the Salmon River watershed:

Crapo Creek, and Wooley Creek.

Siskiyou County - Scott River Mainstem and Tributaries

Comment: In order to protect ESA-listed and at-risk salmonid species from the disturbance and habitat alteration associated with suction dredging, the Scott River and all tributaries to the Scott River that provide habitat for ESA-listed coho salmon and/or the most vulnerable runs of at-risk salmonid species should be closed to suction dredging (Class A).

Turbidity and disturbance from suction dredging in the mainstem Scott River is likely to have adverse impacts to the viability of ESA-listed and at-risk salmonid species due to the synergistic effects of these disturbances occurring during summer in a water quality impaired river system where salmonid species are already adversely affected by excessively high water temperature, excessively low flows, and poor water quality. To provide minimum protection from suction dredging for ESA-listed and at-risk salmonid species all segments of the Scott River and tributaries to the Scott River that provide known habitat for ESA-listed coho salmon and at-risk summer steelhead should be closed to suction dredging (Class A).

Short of closing Scott River mainstem and tributaries known to provide habitat for ESA-listed coho salmon and/or summer steelhead trout, a density limitation on the number of suction dredges allowed to operate in open sections of the Scott River mainstem is needed to protect the viability of these fish species. Based on insufficient local monitoring data and research to date it is arbitrary to suggest that any suction dredging would not have deleterious effects on ESA-listed and at-risk fish species in the severely water quality impaired Scott River mainstem. However, limiting the density and distribution of suction dredging in the Reduced Intensity, the Water Quality, and the Proposed alternative to (1) no more than one suction dredge operation per mile on the mainstem Scott River and (2) including **Etna, Kelsey, Kidder, and Mill (near Scott Bar) Creeks in** the list of Class A streams for Siskiyou County, would not be likely to significantly affect these species' viability. Limiting the density and distribution of suction dredging would also provide some protection for lamprey, mollusks, crustaceans, and other aquatic animals and plants critical for maintaining water quality and the aquatic food chain in the Scott River.

Siskiyou County - Scott River Thermal Refugia:

Comment: Short of closing all Scott River mainstem and tributary stream segments known to provide habitat for ESA-listed coho salmon and/or summer steelhead trout, the Reduced Intensity, the Water Quality, and the Proposed alternatives should include Special Closures for Thermal Refugia in the Scott River Watershed. This would entail designating a 200 foot

radius closure centered on the confluences of the following Scott River tributaries known to provide thermal refugia:

Canyon, Etna, French, Kelsey, Kidder, Mill, Shackleford, and Thompkins.

SUMMARY

It is my opinion that the No Program Alternative is the best alternative to protect ESA-listed, candidate, and at-risk fish species because there would be no additional risk to the viability of these rare fish species or their habitat from suction dredging. The Reduced Intensity Alternative will likely reduce suction dredging intensity in the Klamath River and tributaries but it is unclear whether that alternative would prevent a concentration of dredges on the Klamath River that could adversely affect the viability of ESA-listed, candidate, and at-risk fish species. The Proposed Alternative and the other permitting alternatives are unlikely to adequately protect the viability of ESA-listed, candidate, and at-risk salmonid species in the Klamath system due to excessive disturbance and habitat alteration in impaired waters, in designated fish refugias, and in critical habitat for ESA-listed coho salmon. The No Program alternative would best enable DFG and other resource management agencies to meet their mandates' and the publics' expectations to maintain species viability. The Reduced Intensity, the Water Quality, and the Proposed alternatives, ***with the modifications recommended in this letter***, would not be likely to significantly affect the viability of ESA-listed, candidate, and at-risk salmonids, green sturgeon, and Pacific lamprey. The 1994 Regulation Alternative is not likely to maintain viability of ESA-listed, candidate, and at-risk fish species nor could be the alternative be modified to provide enough protection from deleterious suction dredging effects to maintain the species viability of ESA-listed, candidate, and at-risk fish species in the Klamath River system.

Subject: (no subject)

Date: Sunday, May 8, 2011 10:32:26 AM PT

From: Hilldye@aol.com

To: dfgsuctiondredge@dfg.ca.gov

I truly belive that dredging should be outlawed.
It runs the beauty of of our river's and creek bed's. It endanger's our local fish and there spawing area's.
People can pan just as easy for reconal recreation only.
Of all the miner's I have ran accrossed they only care about the money gold will bring them, should they find any at all, and go through any means of destruction to get it, they have no regards to the restrictions placed on mining only the greed in there eyes .I honestly belive we should try to preserve the natural beauty of our rivers and creeks for the generations to come, so our grandchildren and so on can sees the wonders of wild life that lives in the rivers and creeks, not the ugly mess left behind by miners who care less about the fish and relentless beauty that our generations to come can see-OUTLAW DREDGING IN ALL WATERS AND CREEKS IN THE STATE OF CALIFORNIA<LET US NOW THINKS ABOUT THE FUTURE FOR OUR GRANDCHILDREN AND THERES TO COME.

Subject: unfair dredge regulations.
Date: Sunday, May 8, 2011 11:38:16 PM PT
From: Mr Dennis lee Hinckley
To: dfgsuctiondredge@dfg.ca.gov

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 dredgeminers
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 3/16th inch or 15/64th 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 dredgeminer
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.

And in the future please add to your regulations you will refund my dredge permit fees if you cancel the permit during dredge season, as you stole my $184.00 last time.

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

Dennis Hinckley
737 Fernwood drive

Subject: DREDGING HURTING SALMON AND STEELHEAD FISHERIES
Date: Sunday, May 8, 2011 9:08:10 PM PT
From: jim katz
To: dfgsuctiondredge@dfg.ca.gov

To whom it may concern,

This dredging deal is the result of a lawsuit from american indians in northern Calif. regarding water and their fisheries.
This has nothing to do with dredging for gold.
And the vast majority of places where gold is dredged, the salmon and steelhead are prevented from reaching there do to dams on rivers.
The dams are the real reason our fisheries have gone to hell. To counter this Calif Fish And Game had 170 salmon and steelhead hatcheries from 1870 until 1960.
AT THIS TIME WE ONLY HAVE 8 SALMON AND STEELHEAD HATCHERIES. !!
Does it take a more than a first grader to subtract 8 hatcheries from 170 hatcheries to give us a total of 162 hatcheries that we no longer have to propagate the steelhead and salmon fisheries?

Our university studies show that when the high water flows over our dams it takes away all the loose gravel and sand , and washes it way down stream leaving only river rock for these fish to try and spawn in. The gold dredging brings up more gravel and sand for these fish to spawn in. And this year they have been importing gravel to the down stream side of Englebright dam for this cause, to have a gravel habitat for the fish to spawn in at great cost.

This whole lawsuit against dredging and declaring it hurts the steelhead and salmon fisheries is a farce .

I also include below the letter from fish and game regarding the info about the hatchery history.

It is obvious that to regain our fisheries we need to open back up the 168 hatcheries we closed and..... have other countries that benifit from our fisheries such as Japan, pay into and support our hatchery programs.
Also, dredging has pulled tons and tons of mercury out of the streams left by our ancestors. Putting a bounty on mercury would increase the amount of mercury being collected I am sure. They said there was only 2000 dredging permits. That is hardly anything to compared to the population of California of over 37 million people as of 2010 census. get real.....
Jim:

Your email was forwarded to me for response.

Due to the height of most dams constructed for flood control, irrigation, and hydroelectric development on major rivers in California, fish ways or ladders were not included as part of the project. Exceptions included Van Arsdale Dam on the upper Eel River, and smaller dams constructed for irrigation diversions such as Woodbridge Dam on the Mokelumne River and the Red Bluff Diversion dam on the Sacramento River. In some but not all cases, mitigation for lost habitat was provided through the construction of fish hatcheries. Presently, there are eight anadromous fish hatcheries operating in California and a complete list with locations can be found at:

http://www.dfg.ca.gov/fish/Hatcheries/HatList.asp

Historically, egg taking was a more common practice and from 1870 to 1960, 170 trout and salmon hatcheries and egg collecting stations were constructed and operated in California.

Natural spawning of anadromous fish does occur in the limited area downstream from most dams and the lack of recruitment of spawning gravel below dams is an issue. In some instances, habitat improvement projects have been instigated to enhance the limited spawning areas downstream from major dams. Also, there has been recent interest in providing access for anadromous fish to upper river reaches, however, problems such as upstream dams and providing downstream migration for juvenile fish remains an issue.

Regarding heavy metals, there has also been concern for the released of mercury left in the rivers that were mined and where mercury was used as part of the extraction process. US Geological Survey scientists have done some investigation in this area and provided insight into several ways mercury moved through the environment. You may want to check their website for any public documents or research for additional information.

I hope this information is helpful.

Dennis P. Lee,
Retired Annuitant - Supervising Biologist (retired)
California Department of Fish and Game
Nimbus Salmon and Steelhead Hatchery
2001 Nimbus Road, Rancho Cordova, C

sincerely , Jim katz

Subject: Suction Dredge DSEIR comments

Date: Tuesday, May 10, 2011 4:57:48 AM PT

From: Ken & Debbie McMaster

To: Mark Stopher

KEN MCMASTER
MAY 9, 2011

COMMENTS TO BE INCLUDED IN THE 2011 CDFG DSEIR PROPOSED SUCTION DREDGE REGULATIONS

Please accept and include these comments for official record for the proposed California Department of Fish and Game DSEIR for the proposed suction dredge regulations.

The Executive summary and the overall DSEIR is lacking in its seriousness and data regarding the impacts on mining that these proposed regulations will have on people and the state of California. On page ES-10, line 24, Areas of Known Controversy, mining rights is listed as an issue of greatest concern, yet little is written about this issue.

In the DSEIR, under 4.10, Mineral Resources, at page 9, the DFG states that "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 apply only to suction dredging miners." This statement is blatantly false!

The deprivation of a truly economic method of mineral extraction is fundamentally at the heart of the issue for most miners! The DSEIR attempts to portray miners as merely seeking to comply with federal and state mining regulations. I for one am not a recreational miner! These proposed regulations puts most people into that "hobby miner" designation by limiting their opportunity to use dredges of a reasonable size that would permit economical extraction of minerals from their mining claims.

Implementation of the proposed program **will** affect the ability of placer miners. "**Other'** techniques might not be allowed or "**other"** techniques may not be economically feasible. And most importantly, "**other**" techniques may not be effectively or economically feasible to mine the mineral deposits contained within the active river channel. Miners do need to comply with applicable federal and state mining regulations, but that is not the only reason for ownership of a mining claim. The truest sense for owning a mining claim is not to not only comply with applicable regulations, it is to extract mineral wealth from a valuable mineral deposit.

I have two placer mining claims within the Trinity Alps Wilderness of Northern California, located on the North Fork Trinity River. This river is proposed in the DSEIR to be classed Zone A, closed at all times. On these mining claims, I have had Valid Existing Rights (VER) examinations performed by the U.S. Forest Service and I have successfully passed each one. Each VER was conducted using a suction dredge.

In the VER for the RMH #1 mining claim, performed in 1988, the report summarized the following, on page 7, Mining Method and Economic Evaluation, "**The only reasonable mining method available for working the alluvial gravels within the active river channel in the RMH #1 PMC would be the use of a small suction dredge, with an intake no larger than 6 inches. This is the mining method being employed by the claimants, where a 5-inch suction dredge was being operated. This mining method appears to be economically viable, based on the sampling results and an economic analysis.**" (emphasis added). This F.S. analysis is a clear repudiation of the analysis by the DSEIR regarding the affects on mineral resources.

By not being allowed to dredge on this mining claim, located in a wilderness, I will not be authorized to use "other mining techniques" to comply with federal regulations. Digging the earth by shovel will not pass the prudent man concept, will not pass a marketability test or the many other thresholds that the federal laws mandate. Certainly, using a shovel or other hand methods will enable me to "hold" my mineral rights and qualify for annual assessment work, but that is not what I want to do.

And according to many conversations with the U.S. Forest Service, I would not be authorized to use heavy equipment either, because of no road access, limits to air transport and cost analysis of such. You see, in order to maintain a valid existing right, in a wilderness area, a mining claimant must continue to have a valuable mineral deposit. If the DFG removes the opportunity to mine such a deposit, then my valuable mineral deposit will not be accessible to me.

According to the 1994 VER report by the U.S. Forest Service for the Upper North Fork Mining Claim (and Surface Use Report for the Upper N.F. , RHM #1 and Grizzly Group Mining Claims), at page 9, "The size of the present operation is not likely to increase beyond using a 5 inch dredge due to the stream size and water depth. **There is no likelihood of expanded mechanized operations in the stream due to physical, environmental and legal constraints."** (emphasis added). Furthermore, on page 11 of the same document, it concludes, "Based on the results of the field examination, one suction dredge sample taken by the claimant, and the claimants production records, it appears that the alluvial gravel in the active stream channel of the North Fork Trinity River within the limits of the Upper North Fork PMC can be currently mined profitably and could have been mined profitably in 1984."

So, I have had approved plans of operations with the U.S. Forest Service. I have had two mining claims located on the N.F. Trinity River verified to be valid and have pre-existing, valid existing rights. I have the experts for the Forest Service

stating that their agency will not allow mechanized equipment operations due to "constraints", due to being in a wilderness area. The Forest Service also states that the only reasonable way to mine the mineral deposit in an economic fashion is with a 5" suction dredge.

And yet, the DFG has the audacity to state that the Proposed Program would not affect the ability of placer miners using other techniques to comply with federal regulations. This is erroneous information, non-factual data inserted into this DSEIR. Using other techniques beyond what I have used will not be authorized and using less than what I have used, i.e., primitive hand tools, is uneconomical. The DFG's contention that other mining techniques will not affect the ability of placer miners is preposterous!

It is not only erroneous information, it is misleading. The Mining Law of 1872 grants mining claimants of valid claims the right to mine the mineral deposits...the river channel and the rest of the mineral deposit! I and other miners are not out there in the woods for just recreational purposes, but rather to actually mine valuable mineral deposits, valuable mineral deposits that the DFG is proposing to take from us without just compensation.

Several resources, besides the U.S. Forest Service's approval of my mining technique and plan of operations show that I have federal rights above and beyond the DFG's proposed regulations. The Environmental Statement for the Trinity Alps Wilderness, at page 18, at Minerals, states, "The opportunity to prospect for minerals would last through December 31, 1983. If minerals were found (i.e., valid existing rights verified through a VER), they could be developed and removed in accordance with existing regulations developed by the Secretary of Agriculture." The Wilderness Act of 1964 itself provides for the use of my N.F. Trinity River mining claims, "Mining locations lying within the boundaries of said wilderness **shall** be held and used solely for mining processing operations and uses reasonably incident thereto...." The Wilderness Act only allows for mining operations, not recreational pursuits to find a few colors of gold via a gold pan or hand sluice box!

The current suction dredge regulations that close streams to mining are a law that regulates suction dredge mining a and the current DSEIR proposes to regulate mining too. By closing a stream to suction dredge mining, these laws violate the Wilderness Act of 1964. At 4(d)(3) of the Act, "Subject to valid existing rights then existing, effective January, 1984, the minerals in lands designated by this Act as wilderness areas are withdrawn from <u>all</u> forms of appropriation under the mining laws..." The DFG is appropriating my mineral rights and the Wilderness Act forbids such.

Any mining claimant who can demonstrate that they possess a valuable mineral deposit, regardless of whether it is in a wilderness or not, has the legal right to mine that deposit in an economic fashion. Any claimant who has a claim that is classed as Zone A may not have the ability or the type of deposit that would allow for "other mining techniques". This analysis in the DSEIR must be changed to reflect this important information.

Another important issue, one that again is specific to me is that of designating the N. F. Trinity River, Zone A, closed at all times. It is not based on the best available data. The following will clearly show why the N.F. Trinity River in particular, the areas that encompass my mining claims noted above, must not be classed Zone A, but should at a minimum be classed Zone F, if not Zone C.

In 1994 the DFG regulations determined that the N.F. Trinity river was to be Class A, closed at all times. The reason they gave in the FEIR for those regulations was that it, "may be closed to suction dredging due to the federal wilderness designation boundary beginning at Hobo Gulch. Check with the USFS for details." Well, I checked with the F.S. and they did not have the same opinion, as they had approved my use of a suction dredge within the wilderness. As a matter of fact, the 1994 DFG regulations made the N.F. Trinity River, the only stream in the entire state of CA closed by a determination that had no fish-related reason for its closure. If you will look at the 1994 regulations, at "Appendix J, Reasons for Stream, Lake and River Closures", you will see that what I say is true.

In 1994 the DFG did not have any regulatory authority to close a wilderness to mining and does not have that authority today, only Congress does. **The DFG mandate by the 5653 Code only authorizes them to close a river <u>if</u> they determine that operations <u>will</u> be deleterious to fish.** Just being within a wilderness is not deleterious to fish. The DFG clearly overstepped their legal authority in 1994 by closing this river. I have had to pay the consequences ever since.

So, to dredge on the N.F. Trinity, I had to apply for special suction dredge permits and the DFG conducted onsite inspections. I passed the inspections and received the permits. Since then, the DFG has eliminated special suction dredge permits.Today, the DFG again proposes to close this river. Their reasoning... Coho salmon!

This is in spite of the fact that their onsite inspections, conducted by Bernard Aguilar, found, "We have reviewed your special suction dredge permit application and determined that dredging in your claim areas on the N.F. Trinity River and Grizzley Cr. <u>will not be</u> deleterious to fish, if all dredging is limited to the July 1 through Sept. 15 time period that you specified in your permit for this year. During that period, we have determined that no salmonid eggs or fry should be in the stream gravels so it is not necessary to locate those areas for avoidance in an inspection."

WOW...the current proposed regulations say the same thing, "the Department finds that suction dredging subject to and consistent with requirements of Sections 228 and 228.5 **<u>will not be deleterious to fish</u>**. And, I want to clarify something very important here... the DFG code states that the dept. <u>shall</u> allow dredging if it finds that the activity will <u>not</u> be deleterious to fish... not that it might be or have the "potential" to. The mandate of the Code is being interjected with what ifs, not actualities! What the Code forbids, the DFG may not allow!

In Table 2-1 of the proposed regulations, possibly one of the most important violations of all suction dredge miners rights is formatted. Here it states, **<u>"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 closed to dredging (i.e., Class A)."</u>** Well, the DFG Code at 5653 does not allow for this, thus the DFG is violating the provisions of the 5653 Code. The Code specifically states, "If the department determines, pursuant to the regulations adopted pursuant to Section 5653.9, that the operation **<u>will</u>** **<u>not</u>** be deleterious to fish, it **shall** issue a permit to the applicant." (Fish & G. Code, § 5653, subd. (b).) This <u>mandate</u> of the DFG

Code does not state if there is "potential", it states that if the operation "will not be deleterious to fish, it **shall** issue a permit to the applicant."

The DFG in their findings at Table 2-1 are in violation of the unambiguous language of the DFG 5653 Code... "that the operation "**will not"** be deleterious to fish, it **shall** issue a permit to the applicant." By mandating stream and river closures because of "potential" to result in a deleterious effect to fish is a direct violation of the legislative mandate! There are no maybe's, might be, could be or potential in the 5653 Code, it is unambiguous in that it **"will not"** and **"shall".** The DFG has wrongfully premised river closures in violation of the CDFG 5653 Code and that is not acceptable!

And, why is it that the N.F. Trinity River is closed **again** when your own "experts" deem that my dredging will not be deleterious to fish, the mandated reason, according to the DFG code, for determining open or closed waters? Especially since I am the only person who operates or owns unpatented mining claims within this wilderness. The DFG has improperly closed this river, contrary to federal law and now contrary to their own biologists advice. THE N.F. TRINITY RIVER MUST NOT BE CLOSED AND MUST BE OPENED SO THAT I CAN MINE MY CLAIMS.

In 2002, I filed an administrative appeal with the DFG regarding the denial of my application for a special suction dredge permit. My appeal was denied. But in that appeal, the DFG reasoned that, " Any regulation adopted by the Department that is in conflict with subdivision (d) is invalid and ineffective." Using the DFG's own reasoning and logic, then their proposed regulations to close rivers based upon a "potential" to result in a deleterious effect to fish is contrary to the law, thus is invalid and ineffective.

Another DFG response from this same appeal stated, "In addition, such regulations are invalid or ineffective if they conflict with or are inconsistent with the statute that authorizes the regulations (Government Code, section 11342.2). Lastly, the language, rather that the intent, of Section 5653 is controlling. (Maricopa-Stanfield Irrigation and Drainage Dist. v. U.S., 158 F.3d 428, 435-436 (9th Cir. 1998). (courts look "first to the plain language of the statute, construing the provisions of the entire law, including its object and policy, to ascertain the intent of [the legislature])."

Well, the plain language of the Code does not provide for "potential" effects; the Code is quite specific in that it must not be deleterious to fish! This same denial letter also states, "In any case, dredging may be permitted only where "the operation will not be deleterious to fish." I do not see the word "potential" in the Code. Further, the denial spells this out with even more clarity, "It is important to note the limiting nature of the language of the statute. Simply put, suction dredging is prohibited, except in those specific cases where: 1) the Department has identified open waters or open seasons, and 2) the Department makes affirmative findings that the activity will not be deleterious to fish." The DFG cannot identify open or closed waters or seasons based upon potential, but rather they must make affirmative findings that the operation will be deleterious to fish!

The proposed regulations do not meet the mandate of the 5653 Code and are in direct conflict with the administrative decision by the Director of the DFG! The DFG has not conducted adequate research to classify areas as Class A, waters closed at all times. The action they have taken is not specific to each area, but rather quoting the rationale for designating Class A areas, "There is a broad range of data that provide information on species distribution in the state. The quality and accuracy of these data resources vary. In all cases, CDFG has attempted to use the best available data on species California Department of Fish and Game Program Description Suction Dredge Permitting Program Draft Subsequent Environmental Impact Report distribution. However, because of the broad spatial 1 extent of the Proposed Program, it was not feasible to incorporate all data resources specific to each action species. Thus, the draft proposed amendments to the existing regulations often reflect broad understanding of a species distribution within the state. In many cases, modifications to the species' use classification or known distributions were applied based on regional knowledge of the species status and life history characteristic. In all cases these modifications were based on the "potential" for suction dredging activities to be deleterious to Fish species."

DFG cannot apply these broad principles, the 5653 does not allow it. The DFG has applied gross mismanagement in these proposed regulations. DFG decisions violate the rights of legitimate miners and violates the mandate of the DFG Code imposed upon them by the State of California legislature. The DFG has violated my rights by closing the N.F. Trinity River "due to wilderness designation." They continue to violate my rights with their proposed regulations. They propose to violate many others rights too! This mismanagement must end... I for one, will continue to protect my rights!!!

TABLE 2-1. SUCTION DREDGE USE CLASSIFICATIONS ASSIGNED TO *FISH* ACTION SPECIES

Use Classification Open Dates

A No dredging permitted at any time
B Open to dredging from July 1 through August 31
C Open to dredging from June 1 through September 30
D Open to dredging from July 1 through January 31
E Open to dredging from September 1 through January 31

In general, use classifications were assigned to each species to protect critical life stages (e.g., spawning, incubation, early emergence/development) (See Chapter 4.3, Table 4.3-1). **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). The use classes assigned to each of the *Fish* action species were then applied to streams within the species range or known distribution. There is a broad range of data that provide

information on species distribution in the state. The quality and accuracy of these data resources vary. In all cases, CDFG has attempted to use the best available data on species distribution. However, because of the broad spatial 1 extent of the Proposed Program, it was not feasible to incorporate all data resources specific to each action species. Thus, the draft proposed amendments to the existing regulations often reflect broad understanding of a species distribution within the state. In many cases, modifications to the species' use classification or known distributions were applied based on regional knowledge of the species status and life history characteristic. **In all cases these modifications were based on the <u>potential</u> for suction dredging activities to be deleterious to *Fish* species.** Modifications to the generic use classifications or spatial data used for each species are described in Chapter 4.3, Table 4.3-1 or Appendix L.

Subject: Comments on proposed Draft Regulations for Suction Dredging
Date: Sunday, May 8, 2011 3:38:12 PM PT
From: Walt Wegner
To: MStopher@dfg.ca.gov
CC: dfgsuctiondredge@dfg.ca.gov

To: Mark Stopher
California Dept. Of Fish and Game
601 Locust St.
Redding Ca 96001

From: Walt Wegner
23501 Burbank Bl.
Woodland Hills Ca 91367

Mr. Stopher,
I will start by saying that I am deeply disappointed with the proposed draft regulations! As a member of the PAC committee I was expecting a non-biased, "Fair and Balanced" Scientifically sound piece of work. I am embarrassed for you and the state of California! It is evident to me that this was a politically motivated study and it is my opinion that you see the extreme environmentalist as more politically powerful than small scale miners. I don't know how else you could have drafted such a vague one sided study.

Regulate: To control, direct, or govern according to a rule, principle or system. To adjust to a particular standard, rate, degree, amount etc.

Prohibit: To refuse to permit; forbid by law or by an order. To prevent; hinder.

You are proposing by my count 524 rivers or streams class ''A" No dredging at any time. This is not regulation! This is Prohibition! Read above definitions. Me as a miner understand that some waterways should not be dredged at certain times of the year due to spawning and we are self-regulated out of the water due to weather and water conditions. That is reasonable. Class A waterways are not regulated! They are prohibited! I suggest you remove class A from the draft and regulate these waterways reasonably! All other class rivers between A and H are partial prohibitions that deny me my rights to my private property granted to me under Federal Law and unless they are reasonable I will have no choice but to litigate against the State.

In table 4.3-1 from start to end. Your general rationale for proposed regulations are never more conclusive than "could result in a deleterious effect, has the potential to be degraded by suction dredging; entrainment of organisms could occur". Monkeys COULD fly out of my ass, my ass has the POTENTIAL for monkeys to fly out of it, entrainment of monkeys in my ass COULD occur. What kind of scientific study is this? You can't come to a conclusion because you have NEVER studied the effects of suction dredging in California! If you did you would have had to admit to the positive effects Dredging has. I have not read anywhere in your report on the POTENTIAL positive effects of suction dredging! Don't you think that a legitimate scientific study would look at all the effects rather than the possible negative effects? HELLO? This did not occur to you? Also, why was Joseph Greens effects on scale and Claudia Wises Selenium and its effect on mercury not included in your findings? They were presented to you at the PAC meetings. It leads me to believe those studies did not fall within you political mandate!

Who are the only ones for years removing heavy metals from the waterways for FREE at no cost to the State? SUCTION DREDGERS! Your friends at the Sierra Fund, which I see you have used many times in your study got caught with their pants down at the PAC meeting when they were exposed for possibly getting a grant of 9 million dollars from the tax payers of this country to do what? Dredge Combie reservoir to remove mercury? And these people are telling us we kill fish? The hypocrisy here is un – parallel on earth! There are so many restrictions in your proposed regulations that a citizen of this country with Federally granted rights could not profitably mine his claim if his deposit has water on top of it. It's my opinion that that is the whole motive of your proposed regulations.

My suggestion for you is to start from the 1994 regs. and open up more rivers to reduce the effect on the total river system.
Dredge permits should have have no limit on the numbers issued. The State needs the money.
Winching must be allowed. This is a safety issue!
Also The effect suction dredging has on the rivers could not have the same effect that occurs naturally every year could not even come close in 1,000 years and you know it!

Sincerely,
Walt Wegner

May 9, 2011

Mr. Mark Stopher
California Dept of Fish and Game
601 Locust St.
Redding, CA 96001

Dear Sir,

We would like to strongly urge you to refuse to allow suction dredging on our rivers to resume.

Suction dredging has significant negative impacts on our river bottoms, the clarity of the water, fish and other water creatures.

In addition suction dredging makes it unpleasant if not impossible for other people to use our rivers for recreational purposes.

Please do not allow suction dredging to resume. To do so would be to benefit a few people to the detriment of the rivers, their inhabitants, and all those apart from the dredgers who would like to enjoy the rivers.

Thank you.

Sincerely,

Jim Ames
Joy Ames

Jim and Joy Ames
P.O. Box 487
Oregon House, CA 95962

Jim Aubert & family
1009 East Robinson St.
Carson City NV 89701

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

dfgsuctiondredge@dfg.ca.gov
09 May 2011

RE: Comments SEIR and Proposed Regulations for suction dredge mining in California in Favor of Maintaining Current 1994 Regulations.

Dear Sir: My comments and summation are as follows:

TITLE 14. NATURAL RESOURCES

Section 228 and 228.5. Suction Dredging

PROPOSED AMENDMENTS TO REGULATIONS

Permits Requiring an On-site Inspection.

Where an on-site inspection is required, a permit, or amended permit, is not valid until the permittee has contacted the appropriate Department Regional Office to arrange an inspection, the inspection has been completed and the Department has provided written approval of the proposed suction dredging.

MY COMMENT:

DFG does not have the funding or qualified personnel to carry out such inspections. Thus, on-site inspections would never take place in a punctual or timely matter. Practicality mandates until such time as DFG has the funding and qualified personnel to punctually carry out such proposed inspections. This proposed regulation will enforce an unlawful ban on an otherwise legal activity for months if not years at a time.

Number of Permits.

The Department shall issue a maximum of 4,000 permits annually, on a first-come, first-serve basis.

MY COMMENT:

No factual evidence exists that supports such a limitation on the number of permits issued. Furthermore, assuming this proposed limitation is meant as a "mitigation measure".

CEQA PRC 15126.4 (4) Mitigation measures must be consistent with all applicable constitutional requirements.

Such a limitation would cause a compensable "taking" of private property rights without due process of law to anyone denied a permit under this proposed regulation.

"A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws…". (Cal. Const., art 1, § 7. (a)) "Private property may be taken or damaged for public use only when just compensation ... has first been paid to, or into court for, the owner." (Cal. Const., art. I, § 19.)

"A permit becomes a vested property right where the permittee has incurred substantial liabilities and performed substantial work in reliance on the permit"; Goat Hill Tavern v. City of Costa Mesa (1992) 6 Cal.App.4th 1519; Hansen Bros. Enterprises v. Board of Supervisors of Nevada County (1996) 12 Cal.4th 533 ("Hansen").)

There are about 24,000 active mining claims of record in California. Any one of which could apply for a suction dredge permit. A 4000 permit annual limitation would unlawfully deny as many as 20,000 mining claim owners the ability to put their property to it's only beneficial use. Which would in the majority of case clearly constitute a compensable "taking" of private property. This proposed regulation invites litigation.

Equipment Requirements.

No suction dredge having an intake nozzle with an inside diameter larger than four inches may be used.

MY COMMENT:

The need for this proposed regulation is not supported by any substantial evidence such a restriction would be beneficial. The equipment requirements should remain the same as the 1994 regulations unless DFG can provide unbiased peer reviewed substantial evidence supporting this proposed regulation. A large body of authoritative peer reviewed scientific studies of well regulated suction dredging gold mining with dredge orifices under six inches, individual, or cumulative effects are so minimal, negligible, fleeting that they are De Minimis, meaning unworthy of serious legal consideration, or consequence.

Pump Intake Screening.

The intake for the suction dredge pump shall be covered with screening mesh. Screen mesh openings shall not exceed 3/32 inch (2.38 mm) for woven wire or perforated plate screens, or 0.0689 inch (1.75 mm) for profile wire screens, with a minimum 27% open area.

MY COMMENT:

There is no substantial evidence that small scale suction dredge intakes have ever entrained or harmed a single fish.

This proposed regulation would make suction dredging impractical. As such a small screen could immediately clog the moment the pump was started. There are thousands of "jet" type propelled boats licensed to operate in California waterways. All of which suck water into an intake and expel it under pressure in another direction for propulsion.

There is no requirement those water "intakes" be covered with any type or size screen. As screening the intake would make jet type water propulsion impractical, if not impossible. As the screen could and most likely would clog almost instantly, the moment the pump was engaged. The same holds true for suction dredge intakes.

Restrictions on Methods of Operation.

Motorized winching or the use of other motorized equipment to move boulders, logs, or other objects is prohibited.

MY COMMENT:

Working in and underwater suction dredging involves moving cobbles and boulders to access gold bearing gravels under them. Often times those cobble or boulders are larger and heavier than a person, or persons can move unassisted. In many cases not being able to use a winch would prohibit a mining claim owner from reaching and

mining the most profitable gold bearing gravel deposits he owns.

Furthermore, working with cobbles and boulders underwater is often very dangerous. Winches are nearly the only means to minimize the danger of boulders slipping, moving and pinning a dredger underwater crushing and/or drowning him. To prohibit the use of a safety device like a winch will surely cause unnecessary injury and/or death to dredge operators without them.

Restrictions on Methods of Operation.

No person may suction dredge within three feet of the lateral edge of the current water level, including at the edge of instream gravel bars or under any overhanging banks.

MY COMMENT:

Low water events are generally the most enjoyable, practical, safest and profitable time to dredge for numerous reasons. Usually the best grades of gold bearing stream gravel are readily exposed, water depths are shallow, there is minimal current and stream turbidity.

Obviously steams are subject to wide variations in water levels caused by such things a snow melt, spring run off, flooding, rain storms, hot weather & no rain or draught. It is common throughout California that many streams exceed 20, 30 or 40 feet in width during high water events. During low water events those same streams often are no more than 6 or 8 feet wide. Almost all suction dredges are at least 4 feet wide or far wider.

To prohibit suction dredging within 3 feet of a streams edge or gravel bars would prohibit all suction dredging in streams less than 12 or 15 feet wide during low water events. This proposed regulation would likely prohibit all suction dredging on as many as 50% of all placer mining claims in California. Such a prohibition would effect an immediate "taking" of valuable private property contrary to CEQA PRC 15126.4 (4), Cal. Const., art 1, § 7. (a) & art. I, § 19.

Restrictions on Methods of Operation.

No fuel, lubricants or chemicals may be stored within 100 feet of the current water

level.

MY COMMENT:

This proposed regulation is blatantly impractical and would cause undue and unnecessary hardship on all suction dredge operators. Tens of millions of motor vehicles all carrying a store of lubricants and fuels are allowed to park within 100 feet of waterways throughout California. There are tens of thousands of boats all carrying a store of lubricants and fuel moored actually floating in California waterways. Moreover, given the value of fuel and lubricants today, such a regulation would arbitrarily subject it to theft.

Moreover, California Fish and Game Code Section 5650 provides; (a) Except as provided in subdivision (b), it is unlawful to deposit in, permit to pass into, or place where it can pass into the waters of this state any of the following: (6) Any substance or material deleterious to fish, plant life, mammals, or bird life.

Certainly, fuel, lubricants and chemicals fall into his category. Thus, this proposed regulation is redundant and uncalled for.

Suction Dredge Special Regulations.

The Suction Dredge Use Classifications (Section (a), above) apply for each of the rivers or streams in each of the counties listed below.

MY COMMENT:

Without going through the voluminous list line by line. This proposed regulation would make numerous waterways **not designated as Class A:** "No dredging permitted at anytime" in the 1994 regulations as Class A "No dredging permitted at anytime"

DFG provides no substantial evidence in support of those proposed closures. As such they are arbitrary capricious and not in accordance with applicable law. Moreover, Any waterway where dredge type mining claims are situated open under the 1994 regulations closed by these proposed regulations would arbitrarily effect a willful "taking" of private property without notice and/or due process of law contrary to CEQA PRC 15126.4 (4), Cal. Const., art 1, § 7. (a) & art. I, § 19.

That whole CEQA body of law, regulation, and agenda is based on the fundamental

legal premise, that a person, or entity having made an application for a permit, certainly has knowledge, and constructive notice of the process, as the applicant, or applicants themselves initiated it. In this instance that fact is irrefutably not true.

No advance "Notice" of any kind was given, sent or delivered to the potential thousands of mining claim owners (all a matter of public record & easily discernable) this proposed regulation will absolutely have a disastrous economic impact upon by arbitrarily "taking" their lawful right to mine their individual or particular mining claims with a suction dredge devise. Which in the vast majority of instances is the only viable practical economic means of mining their property, or properties.

For instance, I and my family both directly and indirectly own numerous placer mining claims that this proposed regulation would prohibit all suction dredging on. Each of which is on a waterway containing gold bearing gravels. Where the only economically practical method of recovering that gold is by suction dredging.

This proposed regulatory prohibition on all suction dredging on those particular mining claims would unlawfully "take" without due process of law every single beneficial use and attribute of ownership we have in them. Making the ¼ million dollar value of these particular mining claims utterly worthless. Irrefutably, that is a severe economic impact on us, as it would be to the thousands of other mining claim owners similarly situated.

Generally, "economic impacts" need not be included within a "CEQA" study. As economic impacts are not potential, or actual physical changes to the environment. Here however, when permanent closures of given area's of very large magnitude are utilized to "mitigate" or "avoid" significant effects to the environment attributed to suction dredging, economic impact is relevant to measure the significance of an environmental impact.

Here as well as throughout this CEQA process DFG and Horizon arbitrarily and intentionally abused their regulatory discretion. In this instance by refusing to calculate or include this devastating "economic impact" to all those that will certainly be affected by this proposed regulation anywhere in this CEQA process.

Abuse of discretion is shown if (1) the agency has not proceeded in a manner required by law, or (2) the determination is not supported by substantial evidence. When the informational requirements of CEQA are not complied with, an agency has failed to proceed in "a manner required by law" and has therefore abused its discretion. Furthermore, when an agency fails to proceed as required by CEQA, harmless error

analysis is inapplicable.

The failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decision making and informed public participation. Case law is clear that, in such cases, the error is prejudicial

(See State Water Resources Control Bd. Cases, 136 Cal.App.4th 674, 723; see also County of Amador v. El Dorado County Water Agency (1999) 76 Cal.App.4th 931, 945–946 [91 Cal.Rptr.2d 66].)

The exercise of discretionary powers for environmental protection shall be consistent with express or implied limitations provided by other laws. Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21000, 21001, 21002, 21002.1, and 21004, Public Resources Code; Section 4, Chapter 1438, Statutes of 1982; Golden Gate Bridge, etc., District v. Muzzi, (1978) 83 Cal. App. 3d 707; E.D.F. v. Mathews, 410 F. Supp. 366, 339 (D.D.C., 1976); Friends of Mammoth v. Board of Supervisors, (1972) 8 Cal. 3d 247; Pinewood Investors v. City of Oxnard, (1982) 133 Cal. App. 3d 1030.

A trial court reviews an administrative CEQA action pursuant to Code of Civil Procedure section 1085 to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires. (Lewin v. St. Joseph Hospital of Orange (1978) 82 Cal.App.3d 368, 387.)

The Department's determination is driven by the legal requirements of the Administrative Procedure Act ("APA") (Gov. Code,

§ 11340 et seq.). Here, those legal requirements have obviously not been met.

The U.S. Supreme Court has unequivocally determined valid "unpatented mining claims" are private property, subject to Constitutional protection from "taking", without compensation. Clearly if this proposed regulation is passed into law. I, as well as thousands of other similarly situated mining claim owners affected by the uncompensated "taking" this regulatory closure will enforce. Will file claims for compensation pursuant to CA Government Code Section 910-913.2.

http://www.vcgcb.ca.gov/claims/howtofile.aspx

http://www.vcgcb.ca.gov/docs/forms/claims/GCClaimForm.pdf

If those claims for just compensation are denied by the State. I and without doubt the vast majority of others similarly situated will bring suit in a court of competent jurisdiction to recover compensation, damages, interest, costs and fees. Without doubt the liability to the State of California will run into the tens of millions of dollars. Without doubt, because the facts that prove a compensable "taking" of private property has occurred here are irrefutable, we will prevail.

In summation:

It is painfully obvious to those involved in this CEQA process that are knowledgeable about the De Minimis effects of suction dredging. DFG is attempting to arbitrarily add more stringent regulation, not because they are needed. As they clearly have no substantial basis in science or fact. But rather DFG proposed their regulatory changes attempting to justify the job uninformed California politicians arbitrarily mandated they do.

While DFG took great pains to comply with the procedural requirements of APA. DFG and Horizon also took great pains to arbitrarily ignore and exclude all the authoritative peer reviewed scientific studies by federal government and State agencies, credible institutions that plainly prove the individual, or cumulative effects of small scale suction dredge gold mining are so minimal, negligible and fleeting that they are De Minimis, meaning unworthy of serious legal consideration, or consequence.

Strikingly, there is no reference or mention throughout this CEQA process of the well documented beneficial effects small scale suction dredging has in waterways. Take particular note neither DFG nor Horizon performed one single test with an actual suction dredge anywhere in the state of California during this mandated CEQA study. DFG using the poor excuse they did not have adequate funds to do so.

When in fact a very large number of mining claim owners openly offered their mining claim premises, suction dredges, time, labor, fuel and materials at no cost to DFG to perform verifiable unbiased testing of suction dredging effects throughout California. DGF arbitrarily ignored all offers to assist them at no cost to the State. .

Instead DFG choose to pick and choose from pre-existing studies and reports in a discriminatory manner utilizing speculative conclusions in the most derogatory way possible towards the effects of suction dredging. As an example, DFG chose to utilize results from mercury tests dispersion performed in an area commonly known to be the most contaminated mercury hot spot in the whole State. Then DFG went on to utilize those clearly biased results as if every waterway in California suffered the same type mercury contamination. That alone is an egregious abuse of discretion.

The reality of that is this whole CEQA process is nothing more than a glorified rehash of the same data the 1994 regulations were based on. The only difference being the outcome is much different than what DGF determined in 1994. How is that is possible, when basically no significant new data is involved and nothing else has changed. The answer is that the California Legislature in passing SB 670 mandated changes be made. DGF is paid to do that job, just as DFG paid Horizon over $1 million dollars to do the same job. That job was to make regulatory changes, needed or not.

Without proposing suction dredging regulatory changes, both the California Legislature and DFG would appear as fools if none were proposed. Which would stand as a clear admission and proof those who sponsored SB 670, as well as those who voted for its passage were all hoodwinked into passing bogus legislation. Then compounding their error by budgeting, approving and expending $1.5 million dollars of taxpayers money to carry it out. To drive that very point home, SB 670 banned all use of suction dredges statewide in California as an “urgency” measure until “new“ regulations are implemented.

An “urgency” measure is the equivalent to an “emergency” measure. Everything throughout this CEQA study and even the proposed new regulation clearly evidence no such “urgency” or “emergency” of any type ever existed. A finding of emergency based only upon expediency, convenience, best interest, general public need, or speculation, is not adequate to demonstrate the existence of an emergency. *(CEQA* § 11346.1, subd. (b)(2).) To make a finding of emergency, the agency must describe the specific facts supported by substantial evidence that demonstrate the existence of an emergency and the need for immediate adoption of the proposed regulation.

Thus, all those mining claim owners deprived of income derived from suction dredge gold mining statewide, as well as over $60 million dollars of other annual economic loss in California directly attributable to SB 670 was all for naught, clearly a fools-folly.

To clearly demonstrate DFG’s discriminatory actions and bias here towards suction

dredging. Ponder much to-do is made by DFG of “possible” harm to various species. Using the mountain yellow-legged frog as an example. In the Sierra Nevada, mountain yellow-legged frogs have disappeared from nearly all known low elevation sites on the west slope (4500-9000feet), and are extremely rare east of the Sierra crest and are increasingly uncommon in the most remote alpine habitats along the west side of the Sierra Crest (10,000-12,000 feet).

In the Sierra Nevada, mountain yellow-legged frogs have disappeared from nearly all known low elevation sites on the west slope (4500-9000feet), and are extremely rare east of the Sierra crest and are increasingly uncommon in the most remote alpine habitats along the west side of the Sierra Crest (10,000-12,000 feet).

In addition, most remaining mountain yellow-legged frog populations are located in Sequoia, Kings Canyon, and Yosemite National Parks and are very rare in national forests and wilderness areas. “Mountain yellow-legged frogs are adapted to high elevations without aquatic predators. Widespread stocking of non-native trout in high elevation Sierra Lakes by the Dept of Fish and Game has been the Primary cause of the decline for the species.“ (Vrendenberg et al 2007, and Knapp and Matthews 2000a).

Furthermore, suction dredge gold mining is utterly prohibited in the Sequoia, Kings Canyon, or Yosemite National Parks The mountain yellow-legged frog is not listed as an endangered species. Yet DFG audaciously and arbitrarily acts as if it were. Moreover, DFG regulation allows all other waterway users, swimmers, kayakers, boaters, fishermen, hunters, hikers and campers to trample on, over and through yellow-legged frog habitat without restriction. There are millions in those user categories and less than 4000 suction dredgers statewide. You be the judge of who could do more harm to yellow-legged frog. It certainly is not the few who might suction dredge there.

Ponder this plain fact. There is only one single suction dredge per 31,250 square acres in California. Or about one suction dredge potentially operating per 70 miles of waterway statewide. Certainly, some area’s are prone to higher suction dredge concentrations, than others. Never the less, suction dredging is sporadic, seasonal, performed weather permitting, widely dispersed, and the effects are so fleeting, it is extremely difficult, and often impossible to identify suction dredge sites the following year.

The 1994 EIR noted many positive effects of suction dredge mining (MER51.) It concluded that adoption of the 1994 California regulations "will reduce . . . effects to the environment to less than significant levels and no deleterious effects on fish" (*id*. at 57).

Yet now in 2011 DFG arbitrarily takes the stance suction dredgers are akin to monstrous Mongol like hordes of environmental polluters who annually descend on waterways throughout California, wantonly spewing mercury, poisons, petrochemicals, destroying steams, and unabashedly polluting everything for miles around them. While also harming, injuring and killing every possible species of animal, fish, flora and fauna around them.

The difference between the stance of DFG in 1994 as compared to today in this CEQA study and resulting proposed regulations is preposterous.

The arbitrary discrimination and malfeasance by DFG throughout this purported CEQA process will certainly cause significant harm, injury, damage, depravation or numerous uncompensated "takings" of private property owned by mining claimants and suction dredgers in California. DFG plainly ignores all applicable law regarding mining claim owners private property rights, vested water rights, vested permit rights and the fact we are decent people trying to make a living on what we invested so heavily in. Doing so is plainly unlawful.

Plainly, ownership of a valid unpatented placer mining claim grants only the exclusive right to extract the valuable mineral therein. Suction dredging in the vast majority of cases is the only practical economically viable means to do that. Prohibiting such use renders all affected unpatented placer claims in California valueless.

I for one will certainly sue the State of California for just compensation for the unconstitutional "taking" of my private property. Especially so in the instance where suction dredging is totally prohibited by a Class "A" designation, which did not exist in the 1994 regulations.

Sincerely, Jim Aubert

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In ordinary English, a "claim " is merely a demand for something, or an assertion of a
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right where the right has not been established. The phrase "mining claim" therefore probably connotes to most laymen an unsupported assertion or demand from which no legal rights can be inferred. But that is emphatically not so. In law, the word "claim" in connection with the phrase "mining claim" represents a federally recognized right in real property. 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. Benson Mining & Smelting Co. v. Alta Mining & Smelting Co., 145 U.S.428 (1892)

Valid placer mining claims situated over California waterways grant the owners “vested” riparian water rights. The riparian owner is subject to the doctrine of reasonable use, which limits all rights to the use of water to, that quantity reasonably required for beneficial use and prohibits waste or unreasonable use or unreasonable methods of use or diversion. (See; Sec. 3, Art. XIV, Const. of Cal.; Peabody v. City of Vallejo, 2 Cal. 2d 351, 40 Pac. 2d 486; Tulare Irr. Dist. et al v. Lindsay Strathmore Irr. Dist., 3 Cal. 2d 489, 45 Pac. 2d 972; Rancho Santa Marqarita v. Vail, 11 Cal. 2d 501, 81 P. 2d 533).

This private property right entitles the owner to "the right to extract all minerals from the claim without paying royalties to the United States." (See; Swanson v. Babbitt, 3 F.3d 1348, 1350 (9th Cir. 1990).

The rights that accrue to owners of valid unpatented mining claims on public lands filed pursuant to the 1872 Mining Law, including the right of possession and enjoyment of both the surface and the subsurface, are rights that are enforceable against both third parties and the United States

. *Bixler* v. *Oro Management, LLC.* 2004 WY 29, ~ 17, 86 P.3d 843, 849 (Wyo.2004)

Vested rights are fully protected from “taking” by the government under the fifth amendment to the Constitution. See Solicitor’s Opinion M-36910 (Supp.), 88 Interior Dec. 909, 912 (Oct 5, 1981); Wyoming v. United States, 255 U.S. 489, 501-02 (1921); Appeal of Eklutna, 83 Interior Dec. 619 (Dec. 10, 1976).

Even though title to the fee estate remains in the United States, these unpatented mining claims are themselves property protected by the Fifth Amendment against uncompensated takings. See Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963); cf. Forbes v. Gracey, 94 U.S. 762, 766 (1876); U.S.C.A.Const. Amend. 5; North American Transportation & Trading Co. v. U.S., 1918, 53 Ct.Cl. 424, affirmed 40 S.Ct. 518, 253 U.S. 330; United States v. Locke, 471 U.S. 84, 107, 105 S.Ct. 1785,

1799, 85 L.Ed. 2d 64 (1985); Freese v. United States, 639 F.2d 754, 757, 226 Ct.Cl. 252, cert. denied, 454 U.S. 827, 102 S.Ct. 119, 70 L.Ed. 2d 103 (1981); Rybachek v. United States, 23 Cl.Ct. 222

State regulations are permissible on federal lands only to the extent they are not inconsistent with or in conflict with the United States

. *Brubaker* v. *Board of County Comm 'rs, El Paso County,* 652 P.2d 1050, 1058 (Colo. 1982). However, not all state regulation of mining claims is permissible, and state laws prohibiting activities authorized under federal mining laws are not permissible. *South Dakota Mining Ass 'n* v. *Lawrence County,* 977 F.Supp 1396, 1403 (D.S.D. 1997). State laws that impose reasonable requirements upon the use of federal lands are permissible when directed at environmental concerns; however, the state may not deny the federal use. *See, Id* "The federal Government has authorized a specific use of federal lands, and [the state] cannot prohibit that use, either temporarily or permanently, in an attempt to substitute its judgment for that of Congress."

Subject: To Mark Stopher/ No regulations on dredging

Date: Monday, May 9, 2011 5:28:57 PM PT

From: Scott Baker

To: dfgsuctiondredge@dfg.ca.gov

Allowing larger-sized nozzles after site inspection: If a dredger wants to operate a dredge having a larger nozzle than 12 inches it is allowed under a statewide permitting scheme, the Department should allow the activity.

Unlimted permits

No regulations at all!

Subject: notified too late to come!!!!!
Date: Monday, May 9, 2011 11:33:41 PM PT
From: tdb@linkline.com
To: dfgsuctiondredge@dfg.ca.gov

Dear Sirs,

Today I learned the public input period had been extended and another meeting scheduled for tomorrow in Sacramento. I do not understand how the DFG expects to get public (dredgers) input when they do not give adequate notification. A friend in Sac saw the mtg in the paper and called me or I would not of known as I live in So Cal and according to your website a week or two ago the comment period was over so I was not checking anymore. You had my email address from the email below which I sent so it would be easy notify me in time to adjust schedule and attend. Same thing with the yellow mailers arriving only days before your "public" mtgs. Does not look good if you are really "trying" to hear from everyone.

That said, I would like to add two things to the below letter which I sent two weeks ago:

1. There are no salmon in any of the rivers or tributaries in or near our claim area, which is what seems to have instigated the path to this moratorium, and subsequent wide ranging proposed restrictions.

2. Liquid mercury is the source of the methyl mercury which is blamed on historical mining. Modern dredging slowly but surely removes the free liquid mercury from the rivers. The conversion from liquid to methyl is taking place in the river at all times regardless of dredging. Better to keep removing the source. Scattered dredging disturbs a tiny fraction of sediments yearly compared to the many repeated natural and man made scouring of the complete length of river bottoms in high waters.

With all due respect, here are my comments regarding your draft and the study behind it.

First of all, I support many of the recommendations including requiring improved fuel storage, riparian respect,

4.10.4 implies that since there are other methods of recovering gold are still available to miners,therefore there is no impact to them. This defies BLM "prudent man and marketability" guideline which is supports the spirit of the 1872 mining law. Dredging is by far the most prudent and only feasible way to mine for gold in a river which is at this point a constitutional right. There is no comparison.IT IS LIKE REQUIRING FISHERMEN TO CATCH SALMON WITH BARE HANDS, POSSIBLE BUT HIGHLY IMPRACTICAL.This moratorium is an un constitutional take.

duplicate of comment 042911_ Bracken

Yellow legged frogs according to the info, is most probably impacted to the greatest extent by the other man made forces such as resavoir releases and Agra cultural poisons. The relatively tiny square yard disturbance by miners is miniscule compared to the massive area the former affects. There is also no proof there are any of these frogs there at this time.

Class E season is too short to be practical. To recreational dredgers who may want to work a week or two on vacation may be fine with this but any one who is trying to be prudent and profitable in their right to mine is ruined by this time constraint, not only is it too short, the water will be at its lowest point by sept 1, cutting available dredging area by half. At least 10 per cent of this size season would be spent in set up and break down removal of equipment. Hardly "no impact" to the miner or the economy.

I do not believe dredging has any measurable impact on a stream bed as compared to even one average sized spring flood. The report under emphasises this fact. If you were to look at the main stem Yuba river at the moment I am writing this letter you would see the river bottom being scoured by deep snow melt flooding. Standing Beside it today I can hear and see Massive boulders rolling and know that the majority of the gut is being disturbed and moved. Your comparisons and data comparing the affect of scattered dredgers to the baseline seasons selected are presumptive, circumstantial, and flawed. The amount of mercury being stirred up right now is immeasurable compared to the impact of dredging, and these floods occur many times a year. The base lines for the comparisons are arbitrary and flawed.

I object to being notified of the public meetings by mail only days before they were to happen.

Thanks for your consideration,
Todd Bracken
1827 Lincoln Blvd
Venice Ca 90291
3107760491

duplicate of comment 042911_ Bracken

Subject: (none)
Date: Monday, May 9, 2011 5:38:58 PM PT
From: pedro cichowitz
To: dfgsuctiondredge@dfg.ca.gov

Hi Mr Mark Stopher,
On to the EIR - there are a few things that bother me about this new EIR :
1. We should be able to prospect more than just 6 spots per year. When I go, I check at least 6 spots on the river before I spent energy and time before I dig. Do you hunt for deer, or other wild game. Who only checks 6 spots to hunt for wild game? If so and that is the only way to get food then you would die of hunger. If I have to say where and when I will be then that may lead for thief of my personal belongs at my house.
2. Why put a cap on the limit of permits. I live in florida and now you have just lost tourist dollars if I cannot get a permit. How many others are you going to stop to come to Cali and spent their money on gas, food, lodging....etc?
3. Only allowed to dredge to 3 feet of the bank? Why? mother nature performs more damge during floods to the river banks than any human can perfom. What if the waterway is only three feet. Than we cannot go there? How about making all cars that get less than 25 miles per gallon illegal? Then on one can have a truck or SUV.
4. Dredging does not cause any extra pollution that mother nature does already cause during major floods. Dose mother nature clean up the solid mercury and lead, from nature and prospecting performed 100 years ago in the river? Dredges also allow more fish food in the stream bed to exposed. Rivers that allow dredging actually has better fish populations due to the more food supply. It may damage if performed during spawning and I am not in favor of that.

Thank You for your time,
Pedro Cichowitz
2768 State Road A1A Apt# 816
Atlantic Beach Fl 32233

DFG

C/O Mark Stopher

601 Locust Street

Redding, CA 96001

More Comments on the Proposal of the New Dredging Regulations

I attended the Redding Meeting, I introduced myself to you and I said I emailed my comments a couple of times and also mailed you a letter stating my thoughts on all the restrictions. To refresh your memory, I have four mining claims, 2 on the North Fork of the Trinity and 2 on the East Fork. The NEW Proposal Regulations, they would be classified as Class A which would deem my claims worthless to me as I am a suction dredger. My dad had claims on the East Fork when I was a kid, we started dredging in 1960. I served 3 years 1963-1966 in the US Army; I am 66 years old now, retired. In 2007 moved back to California, from Wisconsin so I could suction dredge. I have 3 gold dredges, which are now going to be worthless.

This Whole moratorium on dredging is wrong! You're just giving into the special interest groups. **Letting the Environmentalist write "The new Dredging Laws"** is just ridiculous. What is wrong with this country? Have these environmentalists done anything for our country, but take our rights away. Think about that! It is so sad, my whole family has suction dredged, and even my daughter dredges and loves it. You're changing the Laws. **I know that you heard all of this at the meetings, but something in this country has to change, you have to take a stand against all the Special Interest groups closing everything down.**

I know you said we need some scientific proof that we don't harm the fish or aquatic vegetation or animals. I just want to point out something, we walk along

the Sacramento River several times a week, and an area we walk was flooded this year, worst than I have ever seen it. The water is back to its normal level now, I have never seen the vegetation in the water as beautiful as it is now and so abundant just goes to show you that, Mother Nature can do damage to the environment but also have a way of making things better. What a small amount of gold dredging does only improves the environment. I have 50 years of dredging and only see improvements in the environment season after season. I guess you have to experience it to understand it.

Please make some drastic changes from your proposed new laws. Make California example for the rest of the Country, We are The Gold State. Do not follow Liberal Oregon with the new laws. I also feel the old tailing piles and mining sites are one of the beautiful parts of California and its **history**. **We do no damage, which will ever be visible to the rivers or the environment so why are we being punished. This is totally wrong.**

Larry Coleman

PO 782

Anderson, CA 96007

colemancls@yahoo.com

530-209-3663

RE: Comments On DFG's Proposed Dredging Regulations and the DSEIR

Dear Mr. Stopher,

DFG seems to be concerned in a big way about the impacts of dredging on the streambed and surrounding banks.

There is no question that dredging does create holes in the streambed and also piles sand and gravels on top of the streambed.

The important question DFG should be asking is - Of what consequence are these activities to the health of a stream and its inhabitants.

Perhaps the best place to seek some perspective on this subject is the effect of natural high water events to every stream and river in CA. The moderate type, from an good soaking rain storm or rapid snow melt. Not just occasionally, but often several times a year.

Then we have the 10 year flood event, which rips and tears out stream and river banks, river bottoms that get scoured and turned over by boulders rolling down them, and finally road embankments that are eroded so extensively as to take out the entire roadway.

These kinds of natural events happen in CA annually, often in many places at once.

The amount of sediments put into a river or stream from these events alone must be staggering when considered on the broad spectrum of CA's diverse topography.

Yet, DFG attempts to classify the impact to streambed eco-systems by dredging as "Significant" and therefore in need of regulation. The only possible way this 'significant' concept could even be considered is if DFG is comparing dredging to the normal low flow stream environment most people see when they are out in nature. For, who goes out to look at a muddy, silt filled river or stream right after a storm? It is not a pleasant sight, so everyone just ignores it, and remembers how clear and clean the water was last summer when they were fishing or boating.

This kind of narrowly focused mindset has no roll in the regulation of CA's water ways.

If DFG wants to improve stream habitat and the species that live there, they need to be open minded enough to consider each of these points: 1) Annual silting of streams by nature do not kill the eco-systems they impact, but rather nourish and improve the stream sediments for the plants and small animals living amongst them. 2) The rampage of rushing water that tears out stream banks are also replenishing the small gravels and coarse sands necessary for spawning of the various fish species.

Has DFG proven that all these natural silting and gravel movement events that occur all year long in CA's streams and rivers, are detrimental to the health of those same eco-systems? NO it has not.

The fact is, the silt, and gravels placed on streambeds by dredging are creating new foundations for life in the stream eco-systems. Even on those years where water flows are too low to recreate this natural process, dredgers are there to help it along by creating sediments that are more easily moved downstream to rejuvenate the habitat, and thus all the species in the local area.

Therefore, having shown no real and actual scientific proof that the impacts of dredging on stream bed stability and stream bank erosion is Significant in comparison to nature's natural process of doing exactly the same thing, DFG has no basis for creating new regulations to further restrict dredging in CA to exceed the 1994 rules.

For these reasons it is recommended that DFG eliminate the following new proposed regulations:

1- Four inch nozzle restriction.
2- No dredging within three feet of a bank.
3- 4000 maximum permits.

In addition, the DSEIR impact stated as "Turbidity/TSS Discharge" in Chapter 6.2.3 as "Significant but Unavoidable" needs to be changed to "Less Than Significant".

These comments are submitted in an effort to help create in the final SEIR a true and accurate picture of the very minimal impacts of dredging on CA's streams and rivers.

Thank You,

R.E. DIVINE
1207 N MAYFLOWER CIR
RIDGECREST, CA 93555

COMMENT ON THE 2011 SEIR ON SUCTION DREDGING

CDFG SEIR COMMITTEE,

As a miner and a dredger for over 35+ years I have followed this SEIR and the subsequent 1994 EIR extremely closely.

The 1994 EIR was fairly equitable after many rewrites and years of work in preparation. As President of the Western Mining Council and President and Vice President of the Shasta Miners a equitable result was somewhat achieved.

This purported 2011 SEIR has failed miserably to provide any scientific evidence, in accordance with CEQA mandate, to justify the massive closures in the immense seasons restrictions section.

The dredgers survey is indeed a good laugh as incongruous in any application of scientific principal.

I would much prefer the return of the 1994 tried and true regulations and seasons with the allotted Endangered Species listings restrictions as the only viable solution.

Sincerely,

Robert L. Doelker Sr 5/9/11

Robert Doelker Senior

May 9, 2011

Mark Stopher

Department of Fish & Game

601 Locust Street

Redding, CA 96001

Mr. Stopher,

This letter is a follow-up to our conversation at the Public Hearing in Yreka, CA on March 30, 2011 in regards to the proposed closure of dredging at the mouth of Jessups Creek on the Salmon River. At that time I mentioned to you that there was no pool at the creek's mouth to create a thermal refugio for fish. When I dredge there, I would create deep refuge holes for salmon to rest in.

I had also mentioned to you that the mouth of Jessups is entirely on private property, so is the Salmon River for about 1,000 ft. which I have owned for 20+ years. (Please see Siskiyou County, Tax Area 115-000, A.P. #032-460-040-000). Making the mouth of Jessups off limits to dredging would precipitate a usage loss of about 50% of my private property which was bought strictly for mining purposes as the parcel has no building sites. Thus its utility and its market value would be reduced greatly. I would also lose one entire claim adjacent to my property and 500 ft. up Jessups Gulch which, by the way, contains no fish.

Also, once the area in question has been dredged there will never again be any dredging as gold is not replenished there by high waters. I have saved this area as my "old age" dredging site as it has easy access and is actually "wheelchair accessible".

Thus, for the above mentioned reasons I am asking you to exempt the mouth of Jessups Gulch from your list of non-dredgeable thermal refugio areas.

Lastly, I also own the mining claim in front of Jackass Gulch the mouth of which has also been declared a thermal refugio. I can live with that although I believe a

500 ft. radius for no dredging is excessive. In my experience, I believe that a one hundred foot radius of no dredging would be sufficient.

Thanks for your consideration of this matter.

Herbert W. Duerr

P.O. Box 176

Etna, CA 96027

Telephone: (530) 467-3264

P.S. If necessary, I would be more than happy to meet with a representative of CDFG if a site inspection is necessary. I would, however, require a week's notice as the area under discussion here is behind a locked gate and I will be out of the county at various times.

Mark Stopher

California Fish and Game

601 Locust Street

Redding, CA 96001

Mr. Stopher,

Regarding:

2. Program Description

Page 2-17

Suction Dredge Size

A suction dredge nozzle size of 4 inches might work alright on small streams but not on all bigger rivers. There is no way you can go down 20 feet and move 10 -12 feet of overburden with a four inch. It is not powerful enough and the reason the environmental groups keep trying to reduce the size is that they know you can't make a living on the river with a four inch nozzle.

Even if a person wants to dredge on one of the bigger rivers for a week or two, they are going to need at least a 6 inch nozzle. Fish and Game states that they want to lessen the environmental impact by reducing the dredge size. The impact is already reduced. It takes all summer to work an area of 30 feet X 10 Feet X 20 feet.

Motorized Winching (page 2-19)

It is a safety measure. Hand winching under water is dangerous. Fish and Game states that you need an onsite inspection under 1602. Why? Everyone who dredges is going to want to use one. How are you going to do all of these inspections before the season opens? I see no reason to require this as long as we continue to follow all of the other restrictions.

Page 2-20

It states that no person may suct9ion dredge within 3 feet of the lateral edge of the current water level including at the edge of in-stream gravel bars on under any overhanging banks. This does not make any sense! What if the stream is only 3

feet across? And in-stream gravel bars? Do you mean upper bench deposit? Please explain. Regarding overhanging banks, what if it is solid bedrock? Please be more specific.

I strongly suggest you strike this 3 foot rule. It is clearly a mistake.

Thank you,

Rick Eddy

5477 Russell Hollow Rd.

Pilot Hill, CA 95664

To: Mark Stopher

California Fish and Game

601 Locust Street

Redding, Ca 96001

Mr. Stopher,

Why is Fish and Game imposing restrictions on suction dredging because of the Yellow Legged Frog that's not on the Endangered Species list yet? Also, why are you expecting people to dredge in the winter instead of the summer to protect frog eggs? What about the trout eggs? Do you not care about the trout anymore? This does not make sense to me. Please explain.

2. Program Description

Pages 2-29 Pump Intake Screening:

3/32 inch (2.38 mm) is too small. It will plug up all of the time. Especially on the South Fork of the American River when they release flows every day. The moss breaks off of the rocks and floats (we call it salad).

Thank you,

Rick Eddy

5477 Russell Hollow Rd.

Pilot Hill, CA 95664

Mark Stopher

Environmental Program Manager

California Department of Fish and Game

601 Locust St.

Redding, CA 96001

Mr. Stopher,

Your new proposed season for the South Fork of the American River (see 2-29) to shorten the dredging season by 3 weeks is not justified. This stretch of the river is severely compromised due to the extreme fluctuating flows released from Chili Bar Reservoir all year long. Fish cannot spawn there when the flows go up and down 5 to 7 feet on a daily basis. This river should be reopened to year round dredging. This should include all tributaries with the exception of perhaps Greenwood Creek and Weber Creek. These are the only two creeks I have ever witnessed trout spawning in late November through January. I have a mining claim on Hastings Creek just below Greenwood Creek, claim number BLM – 272341. It is a seasonal creek with no trout spawning there. By the time the third week in May comes around, the water is too low to dredge, reducing it by another week (June 1) this pretty much shuts me down.

Fish and Game has yet to provide a justifiable reason for this season's closure. During the fall we especially need the low water to work in areas that may be in conflict with other river users. At the end of September the boating season ends so we need those days in October to do our best dredging.

I am also a fisherman, have been for many years, and have seen trout come up from Folsom Lake to spawn and it's always in November, not October. So unless Fish and Game can produce objective fact based reasons for seasonal or nozzle size restriction of suction dredging on this environmentally compromised river, I recommend that you go back to year round dredging with an eight inch dredge with no special inspections or added fees.

Thank you,

Rick Eddy

5477 Russell Hollow Rd.

Pilot Hill, CA 95664