From: Barry Ballew
To: dfgsuctiondredge@dfg.ca.gov;
Subject: SEIR
Date: Sunday, April 03, 2011 7:02:00 PM

attn. Mark Stopher, I am a 69 year old recreational miner who has occasionally used a 3 in. dredge in the pursuit of my hobby. Said dredge has set idle for the last couple of years while the State has dithered over what I would term a frivolous lawsuit that resulted in a statewide ban on suction dredging even though the tribes suit only encompassed 3 rivers. There seems to have been no study done as to the validity of the tribes claim of damage to the Coho salmon before the Legislature jumped on the opportunity to ban all dredges statewide and the Governor signed off on it. I spent several hours at the DFG office in Monterey last week trying to get a cleart picture of what was coming down the line for people who use this method of mining whether professionally or recreational and to be Quite frank the approx. 25 pounds of paper disclosed more than I could ever digest at one time. I would strongly suggest that the DFG support going back to the 1994 rules that closed certain waterways during spawning season and kept others either permanently closed or open all year. The most telling quote I have seen during all the time of the closure came from an unknown author who said: In the year of the suspension of suction dredging the state of California sold about 3600 dredge permits to people who had no intention of harming a fish, the same year the sold 3 million fishing licenses to persons who deliberately planned to kill a fish. Please help those of us who wish to pursue our hobby of mining

as well as the people who make a significant portion of their living mining.

Thank you for your help, Barry Ballew

040311_Bourland

P.O. Box 720796
Pinon Hills Ca 92372
4-03-11

Dear Mr. Stopher;

I'm writing in regards to the restrictions on dredging.

I started dredging back in the early 80's. I use it as a hobby. I only dredge on my vacations in Northern Calif. I live in Southern Calif and I used to dredge here on my days off.

I feel that dredging helps the fish because it stirs up the food in the gravel for the fish because there's always a lot of fish around me when I'm dredging waiting for their food.

I don't feel there should be a 14 day limit on the dredging permits. I have a 4" & a 5" dredge. I feel they shouldn't cut the permits down to 1500 permits a year.

When I find mercury or lead or gold I take it out of the river & take it home to process it, so really I'm helping to clean the rivers.

Thank you.

Sincerely yours

Jim Bourland

From: Ramon and Myrna
To: dfgsuctiondredge@dfg.ca.gov;
Subject: Dredging in Mono Co.
Date: Sunday, April 03, 2011 1:41:58 PM

My wife, Myrna Valdez and I, Ramon Valdez are opposed to dredging the waters of Mono Co. and in Particular, the waters on Swauger Creek where we live.

Ramon and Myrna Valdez

From: Randy Witham
To: dfgsuctiondredge@dfg.ca.gov;
Subject: Comments on Proposed Suction Dredging Restrictions/Regulations
Date: Sunday, April 03, 2011 6:10:27 AM

Dear Mr. Mark Stopher,

After reading through your proposed new suction dredging restrictions to be forced on us California recreational suction dredgers, I can only say I am shocked & appalled at what you are trying to do...

It's 110% obvious you're out to use your proposed overly burdensome and costly "regulations".....i.e., government bureaucracy and red tape, to harass, hinder, limit, reduce and ultimately deny us recreational miners our legal rights under the Mining Law of 1872, and other Federal laws on public lands & waters. Have you ever prospected for gold? Gone suction dredging? Had the fun?

I invite you to come out with me some weekend and see for yourself and maybe find some gold too.

Here's some specifics complaints I have with your proposed regulations:

1). Demanding we itemize all out equipment, down to the nozzle size, restrictor ring (if one), engine make & model number and HP is ludicrous! I update my equipment as needed, and stream conditions warrant. Also, if a friend sells me good used equipment, that may happen in a weekend, or even while out on the stream. Why would you give a hoot if my engine is a Honda or a Briggs & Stratton? I have several different pieces of equipment, such as a 4 inch Keene suction dredge, a Proline 2 1/2 inch high banker dredge/combo unit. Do I have to get a separate permit to use both? What about both in the same day? Same location? What if I had 10 different sized dredges, from a 2 inch backpacker model up to an 8 incher? Would I need a permit for each just to use them?

2). What the heck is this limit on no more than 6 locations to work with my dredge permit? List exact geographical locations too? Are you serious? How do I or any other dredger to know exactly where the gold is? We don't! I set up, work a while and check my sluice box. If nothing, I move on

to another spot. What if my 6 locations all have nothing? I am what....out of luck for the year? Would I have to obtain another permit to work 6 new locations looking for gold? I may go to the SF American River one day and NF American the next day, and the Yuba River the third day....That's the joy & fun of prospecting.

Freedom is a founding principal of this nation, I have the right to work public lands, owned by us, the public, which includes the rivers, creeks & streams as a free man. Just silly to predetermine (or try) where the gold is... Oh, with exact specifics on where I plan to work, so criminals can come and target me and my equipment, or vandalize or harass me on the stream.

Would you tell a hunter to I.D. the 6 exact spots he plans to hunt a deer?

3). Additionally, having to give you the (approximate) dates of my dredging activities? Say what? I often don't even know myself.....work, weather, family situations all mean I may not know until the night before. I suspect it's so you can send you Fish & Game officers out to harass me, right? So as to not waste their time walking the stream to look at the HP rating of my engine, or if my dredge spot is close enough to their opinion as to my "exact" geographical location. If information on my whereabouts gets out, my home/ property is wide open to thieves to come and rob me while I am on the stream dredging. Really, what's the date of my prospecting to Fish & Game? Oh, more control...

As you can see, you and your department are out to use the power of government to ruin a great American pastime, gold prospecting. I have been a suction dredger for many years, and I can tell you we do a great service cleaning up the creeks & streams.....of heavy metals, such as lead, iron, mercury and such. The gold prospectors I know all treat nature and the environment a lot better than most. How a dredger working one, 6, a dozen dredge holes/spots .....maybe 10 feet around.....on thousands and thousands of miles of rivers/creeks/streams in California can be a supposed threat to "the environment" and fish is just silly. We mover inert creek material from one spot to another, separate out the gold, plus remove any heavy metals, and that's beneficial. When the annual floods come, the streambed resets itself, as it always does. It's really neat to actually have the trout and other fish come right into your dredge hole with you, feeding off

any aquatic bugs stirred up, totally unafraid of you or your dredging.

I please ask you to reconsider your positions on these new Dept of Fish & Game regulations: all unwarranted bureaucracy, red tape, burden, cost. Delete, modify and otherwise put some REAL common sense into all this and let us suction dredgers enjoy or hobby as we have and as we help clean the streams in our great state.

Nothing was "broken" before.....don't try to "fix" something that was & is not broken.

Thank you,

Randy L. Witham
Recreational Gold Prospector

From: PROSPECTORS DEPOT
To: dfgsuctiondredge@dfg.ca.gov;
Subject: TAXES, REVENUES AND DREDGING PERMITS
Date: Monday, April 04, 2011 4:09:39 PM

Mark: It is my sincere hope that California gets itself back on track by weighing out the losses and gains of receiving or not receiving revenues from the recreational mining industry. Seems like a few frogs or petty politics are more important than the people of California that pay taxes!
This moratorium is dramatically hurting my business! Time to make some hard decisions for the people who vote!

Philip Bonafede Owner
Prospectors Depot
Joshua Tree Ca

Philip Bonafede
Prospectors Depot
63125 Red Horse Run
Joshua Tree Ca. 92252
www.prospectorsdepot.com
http://stores.ebay.com/prospectors-depot
Keene Engineering Authorized Dealership
Minelab Metal Detector Sales & Training
Authorized Minelab Dealership
Toll free: 1.866.366.8511
Local 760-366-3333

From: MIKE LOUIS
To: dfgsuctiondredge@dfg.ca.gov;
Subject: CALIFORNIA DREDGING
Date: Monday, April 04, 2011 9:39:19 AM

ESTIMATED INDIVIDUAL EXPENSES FOR TRAVELING TO, AND ATTENDING RELATED TRADE AND HOBBY SHOWS.

(ALL FIGURES IN WHOLE DOLLAR AMOUNTS BASED ON 3200 PERMITS ISSUED)

GAS=225

FOOD=125

HOTEL=172

RAFFLE TICKETS FROM VARIOUS VENDORS=220

EQUIPMENT= 425

ON ROAD PURCHASES=40

DONATIONS=50 BSA GSA MAKE A WISH PLP

VEHICLE USE @ 32 CENTS A MILE 256.

1 EA. @ 1,245.00

3 TIMES A YEAR= 3,735.00 (2880 AT REDDING, CA. SHOW ALONE)

POTENTIAL OF 10,756,800 GENERATED REVENUE

YEARLY CLUB MEETING ATTENDANCE AND RELATED EXPENSES

GAS =2,952

FOOD =744

TOTAL =3696

COMBINED TOTAL (CLUBS AND SHOWS) YEARLY EXPENSES, PER MINER=7431

POTENTIAL OF 23,779,200 GENERATED REVENUE.

DFG SURVEYED 2000 DREDGERS IN 1993

"18 YEARS AGO"

(TOTALS DERIVED FROM 3200 PERMITS ISSUED BY DFG)

EXPENSES FOR EACH DREDGER

EQUIPMENT =6,000

TRAVEL EXPENSES =6,250

EQUIP MAINT=3,000

TOTAL=15,250

POTENTIAL OF 48,800,000 GENERATED REVENUE (18 YEARS AGO)

DFG REPORTED COSTS OF 1,500,000 TO PROCESS AND ADMINISTER DREDGING PERMIT PROGRAM

LETS SAY IT NOW COSTS THE DFG A VERY GENEROUS, 5,000,000.

INCREASE OF EXPENSES, PER DREDGER

(BASED ON 3200 PERMITS ISSUED)

COSTS INCREASE FOR DREDGERS ALONE IS A POTENTIAL
73,200,000 GENERATED REVENUE

73,200,000 MINUS THE DFG EXPENSES OF 5,000,000=68,200,000 OF EXCESS GENERATED REVENUE.

COMBINED TOTAL FOR "HOBBY" AND "ACTUAL DREDGING" EXPENSES=91,979,200 OF POTENTIAL GENERATED REVENUE ACROSS THE STATE, NOT JUST IN THE TOWNS WHERE DREDGING OCCURS.

MINERS AND DREDGERS CREATE WEALTH AND GENERATE THE ECONOMY IN CALIFORNIA.

CALIFORNIA CAN NOT AFFORD TO LOSE THE 91,979,200 OF POTENTIAL REVENUES GENERATED BY THIS SELF SUSTAINED, SELF SUPPORTING "INDUSTRY".

Department of fish and game
Attn: Mark Stopher
Suction Dredge Program Draft SEIR Comments
601 Locust Street
Redding CA 96001

I would like to thank the CDF&G for allowing me to comment on Suction Dredging permit Program, SEIR

Non-native fish in California

It is well known that many special interest groups (e.g. environmental organizations, Sportsman Clubs) introduced many non-native species of fish, amphibians and birds to California and its water ways without knowing the full impact to native species. (Bad science and Data) and the California Department of Fish and Game were all too happy to help with the introduction of non-natives. Non-native species Brook Trout, Lake Trout, Atlantic Salmon, Kokanee Salmon, Striped Bass, Brown Trout, and some amphibians to name a few. This practice (fish stocking) started in the mid-1800s and still continues to this very day. It also is well known many of these non-natives species are predacious and feed on California natives. Salmon eggs, is a large part of their diet during salmon/steelhead runs. Frog eggs as well

Current 1994 dredging regulations have a class A on many rivers or streams, (all coastal streams are closed to dredging) prohibit suction dredging during salmon/steelhead runs with seasonal dredging with class B through H

Frogs (Foothill yellow-legged frog) lay their eggs in calm shallow waters (March to May, when streams have slowed usually after winter runoff) If the Yellow legged frog are endangered or absent from rivers? it's at about the same time 1000s of people participate in rafting. Launching & pull out of rafts, kayaks, and canoes happen on daily basis from 100s of different shallow streamside locations. The crowds walking in and out of calm shallow waters surely have an impact on frog's eggs; also from a long know practice of introduced non-native aquatic predators such as fish and amphibians (Hayes and Jennings 1986, 1988; Kupferberg 1994)

1994 dredging regulations show that the earliest Suction dredgers can enter some of the rivers is the forth Saturday in May (Class C or G). Suction dredgers enter and exit in one location and the dredge usually fixed or stationary for the season

There is no mention of the above in the subsequent environmental impact report for the suction dredge program, thereby find the study flawed and without merit or data to substantiate the new propose regulation.
In conclusion, this is not about the protection of fish, amphibians or aquatic-invertebrate as the removal of suction dredging from the rivers

I vote/favor the 1994 Regulations Alternative

Thank you

Frank Matyus
1426 Olive St
Santa Rosa Ca
95407

Source

http://ice.ucdavis.edu/aquadiv/fishbio/biofish.html

http://ucce.ucdavis.edu/datastore/datastoreview/showpage.cfm?reportnumber=746

http://www.biologicaldiversity.org/campaigns/fish-stocking_reform/index.html

http://sanfrancisco.about.com/b/2008/05/30/the-dilemma-of-cute-non-natives.htm

http://www.co.contra-costa.ca.us/depart/cd/water/HCP/archive/final-hcp/pdfs/apps/AppD/13a_yellowleggedfrog_9-28-06_profile.pdf

http://www.enature.com/fieldguides/detail.asp?recnum=AR0023

From: Cindy Reamy
To: mstopher@dfg.ca.gov;
Subject: Common sense Comparison
Date: Monday, April 04, 2011 5:13:09 PM
Attachments: Common Sense Comparison.txt

Dear Mr.Stopher,

If you could take the time to read this Text pertaining to the upcoming California proposed dredging relulations .
I know this is just a personal view but I hope you can understand my Common sense approach
to the questions and opinions contained in it.
Thank you for your time .
Cindy

Common Sense Comparison

Please accept these as my comments regarding the 2011 Suction Dredge DEIR.

Cindy Reamy

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

I am not a dredger, but I have taken a interest in the proposed dredging regulations that are under review at this time.

As a person who hasn't had the experience of dredging nor the ability at this time to dredge, I would like to explain something I have researched thru common sense evaluation over a 2 year period.

I have compared and observed the turbity of river flow when river is at flood stage or during a dam release,and a video of a dam break and snow melt and then the turbity of a single dredge and from what I have seen the dredge in its heaviest working ability
cannot match nor preform any comparison to the activity the flood or snow melt can. And I have sat for hours fishing from a dock numorous weekends and watched boats being fueled up by fisherman and boaters and noticed the spilling of gas into the water time and time again without soak pads being used to absorb the spillage and just a guessing average the amount of fuel would be possibly more than 1 gallon spilled per 2 days of ongoing boaters fillups. And watching youtubes videos of how a dredge motor is located there seems to be a catch pan which makes me think that and the fact with Less dredgers compared to boaters on any and all waters the level of impact is less than 1 percent done by dredgers, if it takes place at all.

And knowing that the flow of water will change the layers and sediments each time the flow from snow melts and rains on most all rivers it seems the local area a dredger changes is mainly the demensions of less than a 20'x20' and it fills back in as the river flows thru its changing rates
naturally and again less than 1 percent compared to the natural river flow during each season.

And I have watched dredging video on you tube and gold prospecting websites where the dredge has collected lead fishing weights and other metals and a few have collected and removed Mercury from the enviroment which to me is something they don't have to do but feel they should do because it helps to clean up the ecosystem and protects wildlife and our water systems from the contamanites which naturally gets stirred up thru floods and flows.

I have watched videos of fish being with the dredgers and I admit in a webforum I read one person said they were caught off guard by a snake in the water and sucked the snake up thru the hose and when he went to check the output the snake swam away unharmed because the pump that dredgers use
are designed to only be pumped thru the hose and not thru a pumping chamber that can possibly injure things sucked into it .

So now my overall opinion after this 2 years study brings me to conclude that modern day dredging is less likely to have a impact on our enviroment and wildlife than cars driving the roadways, boat props and fuelings of boats and skidoos and fisherman, which if you compare the amount of dredgers to all those other catigories the question is why modern day dredging being placed under a microscope with such strict regulations ??

Common Sense Comparison

And why is this proposal meant to restrict a person from doing hard work that not many can or will do that has benefits to our enviroment while they earn a hard days pay to support themselves and families?

And why is it common sense compairison is being avoided by the stop dredge protesters?
Just because a group gets together and decides there are reasons to stop this other small group
and place these accusations on paper doesn't make it so.

Time should be taken to really know the truth for yourself, because sometimes people lie to people who trust them, to just get what they personally want .
This is Not a bully system political controlling powers issue because we can subject is it?

Work from facts and common sense comparison and if you dont have the time why are you in this
position of making such dicisions?

Thank you for allowing me to add my comments.

CJ Reamy

SUCTION DREDGE PERMITTING PROGRAM
Draft Supplemental EIR - Comment Form

Name:	Victor Spolini
Mailing Address:	13207 Sayre St Sylmar, CA 91342
Telephone No. (optional):	—
Email (optional):	—

Comments/Issues: RE: PROPOSED Listing OF Mountain Yellow-LEGGED FROG AS AN ENDANGERED SPECIES UNDER THE CALIFORNIA ENDANGERED SPECIES ACT.

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." THIS QUOTE IS FROM KNAPP FROM THE CENTER For BIOLOGICAL DIVERSITY. PESTICIDES ALSO CONTRIBUTE TO THE DECLINE OF the SPECIES by Killing them OUTRIGHT AND WEAK[redacted]-ENING THEM SO THEY ARE SUSCEPTIBLE TO DISEASES, INCLUDING A CHYTRID FUNGUS THAT RECENTLY KILLED MANY YELLOW-LEGGED FROG POPULATIONS. THIS SHOULD BE SUFFICIENT UNTIL THE DFG TAKES THE ACTIONS NECESSARY TO PROTECT THE SPECIES SUCH AS STOPPING TROUT Stocking, PESTICIDE RELEASE, All COMMENTS ARE submitted by Victor J Spolini A CITZEN OF THE USA, A MINERAL ESTATE OWNER, AND A Future BOARD MEMBER OF PUBLIC LANDS For THE PEOPLE by THE PEOPLE INC. Victor Spolini — I support THE NO ACTION ALTERNATIVE

Please use additional sheets if necessary.

SUBMIT WRITTEN COMMENTS (POSTMARKED BY APRIL 29, 2011) TO:

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

Email: dfgsuctiondredge@dfg.ca.gov **Fax:** (530) 225-2391

Website: www.dfg.ca.gov/suctiondredge

Questions? Please call us at (530) 225-2275

From: tdb@linkline.com
To: dfgsuctiondredge@dfg.ca.gov;
Subject: class E dredge question
Date: Monday, April 04, 2011 9:56:03 PM

Hi,
I would like to know if possible, the criteria which causes the proposed change(delay from July 1 to Sept 1)in the beginning of season date for the class E dredging areas. In particular the Main Yuba River.
Thanks, Todd

040511_Bova

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

Name:	DON G. BOVA SR.
Mailing Address:	Box 5598-17713 Redbud Dr. Summit City Ca. 96089
Telephone No. (optional):	530-275-5816
Email (optional):	SLAMBONG2@yahoo.com

Comments/Issues:

#1 I have been a member of GDRA for 16 yrs. & all I have ever done was the service for METAL DETECTING, A member of the 49's Happy Camp 4 yrs. & Shasta Miners for 8 yrs.

#2. Never have used a DREDGE or Sluce but purchased a 4" & 6" Dredge To use with my 1st 2009 permit which was also on 1st claim at Junction City At Maple bar which I took over from Shasta miners & Pay The annual Fees To let our members use on the 160 Acre parcel, The creek portion is only as wide as I could spread my Arms, so The bank & NEW Rules would not let me do anything There as little activity after 10 minutes would let both banks in my Lap.

#3 After Dredge season was cut I went with a friend at Shasta Miners To Happy Camp on a special High bank outing worked my ass off 4 days put all The gold That 89 people entered in, & when All The gold was divided my take was about $7.00 — Boo!

#4 I also have a Stream on my property That I have lived At 44 yrs. when The spring level drops I just walk down & pick up the nuggets that I can see, This is The best way without All The Fuss

Please use additional sheets if necessary.

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

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

Email: dfgsuctiondredge@dfg.ca.gov

Fax: (530) 225-2391

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

040511_Bradbury

To MARK STOPHER

From LARRY W. BRADBURY
CONTROLS ON MINERS &

Subject SUCTION DREDGEING Date 4/5/11

DEAR MR STOPHER:

I HAVE DONE ABOUT 35 YEARS OF RESEARCH WORK, READING BOOKS ON WHO IS BEHIND THIS WHOLE ENVIRONMENTAL MESS, AND BELIEVE ME I KNOW WHAT I AM TALKING ABOUT. I WISHED I WAS WRONG, BUT I AM AFRAID NOT.

AT THE VERY TOP IT STARTS WITH THE VERY ELITES, THE UNITED NATIONS & THE COUNCIL ON FOREIGN RELATIONS.

THAY ARE IN COMPLETE CONTROL OVER SMALLER ORGANIZATIONS LIKE YOURS, FISH AND GAME, EPA, BLM, NATO, BIG NEWS MEDIAS, SOME BIG COMPANY'S CEO'S, THE PRESIDENT OF THE UNITED STATES & DOWN TO THE SENATORS & CONGRESSMAN.

FORMER PRESIDENT GEORGE BUSH SENIOR HAD CALLED IT THE NEW WORLD ORDER.

IT IS A DARN RIGHT SHAME THAT THAY ARE USEING THE ENVIRONMENT AS A KEY TOOL TO DESTROY THE POWERS OF THE

UNITED STATES OF AMERICA. OUR ECONOMY IS STARTING TO GO TO HELL BECAUSE OF THOSE BASARE LAWS. THE ENVIRONMENTALISTS THE WAY THAY ARE GOING, THAY ARE GOING TO CAUSE THIS COUNTRY TO BE A THIRD WORLD COUNTRY, UNDER THE UN.

IF YOU GIVE THEM AN INCH, THAY WILL TAKE A MILE.

SUCTION DREDGING IS NOT YOUR PROBLEM IF OUR FREEDOMS ARE LOST; WHAT MAKES YOU THINK THE UN WILL SAVE YOURS.

ALL THAY WANT IS TO HAVE COMPLETE CONTROL OVER YOU. A ONE WORLD OF TOTALITARIAN CONTROL.

IF THIS IS THE KIND OF WORLD YOU WANT, THAN KEEP RIGHT ON WHAT YOU ARE DOING. WELCOME TO THE BIG BROTHER U.N.; THE NEW WORLD ORDER

THANK YOU
FOR YOUR TIME

SINCERELY YOURS

P.o.P. [signature]

7260 WILBUR AVE
RESEDA CA. 91335

040511_Morgan

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

I am in favor of the following plan:1994 Regulations Alternative (continuation of previous regulations in effect prior to the 2008 moratorium)

I am one of the founders of The Prospectors Club of Southern Calif., Inc. - a non-profit organization, organized 45 years ago, and dedicated to prospecting and treasure hunting.

Our membership has at times reached as high as 500 members, and many of these have been involved in recreational mining, and dredging at times during these many years of the Club's lifetime.

I think I can speak for the majority of members in our Club by saying that we are wholeheartedly in favor of returning to dredging in our California rivers and streams, without unfair regulations against this activity.

Please take a moment, and visit our Prospectors Club website, and take a look at the fine things we are devoted to in our endeavors.
http://www.prospectorsclub.org

I am also, by the way, the webmaster.

Thanks for your valuable time,
I am,
Sincerely yours,

Arthur A. Morgan

From: J Pooter
To: dfgsuctiondredge@dfg.ca.gov;
Subject: Dredge Regulations Comments
Date: Tuesday, April 05, 2011 7:52:12 AM

Dear Mr Stopher:

It has been a long time since I've seen proposed legislation written in such a detailed, controlling manner (albeit, I've not read the 1,700 page health care "bill").

Passing of this into law would be so restrictive that, perhaps as intended, it could be nearly impossible for a recreational dredger to wiggle, legally.

The one-sided verbage doesn't mention the actual improvement in stream bed quality which takes place after testing or dredging on this small scale occurs.

This restrictive proposition is an invasion of my rights! For whom else must I give the specific hours of the day I will be recreating and in the exact location and duration? No one!! If anyone demanded your schedule of whereabouts on the golf course or any other location of your relaxation, you would protest loudly, wouldn't you?

It appears to me that the only true accomplishment is to produce more "paper pushing jobs for select workers".

If this totally invasive, restrictive proposal becomes the law, all free American citizens may as well hang up their hunting hats and fishing poles because we don't call it "recreating" when Big Brother is "watching"!! Rethink this, please.

Janice Porter
Do it now! Later might not come

5TH CIRCUIT RULING MAY BENEFIT MINERS

by Scott Harn

In National Pork Producers Council v. US EPA (No. 08-61093; 2011), the 5th Circuit Court of Appeals addresses the EPA's authority to require permits for "point source" pollutants when there is no addition of a pollutant to the water. This is the same argument the EPA uses to justify permits for suction gold dredging.

The case involved a 2008 EPA regulation that required pork producers and poultry farms to obtain a permit from the agency regardless of whether or not an actual pollutant will be introduced into a navigable waterway. Petitions for review were filed in the Fifth, Seventh, Eighth, Ninth, Tenth, and D.C. Circuits, and the cases were consolidated in the 5th Circuit Court of Appeals. This is significant because each of the participating courts must abide by the ruling.

In the ruling, the court refers to Concentrated Animal Feeding Operations (CAFOs) and the Clean Water Act (CWA). Writing for the Court, Circuit Judge Carl E. Stewart stated,

The EPA bases their authority to regulate suction gold dredging and other types of instream mining on the same arguments that were tossed out by the 5th Circuit.

"[T]he National Pollutant Discharge Elimination System [requires] a permit for the 'discharge of any pollutant' into the navigable waters of the United States. The triggering statutory term here is not the word 'discharge' alone, but 'discharge of a pollutant,' a phrase made narrower by its specific definition requiring an 'addition' of a pollutant to the water.

"Likewise, several circuit courts have held that the scope of the EPA's authority under the CWA is strictly limited to the discharge of pollutants into navigable waters.

"Notably, in the seminal case *Natural Resources Defense Council, Inc. v. Environmental Protection Agency, 859 F.2d 156 (D.C.Cir.1988)*, the D.C. Circuit explained more than 20 years ago that the CWA 'does not empower the agency to regulate point sources themselves; rather, EPA's jurisdiction under the operative statute is limited to regulating the discharge of pollutants.' In *Waterkeeper*[1], the Second Circuit echoed this interpretation of the CWA and explained that 'unless there is a discharge of any pollutant, there is no violation of the Act....' More recently, in *Service Oil, Inc. v. Environmental Protection Agency, 590 F.3d 545 (8th Cir.2009)*, the Eighth Circuit reiterated the scope of the EPA's regulatory authority and concluded that '[b]efore any discharge, there is no point source' and the EPA does not have any authority over a CAFO.

"These cases leave no doubt that there must be an actual discharge into navigable waters to trigger the CWA's requirements and the EPA's authority. Accordingly, the EPA's authority is limited to the regulation of CAFOs that discharge. Any attempt to do otherwise exceeds the EPA's statutory authority. Accordingly, we conclude that the EPA's requirement that CAFOs that 'propose' to discharge apply for an NPDES permit is *ultra vires* and cannot be upheld."

The EPA bases their authority to regulate suction gold dredging and other types of instream mining on the same arguments that were tossed out by the 5th Circuit.

To reiterate, the court ruled that the Clean Water Act "does not empower the agency to regulate point sources themselves" and "the triggering statutory term here is not the word 'discharge' alone, but 'discharge of a pollutant,' a phrase made narrower by its specific definition requiring an 'addition' of a pollutant to the water.

This ruling comes at an opportune time, just as suction dredge miners are dealing with new proposed regulations in several western states. Be sure to cite this case when you provide comments on the regulations!

(1) Waterkeeper Alliance Inc. v. Environmental Protection Agency, 399 F.3d 486 (2d Cir. 2005).

From: hank burns
To: dfgsuctiondredge@dfg.ca.gov;
Subject: Proposed Suction Dredge Regulations
Date: Wednesday, April 06, 2011 12:42:33 PM

Hi,

My name is Hank Burns and this e-mail is in regard to the Proposed Suction Dredge Regulations.

One of my concerns with the Proposed Regulations is the Regulation stating "no dredging anywhere within 3 feet of the edge of the waterway at the time the dredging is taking place"

I live in the small town of Susanville at the base of the Sierra Nevada mountain range. I, along with several members of my family enjoy recreational gold prospecting. We mainly prospect on a small mountain creek known as Gold Run Creek that starts on Diamond Mountain and runs into the valley here in Susanville.

Unfortunately, due to the Proposed Suction Dredge Regulations we will not be able to operate a small suction dredge on Gold Run Creek since the creek is so narrow. Even in the spring when Gold Run Creek is at its highest capacity the widest parts are usually less that 8 feet wide which would only leave a two foot section to legally dredge. Most of the year the Gold Run Creek is less than 6 feet wide which would make suction dredging illegal due to the proposed 3 feet from the edge regulation.

Gold Run Creek is mainly supplied with water from snow melt and a few mountain springs and on very dry years Gold Run Creek may dry up completely.

If this Proposed Regulation is passed into law my family and I will no longer be able to dredge on this creek and due to the remote location of where we live we are not able to travel to do any suction dredging. This also means lost revenue for the state and local economy.

It is especially upsetting since Gold Run Creek does not even have a Salmon population which is what this whole ban on dredging is about in the first place. Also since it is a small creek we would use a small dredge and the footprint we leave on the ecosystem is also very small.

I am writing this to show how the Proposed Suction Dredge Regulations will affect me and my family directly. Long story short if this passes we will no longer be able to dredge on this small creek without breaking the law.

In my opinion it seems silly to say one can't dredge 3 ft from the bank on a creek that is 6 ft wide and sometimes drys up completely.

I hope that the Department of Fish and Game can find an alternative to this proposal perhaps limiting how close one can dredge to the bank based on how wide the creek is, if it is a tributary, if there are salmon, ect.

Thank you for your time and interest in this matter.

Feel free to contact me for any questions/concerns via email : hankburns@hotmail.com

Thanks again,

-Hank Burns

April 6, 2011

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

Dear Sir,

First of all, thank you for the opportunity to comment on the DSEIR. I would like to register my protest of the ban on dredging.

Secondly, I am one of those recreational prospectors/dredgers who contribute to the local economies of communities near mining activity (based on your 2008 data). I will be 85 years old in April and prospecting is a source of great enjoyment for me. It is a good, healthful activity, to be able to spend time outdoors in this wonderful state of California and, on occasion, find some gold. It is difficult to describe the pure pleasure of being able to do this. I would bet the majority of the 82% of recreational dredgers (according to your 2008 data) feel as I do.

Thus, it was a great disappointment to me when dredging was prohibited. It made no sense as I had not observed damage to the environment by recreational dredgers such as myself. (I cannot speak to the issue of commercial dredgers.) When dredging, I use a 3 inch nozzle/hose size (or less) and always use screening.

There is a big difference between my kind of mining and the "whiz-bang" type of operation. I can understand prohibiting that method of mining as it can create a great deal of environmental damage. Some people may not realize there is a big difference between the two.

I belong to the Valley Prospector's Club in Southern California. We are conscientious about the environment and try to leave sites as clean as or cleaner than they were when we arrived.

Thank you for your consideration in this matter. I attribute some of my 85-year old young-at-heart spirit to the fact that I have enjoyed prospecting for more than 20 years. I'd like to be able to enjoy it for several more.

Sincerely,

Alex Marinello

Alex Marinello 1003 Lytle Street Redlands, CA 92374

From: mike nava
To: dfgsuctiondredge@dfg.ca.gov;
cc: neal;
Subject: dredging wont hurt fish
Date: Wednesday, April 06, 2011 3:46:30 PM

Dear Sir,

I dredged in Calif. for over 25 years. I always find that the fish were very happy, and they ate from the tailings. Every morning when I started to dredge I found schools of fish big small waiting for me to start. I used to have some income that was a lot of help in this economic situation I hope that the politicians and the authorities come to their senses and allow small minors to make a living. Thank you.

Mike Navaee

From: Lisa Souliere
To: dfgsuctiondredge@dfg.ca.gov;
Subject: suggestions
Date: Wednesday, April 06, 2011 3:19:18 PM

Mark Stopher,

I have a few suggestions for the new regulations.

1. Chapter 2-20 Lines 18, 19, and 20. The three foot water mark should not include bedrock that starts before the edge of the watermark due to the fact that bedrock is a solid matter and will not disrupt soil and gravel.

2. Chapter 2-21 Lines 20,21,22, and 23. When filling a dredge, there are already requirements to use an EPA and CARB gas can that has a high tech spout and has an auto shut-off, self-venting for safer and easier pouring, child-resistant, angled tip that allows you to see the inside of the container so that it is not overfilled. It has a U-cup seal that provides a tight fit against leaks. If a dredger uses this gas can he shouldn't need to be the required 100 feet from the water's edge to fill his dredge.

Thank you and hope to hear back from you on these matters after the final regulations are written.

Larry Parsons

MARK stopher-

The facts concering Dredging on trinity, salmon, Klamath Rivers are conflicting pretaining to Dredgers that do it, and officials that don't and only recive reports of the so called Harm that It does to the river + fish. Dredging In my experience is no more than seperating gold from the gravel. Its never where Fish spawn, which far upstream from spawn areas that are off limits as far as Dredging Is concerned and Rules are In place for the process + procedure on How + where to Dredge. It does not Harm Fish Habitat, It can provide deep pools to fish ~~foo~~ to Hide In + Find cold water areas, these spots are also filled Back In during the winter season with gravel moving down stream, small fry Have stayed At my nozzle end + wait for worms to appear As I dredge + will move In to eat, then will move away until another worm appears, I use a 1½ dredge nozzle and watch under water All the time As Im dredging. not once Has A fish

Been sucked into the nozzle or harmed By this procedure, as far as mercury is concerned, never seen it in any of three rivers, Also if mercury is present it will stay in the sluice Box. Ive dreged since 1999 and find it hard after reading assumptions of non dredging expierenced people that they are only still viewing the old gold mining techniques of these days, the old Bucket dredges that ripped the river + Bedrock and caused the enviormental damage Back then don't exist today. with my dredge I can clean gravel in a section of River the size of a pickup truck Bed, the sediment that trails of Behind has always settled at a maximum of 300' Behind the dredge, this in turn is Blown out into the ocean during winter leaving clean river Rock afterwards. to me this is contrary in view that someone that don't dredge says I cause enviormental damage, where? to what? I say put these people in the river for the 2 year study and show them the real facts, test the water at the Back of the dredge, show them where the real spawn Beds are + show them what it looks like the next year where you dredged.

you will see that river shows no signs of damage, no fish are missing from it. the viewpoints of people against dredging need change from the old facts of Dredging to what dredging is today. last year only 2,800 aprox. dredge ops were issued last year (2008) of that you'll find most were recreational, weekends, vacationeers, there is no Impact Damage to the rivers, in fact it cleans the rivers system from sewage (rottin leaves in Between gravel layers) microbes that Harm fish live in these things also, the algea gets removed that can Bear the microbes that infect fish also is removed from Dredging. If you surveyed the actual time from each dredger each year you can also have a better knowledge on the time spent to this so called Harm to the enviorment, ive no such statistics to date except from the old days of Bucket line dredges. The facts are out of proportion. The largest of Dredges on the rivers are 6" + 8" dreges, Ive seen these In work they also remain In one spot on the river usually only Cleaning an area the size of a swim pool, the fish thrive In these deep pools.

2800 dredgers in the entire states rivers system, seems we need more actually to help clean the gravel + help the fish with the ecosystem to thrive. the rivers need help to thrive in these days of problems. and dredgers do that actually, churning + clearing the rivers gravel putting the food out the back of the sluice box help do this. the fish feed the gravels clean, and the sediment is blown out to the ocean in the winter. to end this letter, show the people in person not with paper reports from people that haven't done the proper testing + on hands experience of what a dredge today is about, show them the facts in person so they know the truth not the paperwork that's not complete in the factul harm or good let them see the sightful fact.

yours with
insight to what
is dredging
Chris.
Simonye

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

Name:	GARY SMITH
Mailing Address:	20766 CATTLE DR
	Redding CA 96003
Telephone No. (optional):	530-221-4194
Email (optional):	

Comments/Issues:

I AM WRITING THIS COMMENT ABOUT CHANGING THE TRIBUTARIES OF THE NORTH FORK YUBA RIVER (SIERRA YUBA COUNTY) TO ZONE E. (DREDGING OPEN SEPT 1 THRU JANUARY. I ASKED QUESTIONS AT THE MARCH 31. MEETING ABOUT THIS CHANGE. THE ANSWER WAS THEY WERE TRYING TO PROTECT AN ENDANGERED FROG. I HAVE DREDGED ON THE DOWNIEVILLE RIVER FOR TEN YEARS AND HAVE NEVER SEEN ANY FROGS. HAVE THE SCIENTIST DONE A STUDY ON ALL THESE TRIBUTARIES OR JUST A FEW. I FEEL THE TRIBUTARIES THEY HAVE FOUND ENDANGERED FROGS ON SHOULD BE OPEN FROM SEPT 1ST THRU JANUARY AND WHERE THEY DO NOT LIVE OPEN IT FROM JULY 1ST TO THE END OF SEPTEMBER. DREDGING CANNOT BE DONE WHEN HEAVY RAINS AND SNOW STARTS. THE ROAD MADE OF DIRT CAN WASH OUT WHEN TRUCKS ARE TRAVELING ON THEM. ALSO CREEKS AND RIVERS BECOME TO FULL OF RAPIDS MAKING IT DANGERIOUS TO DREDGE. I SUGGEST EACH CREEK OR RIVER HAVE THE ZONE CHANGED WHEN YOU SEE IF THIS FROG EVEN EXISTS IN THESE AREAS.

Please use additional sheets if necessary.

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

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

Email: dfgsuctiondredge@dfg.ca.gov

Fax: (530) 225-2391

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

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

Name:	GARY SMITH
Mailing Address:	20766 CATTLE Dr.
	Redding CA 96003
Telephone No. (optional):	
Email (optional):	

Comments/Issues: HICKING UP SOME OF THE SMALLER TRIBUTARIES AND SMALL CANYONS. UP AND DOWN HWY 49. I HAVE SEEN DIFFERENT ANIMALS AND FROGS. LOTS OF THESE ARE IN WOODED AREAS. AND CREEKS WHICH ARE TO SMALL TO DREDGE. THESE CREEKS HAVE SLOW WATER AND LOTS OF SMALL POOLS OF WATER WITH NO FISH TO EAT THEIR EGGS. I WOULD SUGGEST THAT MOST OF THE ENDANGERED FROGS ARE IN THE SMALLER TRIBUTARIES

THANKS Gary Smith

Please use additional sheets if necessary.

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

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

Email: dfgsuctiondredge@dfg.ca.gov

Fax: (530) 225-2391

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

Mark Stopher
Department of Fish and Game
601 Locust St.
Redding, Ca. 96001

New Suction Dredging Permitting Program
Draft Supplemental EIR-Comments

1. **A list of six locations**. (Section 228 (c)(2))
Do you really need this if you can amend it later?
I am buying a dredge permit to dredge in California, just like a fishing license or a hunting license I don't list where I will being fishing, sometimes friends will find out on a Friday they can go dredging that weekend, but find out they didn't write that location on their permit and the D.F.G. is closed on the weekend. Are you willing to be open on weekends now so we can make all these unnecessary changes we didn't have to before?

2. **Number of permits maximum of 4000** (Section 228 (g))
The problem here is, to put a small cap or any cap on permits, what's to keep Environmentalists from buying up every permit, just so no one else can dredge. In 1980 you sold 12,763 permits.

3. **Pump intake screening.** (Section 228 (j)(3))
All dredges come with their foot valve covered to protect from sucking up debris and fish, rocks that could damage the pump, its for sucking up water and water only, different size dredges need a different amount of water, To put a hole size limitation with out checking with a manufacturer first would be asking us to damage our equipment and maybe someone's life. If it gets clogged up from having a mandated restricted foot valve, it could seize the pump causing the motor to shut off, and the air supply to a diver under water is immediately turned off. Not to mention the equipment damage done.

4. **Winching,** (Section 228(k)
Winching of material. We should be able to winch a boulder with in the water level. Since you don't know what is in a hole, went you get down a few feet you may find a bolder stopping you, Then you need to be able to move it so you can continue safely and it cannot roll over and kill you... Mother Nature moves boulders long distances in all rivers, and streams. We will likely only move it a few feet

5. **Dredging a bank,** (Section 228 (k)(3))
You said its because you don't want the bank to collapse or fall in to the river or stream, The reason you would dredge close to a bank is because you are following bedrock and bedrock will not fall or collapse. This should be removed since common sense tells you we don't dredge where there is danger or no gold.

6. **No fuel storage within 100 ft from the water** (Section 228 (k)(10))
This is unreasonable. Some rivers don't have an area 100 ft from the water and to ask us to climb a mountain or hike down hill to refuel is unfair. Gas cans have changed over the year to be more environmentally safe and even spill proof. Maybe have the fuel can in a tub, or simply require spill proof cans.

7. **Dredging within 3 ft of water edge,** (Section 228 (k)(3))
What if you have an area with only 3 to 5 ft of water, and that's only a few months out of the year, then it dries up? You said it was to protect eggs, frogs what have you. Will you change the fishing regulation to read no walking or wading with in 3 ft of water edge? And also put up signs for the public to stay 3 ft away from the water edge while wading and or swimming?

8. **Suction Dredge use classifications**. (Section 228.5)
In an effort to push dredging out you cut back on the amount of time one can dredge in some cases from 4 months down to 1 month, 6 months to 2 months Or in the middle of winter when the rivers are running at full potential

Class A – no dredging
Class B – 2 months
Class C – 6 months down to 4 months
Class D – 3 months up to 7 months
Class E – 3 months up to 5 months
Class F – 7 months down to 3 months
Class G – 4 months down to 1 month
Class H – all year

Did someone really look at these dates or just threw something together to hurry things up. This looks like it was just tossed together quickly. I maybe wrong, or it may be an oversight. I would take a look at this and maybe go back to the 1994 regulations for now,

Classification for river and stream in each county. (Section 228.5)
This would take time to go thru every river and stream listed to find the changes made and tell you what I think about each one, DFG should explain why the changes, I would like to know why so many if not most were changed to Class A.? I would love to see where this fit in your budget and the manpower used to check every one of these rivers and streams to come up with the conclusion to make so many changes that limit our rights. Being from southern California I'll use the below examples:

*Riverside was all class H, now out of 22 listed, 15 changed to class A
*San Bernardino was all class H, now out of 21 listed, 17 changed to class A
*San Diego was all class H now out of 42 listed, 40 changed to class A

I want to Thank You, and all the other Fish and Game personal for the meetings and being able to voice my opinion on this matter.

Frank Tafoya
29852 Gifford Rd
Menifee, Ca.92584

Mark Stopher
Department of Fish and Game
601 Locust st.
Redding, Ca. 96001

My question to you Mark Stopher, with all the studies done on dredging by hundreds if not thousands of biologists from different groups and states, everyone comes up with the same conclusion, with the already codified seasons and restrictions, Dredging does not damage the environment. That's a fact.

Dredging rivers, streams and lakes, loosens hard surface gravels creating loose spawning grounds for egg layers, It Removes heavy metals and rejuvenates all streams, rivers, lakes. That's a proven fact.

I see this to be a never ending and costly battle until someone stands up to radical environmentalist, like the Karuk Tribe and show them dredging helps the environment and promotes fish and wild life.

The DSEIR reports seems to be only … could and maybes. True facts? No. Nowhere did I see a dredge used for testing purposes?

Dredging sucks up gravels within the rivers and streams and puts back the same gravels using the same water, so those gravels are never removed from the water. It's only transferring with that water from one place to the next, not adding anything to rivers or streams.

My next question,

I hear a lot of talk about mercury and high levels of mercury being found. Dredging being the blame again. Here say. Again not taking in consideration all facts leading up to this high level. I think that would be very important when American's rights are being taken away.

DFG states agricultural resources are in proximity to waterways, and rivers, where suction dredging occurs, but agricultural impacts are not applicable because of the Williams Act. The DSEIR report doesn't state that in their findings the agricultural industry's use of pesticides, fertilizers, and coal waste (also call synthetic gypsum) leeching into our waterways or rivers are creating higher levels of toxics in the water. That's a proven fact. Maybe this was over looked. If so, then your conclusions would be false and our rights are being taking away based on wrong information.

I want to touch a little on coal waste. Since some people don't know much about it, and because my rights may be jeopardize I did some research.

December 23, 2009 Associated Press writes:
U.S wants farmers to use coal waste on their fields. Farm use of the material had more then tripled from 79,000 tons to 279,000 tons.

Alledonia, Ohio Oct. 1, 2010
Pipe ruptures leaking coal-waste into the ground making its way into Captina creek, Officials said there does appear to be a fish kill.

Senator Boxer wants EPA to regulate coal-fired power plants waste.

Why all the concern over coal waste? Data from the EPA states trace metal content in synthetic gypsum (coal waste) is Arsenic, Cadmium, Chromium, Cobalt, Copper, Lead, Mercury, Molybdenum, Nickel, Selenium, Zinc

Now if farmers are using three times more of this material in their farms, one would think with the rain falls and the flooding of their fields this deadly material would make its way to rivers, streams and lakes. I am sure this was over looked in your reports.

My next question,

The purpose of the new regulations was the Karuk Tribe claiming dredging is killing salmon, and disturbing spawning gravels, is killing salmon eggs. If this is true, then rewrite the regulation to make them happy and save the fish and other wild life. On the other hand, if this is an effort to control rivers, streams and lakes and take away American rights then you need to stop and look at the big picture here. We miners have rights just like anyone else.

Karuk tribe has filed many lawsuits in their area, against loggers, PacifiCorp, and dredging all alleging the same thing. killing of fish.

KlamBlog March 27, 2010

In spite of the PacifiCorp exemption, the Klamath Clean-Up Plan gives hope to those who have been working hard for decades to restore Klamath River Salmon and Steelhead. That is because of the dams, while a significant water quality threat, are not to the main source of Klamath River water pollution. Livestock waste and other agricultural pollutions is by far the number 1 cause; it drives the Klamath's regular fish kills.

The lawsuit against PacifiCorp

According to the Karuk Tribe in their findings and I quote. "Many factors can be blamed on the Klamath's decline, but none greater then the dams, which stands between salmon and their home spawning grounds. The fish kill was caused by an infection that spread rapidly in shallow warm waters of the Klamath. A situation created by a combination of low flows from the upper Klamath irrigation project and water quality degradation by the dams." The Karuk water quality staff reports the dam removal is the key step in restoring the fishery and the fishery based economy.

The Pacific Fishery Management Council
States, conservation and fishing groups have been yelling from rooftops for years that fish need water.

Earth Justice
States, that the staff of the water control resources board calls for more water and also supports two federal biological opinions that call for more water to prevent the extinction of federally protected fish species as well as the Chinook salmon.

The Pacific Coast Federation of Fisherman's Associations
Claims, one of the biggest problems for water quality in Klamath river is the operation of the Klamath irrigation project. The water release from the dam is so hot and laced with pesticides and nitrates from agricultural waste that it"s often fatal for salmon.

Nowhere did I read anything in regards to dredging polluting the water and killing fish. To me it seems someone has a grudge on someone and wants him or her out of the way so they can control the Klamath Rivers, but they need your help to do it.

The facts I see are clear. Dredging creates holes for fish to swim down to colder water, creates spawning pools, loosens up hard pack gravels for egg layers and helps remove some toxics in the water. So what's the real reason for the dredge regulation change? To take away miners rights because an Indian tribe wants control over a river?

I tried to find out how many people died from mercury- poisoned fish from rivers and streams, but no luck, because there were none.

In closing, I want to Thank You for taking the time to read this, I am not a writer but when my rights are being jeopardized I want to make sure we are all working on facts and not making decisions on a lot of might, could and maybes.

Frank Tafoya
29852 Gifhorn Rd.
Menifee,Calif.92584

The Karuk Tribe's Effort to Remove Klamath Dams

Introduction

Fed by snowmelt from the Cascade Mountains, the Klamath River begins as a series of wetlands, marshes, and lakes in the high mountain desert of Southeastern Oregon. Often called the "Everglades of the West", this area once hosted an incredible diversity of wildlife, from the millions of migratory fowl that winter in the marshes to unique species of fish that inhabit the lakes and river. With up to 1.1 million adult fish spawning annually, including chinook, coho, pinks and chum salmon as well as abundant steelhead, the Klamath was once the third most productive salmon river in America.

For thousands of years Native People, including the Klamath, Karuk, Hoopa and Yurok Tribes, sustained themselves on the bounty of the river. As white settlers came to the area, a sustainable commercial fishery developed.

Today all of this has changed. Currently, Klamath River fall chinook runs are less than 8 percent of their historical abundance. For coho salmon the numbers are less than 1 percent. Chum and pink salmon, once abundant in the Klamath, are extinct. Coho salmon are listed as a threatened species, the Lost River Sucker, and the Short Nosed Sucker are listed as Endangered Species. Spring chinook, once the largest run of salmon, are on the brink of extinction.

Many factors can be blamed for the Klamath's decline, but none are greater than the dams which stand between salmon and their home spawning grounds in the Upper Basin.

The Disaster of 2002

In the fall of 2002 we saw the region's worst single ecological disaster when over 68,000 fish died in a matter of days. This represents the largest fish kill in US history. The fish kill was caused by an infection that spread rapidly in the shallow, warm waters of the Klamath- a situation created by a combination of

low flows from the Upper Klamath Irrigation Project and water quality degradation by the dams.

Dams are Dangerous for Fish and People

Dams deny salmon access to habitat and degrade water quality by heating the river and hosting algae blooms. These algae blooms are dangerous for people too.

Last summer, in an effort to better understand and describe the water quality problems the dams create, Karuk Water Quality staff began sampling the reservoirs to learn more about the blue-green algal blooms that occur each summer. What we found could lead to the closure of the reservoirs this summer.

Blue-green algae, or cyanobacteria, come in many varieties- some benign, some toxic. What the Tribe discovered is called Microcystis aeruginosa, which secretes a potent a liver toxin and proven tumor promoter called microcystin.

KARUK TRIBE QUOTE

"DAM REMOVAL IS KEY STEP IN RESTORING THE FISHERY AND THE FISHERY BASED ECONOMY"

The Pacific Fishery Management Council (PMFC) today voted to shut down the California commercial salmon fishing season for a second year in a row to protect the shrinking population of Sacramento River Chinook salmon, according to Brian Smith of Earthjustice.

"Conservation and fishing groups have been yelling from the rooftops for years that 'fish need water,' but their cries fell on deaf ears," said George Torgun, the Earthjustice attorney who represented conservation and fishing groups and the Winnemem Wintu Tribe in federal litigation to protect water flows for winter and spring runs of Sacramento River Chinook salmon. "With the cancellation of commercial salmon fishing off the California coast for a second year, it's clear the salmon advocates were right."

The Central Valley salmon collapse occurs at time when delta smelt, longfin smelt, threadfin shad, juvenile striped bass, Sacramento splittail, American shad, green sturgeon and other species have declined to record low population levels, due to increases in delta water exports, toxics and invasive species in the California Delta. Yesterday American Rivers, a national conservation group, named the Sacramento-San Joaquin River as the most endangered river system in the nation.

EARTHJUSTICE

July 21 2010

Oakland,ca

Staff of the state water control resources board released their recommendation identifying the amount of water needed to keep sacramento – san Joaquin delta wildlife and ecosystems alive, the staff recommendations mirror calls for more water made by fish biologists,other scientists, and state and federal wildlife officials who have studied the program

The staff report also supports the finding of two federal biological opinions that call for more water to prevent the extinction of federally protected fish species as well as Chinook salmon

THE PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS

THE STRUGGLE TO SAVE SALMON IN THE KLAMATH BASIN

Best Viewed With Netscape
Back to PCFFA Home Page

The Klamath River was once the third most productive salmon river system in the United States. Today, thanks to habitat blocking dams, poor water quality and too little water left in the river, the once abundant Klamath salmon runs have now been reduced to less than 10% of their historic size. Some species, such as coho salmon, are now in such low numbers in the Klamath River that they are listed under the Federal Endangered Species Act (ESA).

Salmon losses in the Klamath Basin have had devastating impacts on the lower river fishing-dependent economy, putting thousands of people out of work and eliminating tens of millions of dollars annually from the economy of these rural areas and coastal ports, from Fort Bragg, California to Florence, Oregon. The need to protect depressed Klamath salmon runs has also triggered fishing closures on otherwise abundant stocks (mostly hatchery fish from the California Central Valley) all up and down the west coast, causing many indirect economic costs as well.

One of **the biggest problems** for water quality in the Klamath River is the operation of the **Klamath Irrigation Project**, a huge federal water project which diverts most of the water from the Upper Klamath Basin (in Oregon) for irrigation long before it can reach salmon spawning areas downriver in California. The remaining water left in the river, whatever the Project is willing to release from Iron Gate Dam, is so little in volume, so hot and so laced with **pesticides and nitrates from agricultural waste water** that it is often fatal for salmon as much as 100 miles downriver. Hundreds of thousands of salmon have been killed in recent years as a result, and Klamath River coho salmon driven nearly to extinction.

There has never been much consideration in the operation of the Klamath Irrigation Project by the Bureau of Reclamation for the devastating consequences on lower river communities and families when the Project takes too much water out of the river for irrigation. *Now that is beginning to change*. Recent successful lawsuits by fishermen and salmon conservation groups have begun to bring more balance between upper basin and lower basin river interests, and to demonstrate that farmers have no right to drain the river and siphon off the lakes if it will devastate the river system inself, push its inhabitants into extinction and violate Tribal Treaty obligations. This page contains information and links to official documents, fact sheets and court decisions about this issue.

TheSunNews.com

Wednesday, Mar 23, 2011

Posted on Fri, Jun. 26, 2009

Boxer: EPA should regulate coal-fired power plant waste

Halimah Abdullah and Renee Schoof
McClatchy Newspapers

WASHINGTON — Federal regulations are needed to make sure that ash from coal-fired power plants is stored safely, Sen. Barbara Boxer, D-Calif., said on Thursday as the Senate Environment and Public Works Committee held a hearing on the spill of 1 billion gallons of toxic sludge in East Tennessee.

Republican and Democratic lawmakers promised to make sure that the Tennessee Valley Authority helps the region recover from one of the nation's worst spill and looks for ways to prevent other spills and leaks.

TVA president and chief executive Tom Kilgore told the committee that his agency would do a first-rate cleanup.

"We'll start with the people first, and the environment comes right after that," he said. He also said the TVA wanted to work with the environmental committee to become a leader in better ash disposal methods.

It's not entirely clear how much ash is stored around the country or where. The Environmental Protection Agency doesn't track the number or have a breakdown for the states, said spokeswoman Tisha Petteway.

According to the American Coal Ash Association's latest survey, in 2007, coal-fired plants generated 131 million tons of coal ash.

The nation's hundreds of coal ash dumps contain millions of pounds of toxic metals such as arsenic, lead, cadmium, mercury and chromium, which can cause cancer or damage the nervous system and lungs and other organs if people ingest them. The EPA has left regulation up to the states, but it's been debating whether to set national standards.

"For nearly three decades, EPA has been looking the issue of how to regulate combustion waste," Boxer said. "The federal government has the power to regulate these wastes, and inaction has allowed this enormous volume of toxic material to go largely unregulated."

However, she said she hoped the EPA would decide to regulate coal ash soon. Boxer said she planned to ask Lisa Jackson, President-elect Barack Obama's nominee to head the EPA, whether she agrees on the need for federal regulation at her confirmation hearings.

The EPA decided in 2000, in the Clinton administration, not to regulate coal ash as a hazardous waste. It noted, however, that there was a "lack of controls, such as liners and groundwater monitoring, at many sites" and "gaps in state oversight existed."

Boxer said the ash shouldn't be held in ponds, where it can contaminate water supplies. Coal ash also has been placed in abandoned mines and quarries. In other cases, dry ash is held in lined landfills.

Sen. Johnny Isakson, R-Ga., said that Georgia has 10 coal ash storage sites. He expressed interest in setting standards that would prevent spills.

Stephen Smith, the director of the Southern Alliance for Clean Energy, called for federal regulation of coal combustion waste, saying that voluntary industry practices and state rules haven't prevented the contamination of land and water near disposal sites.

"We absolutely need to keep ash out of the water," Smith said. "Storing it wet is unacceptable."

Smith said that that TVA should be held accountable for the disaster and urged a review of the company's emergency preparedness procedures.

William Rose, the director of the Roane County, Tenn., office of emergency services, told the committee that his office had problems working with TVA after the spill because TVA doesn't use the same emergency preparedness program for ponds and dikes that it uses at the region's nuclear and hydroelectric facilities.

The spill occurred at about 1 a.m. on Dec. 22, about 40 miles west of Knoxville. No one was killed.

TVA, the nation's largest public power company, is likely to pass part of the cleanup cost on to its 9 million customers in Alabama, Georgia, Kentucky, Mississippi, North Carolina, Tennessee and Virginia.

There are about 300 coal ash ponds around the country, and EPA data shows that some contain larger amounts of toxic metals than the Kingston one did.

Kilgore estimated that TVA has about 20 ash ponds. They're unlined, and that raises concerns that the toxic material could leach through the bottom, he said. There also are "one or two other places" at TVA ash ponds with a "wet spot on the dike," he said.

Ash stored in dry conditions, with just enough dampness to prevent dust, can be sold for use in concrete, wallboard and other products, Kilgore said. TVA recycles about half its ash, he said.

Kilgore said that EPA tests showed that drinking water and the air near the spill was safe, but Boxer said that some tests of river water showed problems.

Five people who live near the Kingston Fossil Plant who traveled to Washington for the hearing said outside the hearing room that they're worried about their health.

"My biggest concern is my 11-year-old son" who loves to ride his dirt bike, go boating and swim, said Bridget Daughterty, a nurse.

"We will not know the effects for many years. This might affect a lot more people," she said.

Teresa Riggs said she wanted the EPA to tell the community what's in the sludge.

"If it's not hazardous, why are they telling us, 'Don't walk it in and bring it back in your house?'" she said. " 'We're going to wash it off the tires of the trucks. Don't let your animals drink the water.' If it's not hazardous, why are they telling us to be careful?"

Riggs said that her father and her husband's father helped build the Kingston plant in the 1950s, and that the community appreciates the power it provides. She said that she came to Washington to ask lawmakers for more oversight, including a look into whether changes are needed in how the waste is stored.

Texas doesn't require permits for coal ash disposal if it takes place on the property of the company that produces it, isn't mingled with wastes from other companies, and if the disposal site is within 50 miles of the plant.

Kentucky doesn't require emergency plans for its coal company impoundments or at nearly 400 water dams in the state that are rated as high or moderate hazards. Environmentalists and Kentucky lawmakers began pushing to develop a monitoring and public alert system in 2000, when a spill in Martin County dumped 300 million gallons of slurry into creeks, rivers and bottomland in Eastern Kentucky.

(Cassondra Kirby Mullins and Andy Mead of the Lexington (Ky.) Herald-Leader contributed to this article.)

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Coal ash spill reveals risks, lapses in waste regulation

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The Washington Post

U.S. wants farmers to use coal waste on fields

By Associated Press
Wednesday, December 23, 2009; A17

The federal government is encouraging farmers to spread a chalky waste from coal-fired power plants on their fields to loosen and fertilize soil even as it considers regulating coal wastes for the first time.

The material is produced by power plant "scrubbers" that remove acid-rain-causing sulfur dioxide from plant emissions. A synthetic form of the mineral gypsum, it also contains mercury, arsenic, lead and other heavy metals.

The Environmental Protection Agency says those toxic metals occur in only tiny amounts that pose no threat to crops, surface water or people. But some environmentalists say too little is known about how the material affects crops, and ultimately human health, for the government to suggest that farmers use it.

"This is a leap into the unknown," said Jeff Ruch, executive director of Public Employees for Environmental Responsibility. "This stuff has materials in it that we're trying to prevent entering the environment from coal-fired power plants, and then to turn around and smear it across ag lands raises some real questions."

With wastes piling up around the coal-fired plants that produce half the nation's power, the EPA and U.S. Department of Agriculture began promoting what they call the wastes' "beneficial uses" during the Bush administration.

Part of that push is to expand the use of synthetic gypsum -- a whitish, calcium-rich material known as flue gas desulfurization gypsum, or FGD gypsum. The Obama administration has continued promoting FGD gypsum's use in farming.

The administration is also drafting a regulatory rule for coal waste, in response to a spill from a coal ash pond near Knoxville, Tenn., one year ago Tuesday. Ash and water flooded 300 acres, damaging homes and killing fish. The cleanup is expected to cost about $1 billion.

The EPA is expected to announce its proposals for regulation early next year, setting the first federal standards for storage and disposal of coal wastes.

EPA officials declined to talk about the agency's promotion of FGD gypsum before then and would not say whether the draft rule would cover it.

Field studies have shown that mercury, the main heavy metal of concern because it can harm nervous-system development, does not accumulate in crops or run off fields in surface water at "significant"

levels, the EPA said.

"EPA believes that the use of FGD gypsum in agriculture is safe in appropriate soil and hydrogeologic conditions," the statement said.

Eric Schaeffer, executive director of the Environmental Integrity Project, which advocates for more effective enforcement of environmental laws, said he is not overly worried about FGD gypsum's use on fields because research shows it contains only tiny amounts of heavy metals. But he said federal limits on the amounts of heavy metals in FGD gypsum sold to farmers would help allay concerns.

"That would give them assurance that they've got clean FGD gypsum," he said.

Since the EPA-USDA partnership began in 2001, farmers' use of the material has more than tripled, from about 78,000 tons spread on fields in 2002 to nearly 279,000 tons last year, according to the American Coal Ash Association, a utility industry group.

About half of the 17.7 million tons of FGD gypsum produced in the United States last year was used to make drywall, said Thomas Adams, the association's executive director. But he said it is important to find new uses for it and other coal wastes because the United States will probably rely on coal-fired power plants for decades to come.

"If we can find safe ways to recycle those materials, we're a lot better off doing that than we are creating a whole bunch of new landfills," Adams said.

View all comments that have been posted about this article.

Table 4. Trace metal content[1] of gypsum from different sources compared with U.S. EPA Part 503 pollutant concentration limits for excellent quality biosolids.

Pollutant (ppm = mg kg^{-1})	Museum specimen	Synthetic gypsum	Natural gypsum	Cast gypsum	Drywall gypsum	Part 503 Table 3[2]
Arsenic	< 0.52	0.56 (0.05)[3]	< 0.52	< 0.52	0.98 (0.11)	41
Cadmium	< 0.48	< 0.48	< 0.48	< 0.48	< 0.48	39
Chromium	0.01	1.30 (0.85)	1.38 (0.32)	0.07 (0.00)	1.09 (0.09)	1200
Cobalt	< 0.48	< 0.48	0.53 (0.04)	< 0.48	< 0.48	NR[4]
Copper	< 0.48	1.16 (0.66)	1.33 (0.30)	1.40 (0.21)	0.95 (0.14)	1500
Lead	< 0.48	0.80 (.30)	2.92 (0.30)	0.57 (0.08)	0.70 (0.02)	300
Mercury	< 0.26?	< 0.26	< 0.26	< 0.26	< 0.26	17
Molybdenum	< 0.24	0.51 (0.26)	1.28 (0.04)	< 0.24	< 0.24	—[5]
Nickel	< 0.24	0.73 (0.18)	1.42 (0.23)	< 0.24	0.83 (0.12)	420
Selenium	< 1.45	5.51 (3.47)	< 1.45	< 1.45	1.85 (0.04)	36
Zinc	< 0.24	3.88 (2.78)	0.91 (0.49)	< 0.24	3.08 (0.45)	2800

[1] Data obtained by EPA method 3050 (USEPA, 1996).

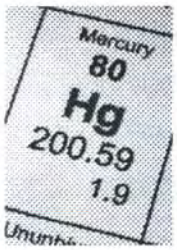
[2] Part 503-Standards for the Use or Disposal of Sewage Sludge; 503.13, Table 3. (USEPA, 1993).

[3] Standard deviation included in parentheses.

[4] NR = not regulated.

[5] Ceiling concentration limit for molybdenum is 75 ppm; 503.13, Table 1. (USEPA, 1993).

0



In the midst of the push for environmental regulation in connection with the UN Climate Change Conference in Copenhagen, the Environmental Protection Agency (EPA) declared carbon dioxide — a substance produced by human respiration, among other means — a danger to public health. However, it appears that the EPA has a far more tolerant view to mercury, arsenic, and lead, since it is encouraging American farmers to spread these and other heavy metals on their fields.

According to a report in the *Washington Post*:

> The federal government is encouraging farmers to spread a chalky waste from coal-fired power plants on their fields to loosen and fertilize soil even as it considers regulating coal wastes for the first time.
>
> **The material is produced by power plant "scrubbers" that remove acid-rain-causing sulfur dioxide from plant emissions. A synthetic form of the mineral gypsum, it also contains mercury, arsenic, lead and other heavy metals....**
>
> With wastes piling up around the coal-fired plants that produce half the nation's power, the EPA and U.S. Department of Agriculture began promoting what they call the wastes' "beneficial uses" during the Bush administration.
>
> Part of that push is to expand the use of synthetic gypsum — a whitish, calcium-rich material known as flue gas desulfurization gypsum, or FGD gypsum. The Obama administration has continued promoting FGD gypsum's use in farming.

Thus, the EPA intends that the substances carefully "scrubbed" from plant emissions for the stated purpose of keeping them from polluting the environment are to be spread around where much of the nation's food is grown. Why? Because the waste is piling up, and they have not been able to determine another use for it.

Amazingly, the same quantities of mercury, for example, which were apparently too toxic to release from the coal-fired power plants are suddenly less dangerous when they are scattered over farm fields. Again, according to the article in the *Washington Post*:

> Field studies have shown that mercury, the main heavy metal of concern because it can harm nervous-system development, does not accumulate in crops or run off fields in surface water at "significant" levels, the EPA said.
> "EPA believes that the use of FGD gypsum in agriculture is safe in appropriate soil and hydrogeologic conditions," the statement said.

But why, one might ask, should the plants go to the trouble of collecting and concentrating such hazardous substances in the first place if the government is simply going to encourage releasing them right back into the environment in the end? Would not the least dangerous disposal of such "insignificant" levels of heavy metals be to have as wide of an area of dispersal as possible, rather than compounding the toxins in a small area, and spreading them in the fields?

Government programs beget more government programs. One government program sets stringent guidelines to carefully collect the toxins produced by our nation's power plants, which, in turn, necessitates another government program to determine what to do with the collected waste. Presumably, in a generation or so, the EPA and USDA will develop another program to remove newly discovered "dangerous" levels of heavy metals from the soil of America's heartland.

One thing that is certain is that the program is steadily expanding:

> Since the EPA-USDA partnership began in 2001, farmers' use of the material has more than tripled, from about 78,000 tons spread on fields in 2002 to nearly 279,000 tons last year, according to the American Coal Ash Association, a utility industry group.
>
> About half of the 17.7 million tons of FGD gypsum produced in the United States last year was used to make drywall, said Thomas Adams, the association's executive director. But he said it is important to find new uses for it and other coal wastes because the United States will probably rely on coal-fired power plants for decades to come.
>
> "If we can find safe ways to recycle those materials, we're a lot better off doing that than we are creating a whole bunch of new landfills," Adams said.

The story between the lines of such reporting is that despite all of the supposed environmental concern over coal-fired power plants, the government is establishing programs that appear to assume a steady supply of waste generated by such plants for years to come. After all, if “cap and trade” taxation produces an entirely new "revenue stream" for the federal government, what incentive would politicians have for eliminating the very source of that new income?

From:	"Janet Thew"
To:	dfgsuctiondredge@dfg.ca.gov
CC:	
Date:	04/06/2011 7:56:32 PM
Subject:	Reject Suction Dredge Mining in California

To: Mark Stopher, California Department of Fish and Game

We oppose the continuation of suction dredge mining permits. It's an antiquated practice that harms the environment, and there's no justification for subsidizing it with our money. There's no benefit to the state whatsoever, so why is it even being considered?

Thank you.

Janet Thew
5572 St Francis Cir
Loomis, CA 95650
US

Subject: SEIR on Suction Dredging

Date: Wednesday, April 6, 2011 7:59:58 PM PT

From: Phil Thomas (sent by pthomas22 @dslextreme.com <pthomas22@dslextreme.com>)

To: dfgsuctiondredge@dfg.ca.gov

I would like to make a public comment on the recent proposed dredging regulations that were released on February 28, 2011.

There are many areas of concern regarding the changes being made to current regulations. All of the proposed changes are arbitrary, show no common sense, and serve to discriminate against suction dredgers.

1. The limit of 4000 permits per year is arbitrary. Fishermen and Hunters have no such limit placed on their licenses. With a limit in place, activist groups could conceivably buy up all available licenses, effectively shutting down suction dredging statewide. At a 2009 cost of $47.00 per permit, a group could buy up all permits for only $188,000. A mere drop in the bucket for those intent on asserting their power over our right to access natural resources. There should be no limit on the number of permits issued.
2. The limit of six locations allowed per permit is only a way to provide a way to harass the suction dredging community. Does it really matter how many places that I do my dredging? NO. I can only be in one place at a time since the permit is issued to an individual. What do you care where I dredge, as long as I do it legally? Adding to this requirement of dates that the dredging will take place is another way to potentially harass by officials. I doubt that you would accept January 1 to December 31 on the permit application. Does it matter when the dredging takes place? NO.
3. Display of a permit number on all equipment is also arbitrary and unnecessary. A few years ago, the department required fishermen to display their license visibly above the waist. Why was it changed? Because it did nothing but allow strangers to learn personal information. What if 10 men all own a share in a dredge and take turns at the nozzle, all with permits? Does that mean that you have to replace the permit number on the equipment several times a day? Ridiculous. The requirement is there only so an officer can use his binoculars from his truck, looking for a non-marked dredge, and write the owner a citation. Revenue enhancement for the state. No, this has no basis in common sense.
4. Changing the maximum nozzle diameter to four inches is arbitrary. What data is available that shows that the current six inch maximum causes harm to the environment? None.
5. The 3/32 intake screen regulation is also ridiculous. With such a small hole size, the intake will plug up from stream debris, causing the dredge operator to run without the screen. More revenue enhancement for the state. You couldn't suck a fish through the intake if you tried They live in the swift currents of the river and are much too agile to allow themselves to get anywhere near the intake. Maybe you should do some testing to see if you can capture a fish in open water in such a manner.
6. There is no mention of the permit fee that will be charged. I believe it should be no higher than what is charged for sport fishing licenses.
7. The requirement to level all tailing piles is also a ridiculous requirement. As long as the material comes from the streambed and returns to the stream bed, no harm has been done. Nature will erase all evidence of the activity in a very short time. Erosion is a natural process and one that is familiar to all of the life forms that inhabit the stream or river. The movement of material a few yards from where it originated is insignificant.
8. Why is it necessary for the state to force the miner to disclose a list of all equipment used to include engine manufacturer, model number and horsepower? What difference does it make? None. As long as the nozzle diameter is adhered to, there is no reason for this information. It is

just another tool for selective enforcement and harassment.

These points are just a few of the major problems with the draft regulations. It is always expected that government will over regulate and fail to use common sense. Let's change that track record and keep the regulations reasonable and fair for all.

Thanks,

Philip Thomas

Mark Stopher

April 6, 2011

Department of Fish & Game

601 Locust Street

Redding, Ca. 96001

Re: Proposed Suction Dredge Regulations - Project No. 09.005

Dear Mr. Stopher,

I am opposed to ALL of the alternatives presented in the new Draft Supplemental Environmental Impact Report EXCEPT the return to the 1994 Regulations. During the Fresno meeting you expressed the opinion, as I understood, that the Department could not return to the "old regs" because the Alameda Court ruled that you couldn't. I do not believe that is what Judge Sabraw indicated in her ruling. The Court order states :
'3. THEREFORE the Department is hereby ORDERED to conduct a further environmental review pursuant to CEQA of its suction dredge mining regulations and to implement, *if necessary*, via rulemaking, mitigation measures to protect coho salmon and/or other special status fish species in the watershed of the *Klamath, Scott, and Salmon rivers*, listed as threatened or endangered after the 1994 EIR'. Somewhere in the 897 or so pages of the DSEIR it states that the 1994 Regulations Alternative is included ONLY as an informational alternative. That, MR. Stopher indicates to me that the entire project is biased and that the conclusions reached are being used and twisted to promote a self-serving agenda. That agenda is being perpetrated through the new regulations which are overly burdensome and loaded down with new added costs for miners that need to use a suction dredge to efficiently mine their claims. That agenda is to economically and strategically deny suction dredgers the ABILITY to make a profit from their Federal mining claims.

Specific points of the proposed regulations I am opposed to.

- Permit Application Requirements; starting page 4, line 4. Valid I.D., limitation of six locations, list of all equipment to be used, location may require an inspection pursuant to DF&G Code 1602, limit on number of

permits issued, permit may be revoked or suspended at discretion of the (regional manager) *assistant chief of enforcement.* No other users of the waters of California such as fishermen & rafters are subjected by the DF&G to such burdensome requirements. Changing the "regional manager" title to *assistant chief of enforcement* implies that there is now a criminal element in suction dredging.

- Equipment Requirements; page 11, starting line 11. (1) Nozzle Restriction. Cannot use a nozzle larger than 4" unless the Dept. has conducted an on-site inspection, approved the larger nozzle, applicant must have a valid permit, must prove compliance with section 1602, AND must have all this documentation on-site once approved. There is a very good chance that the on-site inspection would not even occur within the limited dredge "season" or window. Again, burdensome expensive restrictions without any REAL science to back up the necessity for the requirements.
- (3) Pump Intake Screening; page 12, line 28. This requirement is ridiculous. Phillip A. North in a "Review of the Regulations and Literature Regarding the Environmental Impacts of Suction Gold Dredges". (U.S. Environmental Protection Agency, Region 10, Alaska Operations Office. 1993) states. "*While adult fish did not show a sensitivity to entrainment it is unlikely that they would be sucked into a dredge in the first place. They have the ability to avoid entrainment in a suction dredge by moving to a safer location.*" The quote is referring to entrainment into the suction nozzle of the dredge. Fish can CERTAINLY avoid entrainment into a stationary pump intake! This is simply a "rip-off" regulation from Washington state.
- Equipment Requirements; page 13, line 2.
  (5) The..permit number must be affixed to all permitted dredges at all times..What scientific study, endangered species or critical habitat demands the need for this requirement? This is another unnecessary expense being used to discourage suction dredging. Get rid of it.
- (k)Restrictions on Methods of Operation; page 13, line 9. Motorized winching is now prohibited unless the permittee has an on-site inspection, 1602 authorization, valid dredge permit and all documentation there on site. Same burdensome, unnecessary, expensive restriction that may or may not be conducted by the time the claim holder is allowed to dredge on that particular site. The 1994Regulations Alternative would be sufficient to adequately protect the streambed, I don't see any added "danger" to the environment between a hand winch and a motorized winch. Where's the science? I have been suction dredging in California for 32 years. I would not have continued dredging or performed the related activities such as winching if I saw that I was causing harm to the environment.

- (k)Restrictions on Methods of Operation; page 14, line 17.
  (3) No person may..dredge within three feet of the lateral edge of the current water level, including the edge of instream gravel bars..
  Many gold bearing locations that were previously open, at least seasonally, to suction dredging on small streams are only six feet wide or less when there is seasonal water running. This restriction effectively closes off those areas on gold bearing small streams in a very under-handed manor without specifically naming them as "closed" as does some of the other new restrictions.
- Page 15; starting line 14 (9) & (10) Fueling, lubricants & servicing.
  Being careless with fuel, lubricants and servicing equipment was already a violation of the regulations previously. This new restriction assumes that suction dredge operators are regular violators of common sense practices. I can see that this new language has come from unfounded anecdotal fears from environmental groups that have continuously accused suction dredgers of spilling fuel without any evidence.
- Page 16; line 1, (15). Permittee must level all tailing piles. I thought EVERYONE knew this; *"However during the suction dredge mining process, a new pool area is created by the cone shaped dredge hole. Dace, suckers and juvenile steelhead were observed feeding and resting in Canyon Creek dredge holes. Freese (1980) observed a small spring-run chinook salmon holding in a dredge-created pool on Canyon Creek".* Thomas J. Hassler, William L. Somer, Gary R. Stern – 1986. Requiring dredgers to level tailing piles would be deleterious to fish habitat! This needs to be removed.

Mr. Stopher, I could continue exhaustively. To sum up, I believe the Horizon Environmental group that wrote the DSEIR has promoted the effects of suction dredging as a "significant disturbance" when the scientific, peer reviewed evidence does not support that opinion. The effects of suction dredging on our environment have not changed in 17 years; they remain "*de minimus*". I urge the Department to return to the 1994 Regulations Alternative.

Bill Wilkinson

813 Lincoln Street

Hanford, Ca. 93230

April 7, 2011

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

Subject: SB 657

Mark: As I'm sure you are aware of, there is a vote on April 12, 20ll of SB 657 regarding the permitting of dredging on June 1, as in a normal cycle. You, and your committees, and all of your studying that has now taken app 1 ½ years to conclude, which isn't concluded, and doesn't appear to be close to being concluded, come at the expense of the dredging community. There is absolutely no solid evidence that dredging is harmful to the environment, fisheries, or anything else. In fact, after the DSIER meeting in Sacramento, it sounded to me, like we do a lot more good than bad, and are blamed for a lot of matters unfairly.
Furthermore, it is not the fault of the dredging community that this EIR was not done in a timely matter in the first place. Wouldn't that be the fault of F&G?
I think you should advise the senatorial committee, and admit to them, that until there is solid evidence and a complete study done, suction dredging should be allowed to commence immediately, as it has for years, and continue to use the 1994 regulations that provide adequate protection for all involved.
I hope you take the time to read this, and at least consider it.

Thank you for your time.

Roger J. Bendix
5201 Dewey Drive
Fair Oaks, Ca 95628
916.792.5796

Mark Stopler / DF&G 4-7-2011

After the Public Hearing on March 31, 2011, I must say, that my husband and myself were glad we attended. Our concerns seem to be the same as most everyone else's. Our concerns are as follows:

1. a 4" suction dredge as well as the water intake reduction size are too small. A 4" dredge is like a toy compared to a 6". Water intake reduction is going to cause a lot hardship on our dredge due to a lot more clogging. We have used a 6" dredge on our claims since 1996 and after the following year you cannot find where we dredged. This is true because we have very steep canyons w/ shear walls. Yearly rains produce a lot of fast moving water. I can honestly state that our 6" dredge has caused no damage to our claims / creek or surrounding environment.

2. 3' set back from shores or banks - Our claims, in Siskiyou Co. Are very steep + our upper claims are not 6' wide. we have little or no shoreline. Does this mean that we can't dredge these claims?

3. Winching for us is a must, all of our claims are filled with high boulders - some as big as our jeep. Before getting our Winch there were several instances where possible injury just about occurred by us trying to muscle or bar out large rocks.

4 4,000 dredge permits 1st Come 1st Served is simply not Right. Both my husband + myself purchase dredge permits. Thats 2 permits for 1 operation. If we cannot obtain a permit to dredge - we still have to pay County taxes on our claims - as well as County recording fee + BLM forms/fees.

This is a lot of money to be putting out each year for possibly not being able to dredge. What if certain private intrests / clubs come in & purchase dredge permits so that a true dredger / miner can't obtain them? I feel that every valid claim holder should be intitled to a dredge permit.

Once again, I feel that our concerns were covered at your Public Hearing on 3-31-2011. Thank you so much for taking the time to read this letter of our concerns.

Sincerely
Craig & Debbie Cahoon

Subject: Dredging Comment Letter1 to DFG 2011.doc
Date: Thursday, April 7, 2011 11:41:44 AM PT
From: Mark Dowdle - TCRCD
To: DFGsuctiondredge@dfg.ca.gov
CC: Gary Adair

Here is a comment I would like considered and included in the final EIR for suction dredge mining.

Thanks!

Mark Dowdle

Mark Dowdle
James McKee Ranch
2671 East Fork Hayfork Road
Wildwood, CA 96076
Mail address:
James McKee Ranch
P.O. Box 1694
Weaverville, CA 96093

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

RE: **NEED FOR INCLUSION OF EAST FORK HAYFORK CREEK, TRINITY COUNTY** IN SUCTION DREDGE MINING USE RESTRICTIONS

Dear Mr. Stopher,

I am one of the partners in a large piece of property near the Chanchelulla Wilderness in Trinity County with approximately one-half mile of the East Fork Hayfork Creek running through it. A smaller stretch of Potato Creek also runs across the property.

Physical salmonid surveys and redd counts conducted by the California Department of Fish and Game over the years continue to indicate the East Fork of Hayfork Creek is one of the best, if not the best, spawning and juvenile-raising habitats in the entire Hayfork sub-basin of the South Fork of the Trinity River. Our family members and visitors are cognizant of and enjoy observing high numbers of juvenile salmonids here. Being such a productive stream, this particular stretch of salmonid habitat requires special protection from degradation. It was heavily mined in the 1800s and early 1900s and only in the recent two or three decades has it attained substantial recovery.

As landowners, our primary goal is to conserve and continue to restore this stretch of riparian habitat. We own all mining and timber rights to our land and do not intend to exercise them aside from fuels reduction activities. So it is with considerable trepidation we note there are no proposed restrictions on any of the tributaries to the South Fork of the Trinity River.

All efforts we invest to ensure protection and conservation of spawning beds and juvenile rearing habitat can be quickly nullified by degradation of salmonid habitat downstream or upstream by suction dredge mining and related activities. Importantly, high flows vary

significantly year to year in this stream, providing no assurance that residual sediment from dredging activities will be adequately flushed from critical salmonid spawning beds from one year to the next. Moreover, the recent drought, compounded by seasonal agricultural diversions upstream, caused East Fork Hayfork Creek to cease flowing for two consecutive summers as recently as two years ago. In sum, salmonid populations in this water body are already subject to significant stressors and need whatever protections can be accorded them.

The Environmental Impact Report on Suction Dredge Mining offers no proposed restrictions that would serve to protect this stream. In fact, it offers no restrictions on any tributaries to the South Fork Trinity River. As such, we ask that California Department of Fish and Game include East Fork Hayfork Creek and Potato Creek as subject to suction dredge mining restrictions and assign each the appropriate restriction of Class A, no dredging permitted at any time.

Thank you for your dedication and your efforts.

Sincerely,

Mark Dowdle
James McKee Ranch

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

Name: Lloyd Paul Hamlin

Mailing Address: P.O. Box 5144

Shasta Lake Ca. 96089

Telephone No. (optional): 530-275-8683

Email (optional):

Comments/Issues: After hearing Mr Waggoner the speaker for the Sierra Club I think you are going to be on that treadmill of endless litigation that you spoke of. Mr. Waggoner and the other members of the Sierra Club are well connected politicaly in Sacramento They are also represented in court by a small army of very expensive lawyers and are not going to stop unlitthey get the restrictions they want which is no dredging at all. They have been successful in shutting down the timber industry oil and gas exploration and all other forms of use of public land by the tax paying public

Please use additional sheets if necessary.

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

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

Email: dfgsuctiondredge@dfg.ca.gov

Fax: (530) 225-2391

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

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

Name:	Laith LeBoa
Mailing Address:	POBox 7146 Petaluma CA 94955
Telephone No. (optional):	
Email (optional):	

Comments/Issues:

4" dredge is not big enough to dredge Big waters
List where I am dredging = Noway people would be likely to be robbed or harrased
4000 dredge permits only = whats to stop enviromental groups from snatching all the permits. How do you decide who gets permits Claim owners past permit holders with gold up more + more people will Need permits
3' away from banks makes all most all small creeks + streams undredgeable vegetation is more likely to be abbused by the large # of fisherman tubers Rafters. seem to me you are singleing out the dredgers
No motorized winches puts everybody at risk for crushing + Drowning
Yellowlegged frog = any body can say they saw one anywhere whats to stop the enviros from making false reports.
Were you guys ordered to review and change dredge laws or just to review
I still havent read all the report but I will I see plenty of problems with your proposed or allready made changes.
Display liscens will you give us a waterproof liscens with 3" letters so you can read from 100'

Please use additional sheets if necessary.

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

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

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

040711_Robel

From:	"Leonard Robel"
To:	dfgsuctiondredge@dfg.ca.gov
CC:	
Date:	04/07/2011 7:37:28 PM
Subject:	Reject Suction Dredge Mining in California

To: Mark Stopher, California Department of Fish and Game

Please do everything in your power to stop the destructive mining happening in California. It's just one more industrial stealing operation - taking a little something for oneself and causing catastrophic damage to everyone else.

Thank you.

Leonard Robel
34 Meadow Drive
San Rafael, CA 94903
US

Subject: Draft SEIR
Date: Thursday, April 7, 2011 3:03:38 PM PT
From: Clifford Ruff
To: dfgsuctiondredge@dfg.ca.gov

April 7/ 11
RE: Draft SEIR

Dear Mr. Stopher,

The 1994 environmental impact report was working fine. Dredging is one of the few remaining activities that have a positive effect on the environment (the removal of mercury from water systems, resurfacing of riverbed nutrients, and the creation of rest holes for salmon.) The new system takes this beloved experience from those who deserve to have it.

Sincerely,
Clifford Ruff
Banning, Ca
cliffordruff20@yahoo.com

Subject: (none)

Date: Thursday, April 7, 2011 2:35:31 PM PT

From: Larry Rux

To: dfgsuctiondredge@dfg.ca.gov

Dear Mark Stopher
I have been trying to come up with the oppropriate words to describe
how I am feeling about the new Dredging regulations
I have been dredging with my sons for almost 30 years (recreationally)
We have 2 claims in the Happy Camp area (Elk Creek and (Indian Creek)
Well now these Creeks are closed to dredging and that makes our claims worthless
as it is not productive to pan,sluise or high bank in these tight little creeks
With what little impact we have on these creeks dredging a few weekends a year
I would think It should still be allowed,especially to current claim owners
Again I am very dissapointed in these new rules and still have some hope
that things can be corrected
Thankyou very much
Larry Rux

Subject: FW: youtube
Date: Thursday, April 7, 2011 9:00:25 AM PT
From: Craig Tucker
To: mstopher@dfg.ca.gov

S. Craig Tucker
Klamath Coordinator
Karuk Tribe
cell: 916-207-8294
home office: 707-839-1982

Follow our efforts to restore the Klamath on twitter by visiting http://twitter.com/#!/scraigtucker

www.klamathrestoration.org
-----Original Message-----
From: amargi@riseup.net [mailto:amargi@riseup.net]
Sent: Wednesday, March 30, 2011 9:23 AM
To: Craig Tucker
Subject: youtube

link is up:

http://www.youtube.com/watch?v=PJYyT2U3iAg&feature=channel_video_title

SUCTION DREDGE BAN IN SIERRA COUNTY BECAUSE OF THE FOOTHILL YELLOW LEGGED FROG

robert young

Sent: Thursday, April 7, 2011 3:31 PM

To: dfgsuctiondredge@dfg.ca.gov

I've done more reading on the yellow legged frog in the last two weeks than I ever want to in the rest of my life. From the reports/studies that I have read your planned ban on Suction Dredging in the tributaries of Sierra County are mostly per bull based on one study that named suction dredging as a contributing factor to Yellow legged frog decline, all the other reports I read either didn't mention mining at all or mentioned mining in general along with timbering, recreational use, fishing, etc. From my readings I gather and it is clearly stated that the two main causes that researchers have found for the yellow legged frog decline are non-native fish species (bass-trout) in water systems and pesticides that blow in from the Sacramento Valley agriculture, which are not even mentioned or addressed, instead you have jumped to an unfounded conclusion that shutting down our dredging will help the frog populations. Even the fact that the largest populations of yellow legged frog are found below the 2900' level you haven't changed the rules for dredging there but instead picked an area above 3500-4500 feet as a target for a controlled dredging season from Sept-Jan. Who can work their claims during winter when you can't even access your claim. IT SOUNDS TO ME THAT YOU ARE TRYING TO MAKE THE FACTS SUPPORT A PRE-DETERMINED CONCLUSION. YOUR CONCLUSIONS ARE SKEWED . YOUR CONCLUSIONS ARE BIASED. GO BACK TO 1994 REGULATIONS WHICH WERE WORKING FINE. QUIT TRYING TO APPEASE THE SPECIAL INTEREST GROUPS WHO HAVE MONEY AND SUPPORT THE PEOPLE YOU ARE PAID TO WORK FOR!!!!! Robert Young, box 1738 (446 Apple Blossom Dr.) Murphys, Ca. 05247 Reply requested!

Proposed Regulations

Bob Hendy

Sent: Friday, April 8, 2011 4:54 PM

To: dfgsuctiondredge@dfg.ca.gov

Hi Mark,
I want to thank you for keeping us informed, I would have liked to attended the public hearings but was not able to due to the severe weather in Tuo county.
But I would like to comment on a few items.

! I would like to see the maximum nozzle size increased to 6" instead of 4",as most of us have four to six inch dredges, Realizing that on the smaller streams this may not be acceptable.
2 I would like to be able to be in the front of the line to get the new permits,due to the fact that I purchased mine in july,and was not able to use it due to the signing of SB170,I would be willing to pay again but think that those of uss that purchased the permit to have it cancelled in a few weeks afterward deserve some consideration.
3 The restrictions on streams 2000 ft and lower, a july start is somewhat ridicules,as most of the are dependent on rainfall for the proper flows to be able to dredge with minimum impact. I would like to see an earlier start.
4 I am hoping that most of the biology done on this takes into consideration that most of us who have mined and studied the rivers in California realize that most are suffering from impoundment problems that controlled flow cause, and that most Californians have not see a wild river scour banks take out trees redistribute gravels and so on. we all know that fish and invertebrates need not only large cobble but also small gravel to spawn in. Having fished from the santa ynez river for steelhead when I was young to the rouge river to the Salmon River in Idaho, we all know that damming and controlling the flows is not helping the fish population or their condition.
Again thank you for keeping us updated
Bob Hendy

California Regional Water Quality Control Board
Lahontan Region

Linda S. Adams
Acting Secretary for
Environmental Protection

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150
(530) 542-5400 • Fax (530) 544-2271
www.waterboards.ca.gov/lahontan

Edmund G. Brown Jr.
Governor

MEMORANDUM

TO: Suction Dredge Program Draft SEIR
California Department of Fish and Game
601 Locust Street
Redding, CA 96001

FROM: Lauri Kemper, PE
Assistant Executive Officer
LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE: APR 0 8 2011

SUBJECT: **COMMENTS ON DRAFT PROPOSED REGULATIONS AND DRAFT SUBSEQUENT ENVIRONMENTAL IMPACT REPORT (SEIR) FOR THE SUCTION DREDGE PERMITTING PROGRAM (SCH #2009112005)**

This letter provides comments on the above-referenced SEIR and Draft Proposed Regulations for suction dredging.

The SEIR and Draft Proposed Regulations should be substantially supplemented to adequately address suction dredging in: 1) water bodies impaired by sediment and/or mercury, and 2) water bodies that are of "reference" quality. These situations lie at the two extremes of the waterbody-condition scale, and both deserve special attention to address key environmental and regulatory considerations.

At one end of the waterbody-condition scale are those water bodies listed as impaired pursuant to Section 303(d) of the Clean Water Act. For water bodies so listed as impaired due to sediment and/or mercury, the SEIR and Draft Proposed Regulations should explicitly prohibit suction dredging within or upstream of the listed water body segment(s), unless suction dredging is explicitly allowed and regulated under a Total Maximum Daily Load (TMDL) adopted by the State Water Resources Control Board.

At the other end of the waterbody-condition scale are those high-quality water bodies which are undisturbed, or minimally disturbed, and which may serve to define or preserve reference conditions and/or qualify for designation as Outstanding National Resource Waters (ONRWs). The SEIR and Draft Proposed Regulations should be supplemented to: 1) acknowledge recent developments in federal-state programs to

provide adequate protection for remaining high-quality aquatic ecosystems; and 2) prohibit the practice of suction dredging in "reference quality" water bodies in California.

The USEPA recently released its final ***Clean Water Strategy*** (USEPA 2011) which places fundamental emphasis on the needs to define baseline conditions, to increase protection for existing high-quality (i.e., "healthy") waters, and to emphasize strict adherence to antidegradation policies in order to prevent the incremental degradation of high-quality waters over time. The State Water Resources Control Board is implementing the USEPA's Clean Water Strategy in part via a ***Reference Condition Management Program*** (RCMP) for California (Ode and Schiff 2009). Scientists working on the RCMP could provide the CDFG with information to identify high-quality or "reference-condition" water bodies in California. We suggest that you contact the authors of that report for more details, and to request assistance in identifying reference-quality water bodies. For such water bodies, the SEIR and Draft Proposed Regulations should explicitly prohibit suction dredging unless a Regional Water Board, after a public hearing, makes the requisite nondegradation findings (i.e., under State Water Resources Control Board Resolution No. 68-16) to allow degradation due to suction dredging.

As you may know, the State Water Resources Control Board, along with the Regional Water Boards and other stakeholders, is now developing biological objectives for wadeable streams and rivers throughout California. The maintenance of reference-quality waters is crucial to the success of this project. In order to adequately protect California's high-quality waters into the future, known high-impact activities such as suction dredging should be prohibited in reference-quality streams and rivers unless the findings required under Resolution No. 68-16 are explicitly made.

Please contact Thomas Suk of my staff at (530) 542-5419 if you have any questions regarding these comments.

References

Ode, P., and K. Schiff. 2009. Recommendations for the development and maintenance of a reference condition management program (RCMP) to support biological assessment of California's wadeable streams: Report to the State Water Resources Control Board's Surface Water Ambient Monitoring Program (SWAMP). Technical Report 581, March 2009.

U.S. Environmental Protection Agency. 2011. Coming Together for Clean Water: EPA's Strategy for Protecting America's Waters. USEPA, Washington, DC. March 2011.

cc: Mark Stopher/CA Dept. of Fish and Game

4/8/11
Mark Stopher
CDF&G

Re: Suction Dredge Permitting Program

Dear Sir:
I believe the following components of the proposed program are misguided, mistaken and just plain wrong
- size limitations of equipment
- timing of operating seasons
- limiting licensees to 4000

we've been good stewards of the land and ~~our~~ resources on our claim at Red Oak. Your time would be better spent on other projects. Please note I take exception to the fact no public meetings were held in rural areas where dredge mining is common. Count me as a definite "NO" for the proposed program. Return suction dredging to it's previous state.

Yours

Michael S McAndrew Sr.

Dear Mark Stopher,

I am writing in reference to the new proposals for the dredging in CA. But First let me tell you about myself. I am now 71+ years old, live in Barker NY and love to spend my summers in CA gold dredging in the Merced River above the dams. In the 60's I spent some time in Vet Nam doing what I was told to be right. I do not regret what I did and the good things that happened over there. I believed that the United States would always support us people who served and those who live here in the USA. I do not get around as good as I once did but still do OK. But as I read through the new regulations I can see that their will be many hardships add to my last days of enjoy ment. And as I see it they are totally unneeded. The 1994 laws are more then addict to keep us small miners doing what we should. I'm sure a lot of collage people, who are hikers part time as well as rafters had a lot to say about the new proposals you are looking to introduce. As the reason for all of this was the Salmon and the effect on the fish that dredging caused. So why and who is responsible for all the new regulations and why???? We as a dredger do not have a problem with the Rafters or the Fishermen We do not get in the way and we support these sports . I have in 1 season's time taken out 35" of Lead from my claim. This is the most I have ever gotten in a season but it is still a lot to be removed. I keep my area clean and neat, I keep most of my equipment out of site so's not to spoil the vitas. There is no need to change the dredging laws in any way and some of the proposals are impossible to comply with. At this point I would like to go over some of the proposals 1 by 1.

1

I'm sure no one would want to enter a hazardous waste site or a listed toxic site and if these site exist they should be properly posted and fenced. And should have the been cleaned up by now especially if a River, Pond or Lake be involved. I say no more on this subject.

2

You State That the new regulations proposed are do to DSIER study which showed no adverse effects on the Fish and or the environment Which your study showed none , So why all the new proposals????

3 Check out what you said in section 228.

4 To ask me to list 6 sites I plan to dredge for the season is unreasonable. This all depends on the water flow for any given year as to where we will be able to dredge and when. This needs to be removed as it serves no propose to any one.

a) County, river,lake,township,range,section,quartar,base and meridian. This is acking way to much and of course you know this is. This should also be removed!

b) This section is no better or useful then id A and should also be removed

(3) A list of all suction dredging equipment to be used is OK, **except for the addition of constrictor size, and engine manufacturer and model number**. This totally unnecessary information and serves no meaning to any one. It is surely only a means for which your Dept. to harasses the dredger . This part needs to be removed!

(d) Should not be needed refer to (3)

(e) Not required as well.

(f)Not required as well

(g)The number of permits issued to be 4000 is below what was issued in 2008, So why would the F And G dept give up this income??? Let who ever wants to buy a permit buy one as a lot of these permit will not be use for any great length of time any way and you will still keep your income. Who ever came up with this idea could not be thinking very sharp. This need it be amended!

(h) This section has wording in it which gives the assistant chief of enforcement to much authority which should l only lay with the regional manager . This leaves to much up to the discretion of the assistant chief of enforcement. This is to include the following lines as well. 3,6,12,21,24 of page 6

No permit is to be revoked until the permit holder is convicted of breaking a law , as you know innocent until proven guilty is the law of our land .

PAGE 7

Again the wording assistant chief is to be removed and replaced be by regional manager in the following lines 8,10,23,25,29.

(f) You state that the assistant chief of enforcement is to be the judge as well as the the person convicting and sentencing the accused. This is totally illegal. And must be removed. You can not notify all by mail as some of the dredgers are from out of state, so they would have to notified in person.

Page 8.

Again the wording must be changed to regional manager in the following sentences. 2,20,24 & 25. 32&33.

Page 9.

Line 3 . The word NOT shall be removed as this is not in accordance to law

Lines 22,23,24Shall be removed as this statement in not the F & G Depts. Authority.

Line 28-33 the assistant chief of inforcement can not be the person who charges, convicts and sentences. So this wording must be removed as it is illegal by law.

Page 10

The wording assistant chief enforcement must be removed and replaced by regional chief from the following lines.1, 6,

Page 11

Line 11,12 13,14. On these lines the wording 4 inches should be changed back to 6 inches as the 6 inch dredge is the largest dredge 1 person can handle by him self. And in most rivers a 4 inch dredge is to small to be efficient. This 4 inch proposal is only a way to harass the dredger again. So the wording 4 inch needs to be replaced by 6 inch. And as most people know a 5inch or 6 inch intake dia. Will be smaller then the hose dia. of 6 or 5 inch. Also the wording in these lines A, B, C, in conflict. And line 30 should read 6 inch.

Page 12.

Line 1 should read 6 inch. The 6 inch dredge is a reasonable dredge to run in a river and should not be restricted.

Line7 should read that bolt on restrictors are allow if properly and securely instilled, As not every one has a welder down at the river, and this would be reasonable.

Section 2 Line 25 should be changed back to 4 inches larger. This size means nothing to the Fish and Game .

Line 29 Screen mesh size of 3/32 or .0689 dia openings . This is to restrictive for the dredge pumps and would cause motor burn out and over heating. The min / max size should be ¼ inch or smaller. For all applications including commercial dredges.

Line 33 should read only the nozzle size or smaller and the engine H/P on the permit may be used as you and who ever wrote this knows that from time to time motors go bad and need to be replaced.

Page 13,

This requirement is one of the worst If the permit is to be required on site why in the world would there be a need to try to put 3" numbers on the dredge. This is something that come from comm.. tractor trailers and the 53 foot markings. This is needs to be removed.

Line 30 should be changed to read within the high water line. Line 31 again should read high water line.

Page 13.& 14

The restriction on winching of embedded materials on the banks of rivers is good, But the wording (or rivers is prohibited) needs to be removed. Because it is just another way for someone to interpret winching in the river on another form of harassments.
Line 8 should read high water line
Line 14 the word abrasions should be removed as all trees can stand abrasions and as you knoe Bears, birds and small animals do far more damage then a dredge would ever do
Line 17. The wording within 3 foot of current water line is way out of reason. The proper wording should be High water line. There are many rivers and creeks in CA. that will be under 6' across when it is at high water and many more rivers will be under 6' across at lower water levels. Who ever came up with this idea is vary unreasonable. And could not have put much though into these revisions.

Page 15

Line 18. This one is as unreasonable as they come. The wording no Lubricants or fuel may not be stored within 100 feet of the water level don't make any sense at all as most or the dredging is done in the river canyons and to get 100 feet away from the water line would mean we would need to clime 70 + feet up the side of the mountain, this wording needs to be removed. As far as a pan under the fuel this is Ok.
Line 24 (12) this is repetitive and should be removed.

Page 15

Line 1 (15) This section has to be removed as every one knows the River it's self will take care of the dredging piles better then any one else can. This section needs to be removed completely. In fact Line 1 toline15 needs to be removed as it is again repetive.
Lines 21 to 32 are to be removed as this is governed by other laws of the state and or U. S. Government. And should be enforced by them.

Page 16.

Lines 1 to 3 are to be removed as they are repetive also.
Line 6 should read 1 hr before sunrise till 1 hr after sunset. In fact there don't need to even be a restriction such as this.
Lines 14 to 26 are clearly in favor of the rafters and there is no consideration for the Dredgers. There for it is discimatory against the dredgers. We should not be restricted to please other people who don't care one bit about the Rivers except for how much money they can make. I have seen them dump junk from the rafts and use the banks as toilets with no concern for the Rivers. Or at least the Merced River. All dredging in the Merced River of Mariposa County needs to be listed as Class H like it always has been. As you know the BLM puts a restriction on the allowed dredging dates so F&G don't need to. And again we are above 2 big dams. You have to many Classes of rivers listed for dredging and most of it is uncalled for. You would be much better off to remove several of the classes. Such as class B. ,class C , Class E ,and Class G.

Page 70

Check out line 14 which pertains to the Mreced river There is no need to change this Class from H. The truth of the matter is all the RIVERS should remain the same as they were in 2007.

In closing I will say that this whole doc. Is beyond reason. Why would you F&G want to restrict the flow of income into your own state. Much of would be going to the Dept of F&G. Also why would you want to spend the extra money you will need to enforce these unneeded regulations. Why would you want to impose Hardships on the people of CA. and the Manufactures of the equipment. The loss of revenue to the counties the retailers. Why would you want to put the new regs. Enforce for no apparent reason. I strongly suggest you return to the 1994 Regulations, Which are more then restive enough . These new Regulations have nothing to due with the reason for the SEIR. It was because of a Tribe up North and some people who don't like dredgers. As you know we do more good then harm and this is a fact. We are no problems to your dept and you don't even need to police us. I believe you will fine that the dredger is law abiding and wants to be. We want your Dept to be pleased with us. I wish you well and and hope you will do what is right by us and you.

Thank You for your time

Bill McCracken
2031 Quaker RD
Barker NY 14012

Bill McCracken

040811_Pruitt

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

Name:	Roy Pruitt
Mailing Address:	4699 Arboga Rd Olivehurst, CA 95961
Telephone No. (optional):	530 741-0873
Email (optional):	

Comments/Issues:

I have been gold mining for over 50 years, most of the time suction dredging.

In all of that time I've never seen any environmental impact of any kind, or any harmful effect to animal or fish species of any kind.

Therefore suction dredging should be open to all water ways in the State of California, without any restrictions or permits required.

Because there is nothing to regulate.

Please use additional sheets if necessary.

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

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

Email: dfgsuctiondredge@dfg.ca.gov

Fax: (530) 225-2391

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

4/8/11

Re: DSEIR + Suction Dredge Permit Program

Dear Sir,

I have received and reviewed both the Suction Dredge Update of March 2011 and the C.D. sent to me by DFG.

I find your proposed regulation to go to far.

1. Limiting a person to 14 days of dredging
2. Listing where and when they will dredge
3. Filling in dredge holes.
3. Limiting suction hose intake size.
4. Limiting dredging season

These are just a few of the changes I find to be overly restrictive and costly.

The use of terms such as "POTENIAL IMPACTS" and "CONCLUSION" are used freely through out your material, it does not appear your statements are based on facts.

The DSEIR refers to other agency's reports many time, even though some of these reports have been shown to be flawed and only say what that agency wants it to say.

As you and I know a Federal

Mining Claim is property. The DFG's proposed regulation will restrict the free use of a Claim Owner's property. This will result in more law suit being feled against DFG.

I have watched this whole thing develope over the last several years. DFG has allowed itself to be put between a rock and a hard place. If DFG inacts these new regulation it will be opening a very ugly can of worms it can not put the lid on.

Sincerly

Troy Britton

P.O. Box 64
TWAIN, CA 95984

040811_Schuldt

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

Name:	Jeff Schuldt
Mailing Address:	PO Box 224
	Smith River, CA. 95567
Telephone No. (optional):	707-954-1105
Email (optional):	none

Comments/Issues: Mr. Stopher, I would never want your job, I was present at the Yreka meeting and my issues with the draft SEIR are as follows and I know you have already heard them. But, here goes... I should be able to operate All Season, not just 14 Days. I should be able to operate All Day, not from 10 A.M. to 4 P.M. I will not provide info that will be made public. No over-all permit limit (4000). Nozzle size limit too small. 3 foot limit at stream side is not acceptable. Minimum spacing of 500 ft. too far. On the Klamath river, Elk creek and Indian creek should remain open. A buffer zone around creek mouths is unnecessary. The new permit should contain "Reasonable" regulations. This is not a limited entry permit, please use sound science. Miners do not want to hurt fish runs or destroy wildlife habitat.

Please use additional sheets if necessary.

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

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

Email: dfgsuctiondredge@dfg.ca.gov

Fax: (530) 225-2391

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

Subject: (none)
Date: Friday, April 8, 2011 8:53:47 AM PT
From: Michele Thurston
To: dfgsuctiondredge@dfg.ca.gov

Dear Sir,

As owners of a claim in your state we where appalled at the intended regulations proposed for suction dredging. By singling out the activities of one group of individuals, the regulating and restricting of this activity appears not only biased but also unconstitutional! Do you intend to have hunters and fishermen itemize there equipment including serial numbers of guns and makes and models of fishing poles? Will they as well be asked to disclose the areas they hunt and fish and times they intend to be there? Do you intend to restrict hikers to only six hikes per year, with the exact geographical location for each hike? Is California to become a police state where every action in monitored, or do you hope as we do that individual liberties and freedoms will be preserved?

Respectfully Submitted,
Martin and Michele Thurston

Subject: Re: Safety Concern
Date: Saturday, April 9, 2011 1:41:41 PM PT
From: Larry & Gretchen Koch
To: Mark Stopher

Mark:

Thank you.
It is a real shame that there are those who only value themselves and nothing else. We certainly endorse protection of streams and surrounding habitat and think "dredge miners" need to be reminded that the stream does not belong to them.

I hope they are not able to change recent decisions made by the DFG as it is clear, left to their own devices, Miners will create mud holes in gold bearing streams and they would no longer be able to support fish, etc.

I hope those working for DFG stay safe and I hope you are correct in estimating what that "crowd" would not do.

Gretchen Koch

--- On **Thu, 4/7/11, Mark Stopher <*MStopher@dfg.ca.gov*>** wrote:

> From: Mark Stopher <MStopher@dfg.ca.gov>
> Subject: Re: Safety Concern
> To: "Larry & Gretchen Koch" <lgkoch@att.net>
> Date: Thursday, April 7, 2011, 9:05 AM
>
> Gretchen
>
> Thank you for your message. As you report, the meeting was contentious and I can understand you might see it as intimidating. If you discuss Mr. Waggoner's experience with him I am confident he will say something similar. I personally intervened twice with the entire audience to reassert order in the room. Perhaps because of my experience with similar events I do not believe the meeting presented a physical risk to anyone attending. The Department was very well prepared to deal with any serious outbreaks and those preparations went beyond the obvious presence of uniformed peace officers in the room.
>
> Mark Stopher
> Environmental Program Manager
> California Department of Fish and Game
> 601 Locust Street
> Redding, CA 96001
>
> voice 530.225.2275
> fax 530.225.2391
> cell 530.945.1344

>>> Larry & Gretchen Koch <lgkoch@att.net> 4/2/2011 11:29 AM >>>
Dear Department of Fish and Game:

Recently a friend of ours attending a meeting held in the Redding area regarding a change to the dredging regulations. He is an attorney and the Director of the Sierra Club for the Shasta/Tehama region – not a popular organization with the dredging miners. When my husband and I learned of the meeting we sent a letter supporting the new regulations. We did not attend the meeting.

When our friend told the DFG agent that he was planning to speak the agent asked him with concern "are you alone?" When he said he was the agent recommended he let the police in attendance know, which he did.

Apparently our friend, along with a fish biologist, were the only ones to speak in favor of the new regulations while about 100 angry dredge miners are vehemently against it. This is extremely disturbing that this event became what appears to be a risky endeavor for anyone who does not agree with the miners.

While it is true that we are members of the Sierra Club our letter was in response to what we witnessed for several years during the 80's. We used to spend two weeks in July in a Sierra City RV park along the Yuba River. We went there to fish for trout and swim in the large swimming hole located next to the park. Every other day the dredge miner (who spent all summer in the park) would go to the Yuba River, run his gasoline dredger and tear up the stream bed. Most of the day he did that the Yuba went from a pristine clear stream to a river that was completely filled with silt and debri, the water was absolutely brown and it took most of the day for it to finally clear. It was not fishable nor was it safe to swim in the "swimming hole", not to mention the noise and diesel exhaust that was constant. There were few, if any, regulations we were aware of and we finally stopped going there.

Now it appears that the miners, who clearly care only for themselves, are attempting to intimidate those with a differing opinion. I am truly concerned for my friends safety and worry that some of these angry hot heads will do something to his home.

We should have attended that meeting but I am certainly glad we did not. I would be very frightened to be there and concerned that these miners would harm my husband, friends or myself. I don't know what you can do regarding these public meetings but I wanted to reiterate that there are many who are afraid to confront these dredgers in public for fear of harm but do want to see streams protected so wildlife can

survive. If regulations go back to the "good old days" the streams will face massive destruction because of increased mining due to the increased price of gold. This is not 1849.

Our friend who spoke does not know I'm writing this and that is why I have not used his name. Thank you so much for taking the time to review this and I hope you and your staff stay safe at any future public hearings regarding this issue. Please consider that there are many who are very intimidated by the dredge miners but share a deep concern for our streams and wildlife.

Thank you,

Gretchen Koch
18776 Country Hills Drive
Cottonwood, Ca 96022
530-347-4040

Michael LaBox

1115 Madison St. S.E.

Salem, Or. 97301

goldscrewman@yahoo.com

RE; Suction Dredge Permitting Program

DSEIR Comments

Page 2-10 line 29 A list of up to six locations is not reasonable, especially for a miner that has claims throughout the state.

Page 2-11 line 4 Dates of operation creates concern for safety and security of a miner.

Page 2-11 line 11 Permit amendments can mean a delay if not issued immediately.

Page 2-11 line 17 Will on-site inspections are done in a timely manner as to not be a problem for the miner?

Page2-12 line 1 No limits on permits should be imposed. Any arbitrary number implemented could be consumed by non-miners (environmental groups opposed to any form of mining). Prices of precious metals can and does have direct impact on numbers of miners actively pursuing the trade.

Page 2-17 line 14 Nozzle restrictions to 4 inches is outright ridiculous. It is through personal observation that 5, 6 and 8 inch dredges are the most productive and used by small scale miners.

Page 2-18 line26 Limiting hose diameter to 2 inches larger than nozzle diameter can cause more plugging of hoses to occur.

Page 2-18 line29 any restrictions smaller than 5/32 inch (3.96 mm) can have serious adverse affects on equipment function or cause equipment malfunction.

Page 2-19 line 1 Unreasonable and not necessary. These restrictions put excess burdens on miners and equipment dealers to rebuild, fix, maintain, upgrade or whatever. Some miners have multiple dredges and find it necessary to change, replace or substitute equipment.

Page 2-19 line 10 With all the proposed restrictions on winching, it might as well be said to eliminate all winching. Narrow creeks, unforeseen obstacles to include boulders, logs and log jams or any number of problems that could arise and need immediate winching could and would be delayed indefinitely waiting for permission and or a permit.

I will now submit that the DSEIR should be scrapped and resume the rules as implemented by 1994 standards. New rules and regulations are not needed, just enforce current rules and regulations. Dredging does not kill the fish, but I can promise you that fishing kills fish

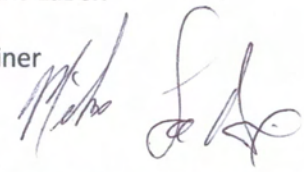
How can these studies on the impact of dredging be done when dredging is not allowed ? Re-instate the miners right to dredge, then start the studies on the impact, if any of dredging

Without losing site of the need to protect our waterways, don't lose site of the rights that Federal Law affords the citizens to mine and support, feed and house himself and family. We are small scale miners for the most part, not strictly recreational. Gold is new money into the system, real wealth, not money printed by the Federal Reserve that is devaluing the dollar.

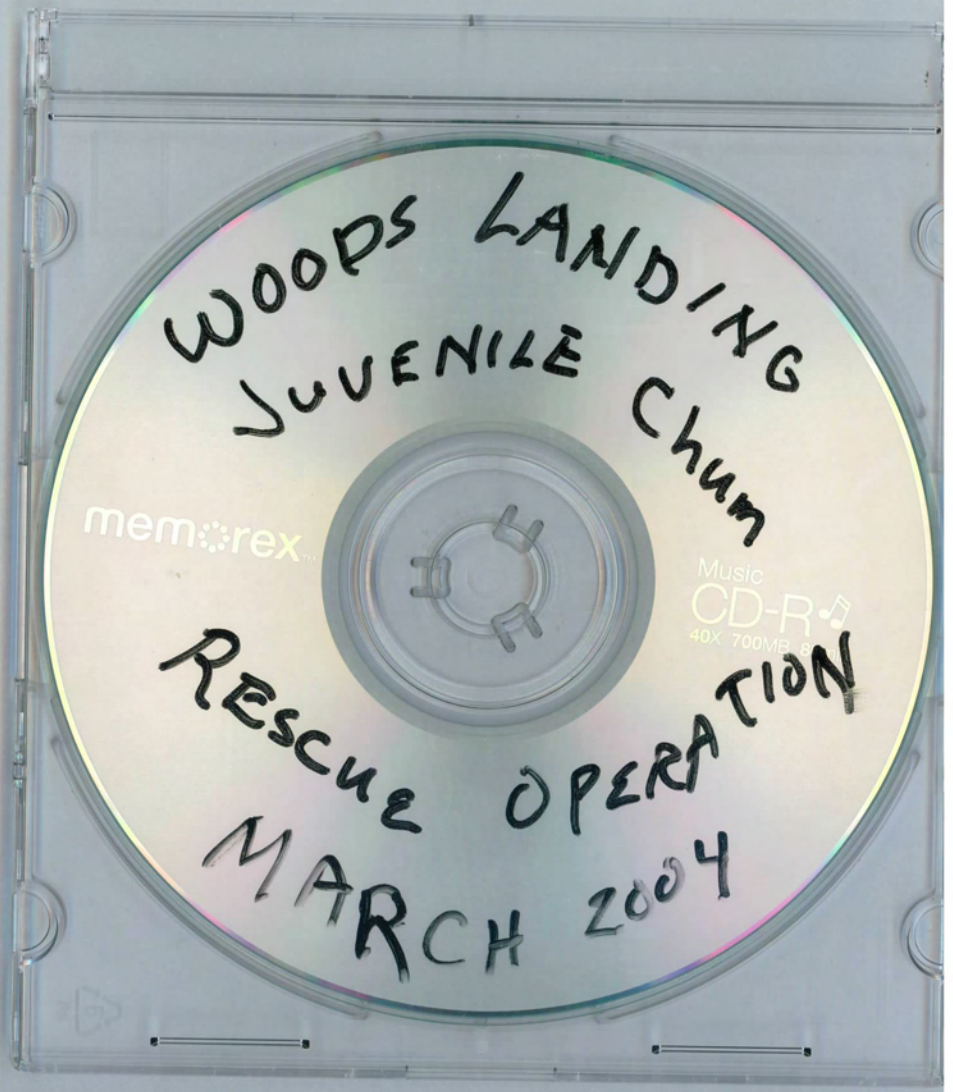
Thank you for allowing my input and I sincerely hope common and good sense prevail

Mike LaBox

Miner



Enclosure: DVD slide power point of Woods Landing Rescue


WOODS LANDING
JUVENILE Chum
RESCUE OPERATION
MARCH 2004
memorex
Music
CD-R
40X 700MB

Subject: US v Eno IBLA For Notice and Comments
Date: Tuesday, May 10, 2011 9:48:24 PM PT
From: Rabideno@aol.com
To: dfgsuctiondredge@dfg.ca.gov

April 10th 2011

Public comments CDFG / SDEIR

Attached is a copy of my appeal costing some $185,000.00 compliments of my USFS buddies.

Mr. Stopher,

I won General permission to mine my claim as you can see, and the USFS did their EA for a mineral withdrawal, and for my hearings, and the courts (2) adjudications (levels of intense environmental scrutiny) found no plausible reason to stop me from suction dredge mining this river and that is recorded in this case in detail and all of the environmental work is a matter of public record with the USFS in Plumas National Forest.

The Judges had to look at the realities that I had the right to work with whatever was lawful at that time, and since I proposed running 2 - 6" nozzles side by side, uncontested I believe under these circumstances this short stretch of river should remain as it was under the 1994 CDFG regulations, at bare minimum, because of the extensive environmental work the USFS did and found no adverse affects.

Two dredges necked down to 6" mining in this river with six inch nozzles and a Power winch, or a10" dredge necked down to 8" for production with out clogging the hose would be acceptable (if I believed that a limit on commercial dredging was even lawful which I do not). Nozzle size - to be reasonable - should be based upon the geological and size range of the aggregate intended to be

dredged, not an absolute limit by an arbitrary rule. I own a mine, not a dive shop or a swimming hole. Unreasonable is when validity exam destroys and takes a rich placer mine. In light of the intense decade long battle, and having won General Permission to Mine based upon the USFS EA's etc, I reject the notion that CDFG can or should limit my operations in any way with respect to dredge Nozzle size, Power Winching, and Stream bed alteration permits etc..

I have complied with dredging rules in the past, this is a commercial mine, as proven in this case and since gold has quadrupled since the date location and withdrawal, and even cursory calculations of the worst samples of all demonstrate that the stream is holding at least four times what the worst estimates show in this case, then it is truly a valuable mine worthy of further development.

FS has already threatened to challenge validity and any material interference by CDFG mining regulations such as you propose will be tough at best to overcome and that is not going to happen if I can stop it here and now.

I spent a vast a vast amount of energy, money and stress defending US V Burton, and the US v Eno IBLA Appeal in my MCRRA case. I won both USFS adjudications for my Hound Dog Placer Mining Claim CAMC 269556. It is in Indian Creek, about 3 miles up stream on HWY 89 from the junction of HWY 70 and Hwy 89. About 80% of the river is privately held, there is only 3 unpatented mining claims on this stretch of river all the way to the base of the Falls, and it is the main branch that joins Spanish creek at the Hwy junction previously described.
On the Topo maps you will see that from the base of Indian falls heading up stream, there will be no losses to dredging for several miles as this is Indian Valley, no gold, unless you use a bucket line

or drag line dredge. So, in light of these facts the SDEIR is far to inflexible because if a valid enough placer claim, can pass the muster I went through there should be no arbitrary limit that has the potential of making a valid claim worthless in a validity exam strictly due to rigid limitations ie Material interference. And the USFS knows it, which is why I will not tolerate more FS screwing. This is a prime example why setting absolute limits on dredge nozzle size is unacceptable. This is unreasonable regulation, Material interference, and endangers my own safety in unacceptable ways thus you need to take a hard look at this river and make the necessary changes for others in similar situations, not rules on size or capacity cast in stone.

Thanks for your consideration,

Donald E Eno

Attached is US v Eno

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
Interior Board of Land Appeals
801 N. Quincy St. Suite 300
Arlington, VA 22203

703 235 3750 703 235 8349 (fax)

UNITED STATES
v.
DONALD E. ENO

IBLA 2004-92 Decided February 13, 2007

Appeal from a decision of Administrative Law Judge William E. Hammett granting a general permission to engage in placer mining operations on a placer claim located within a powersite withdrawal. CAMC-269556.

Reversed in part, affirmed as modified in part, granting of general permission to engage in placer mining affirmed.

1. Act of Aug. 11, 1955--Mining Claims: Powersite Lands--Mining Claims: Special Acts--Mining Claims Rights Restoration Act--Powersite Lands--Withdrawals and Reservations: Powersites

> The Mining Claims Rights Restoration Act of 1955, as amended, 30 U.S.C. §§ 621-625 (2000), which opened powersite withdrawals for entry under the mining laws, provides that the locator of a placer claim under the Act may not conduct any mining operations for 60 days after filing a notice of location pursuant to 30 U.S.C. § 623 (2000) and that, if the Department decides to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land, the suspension of operations will continue until the hearing has been held and the Department has issued an appropriate order providing for one of the following alternatives: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator restore the surface of the claim to the condition it was in prior to mining; or (3) a general permission to engage in placer mining.

2. Act of Aug. 11, 1955--Mining Claims: Powersite Lands--Mining Claims: Special Acts--Mining Claims Rights Restoration Act--Powersite Lands--Withdrawals and Reservations: Powersites

> To determine whether mining would substantially interfere with other uses of powersite lands within the meaning of the Mining Claims Rights Restoration Act of 1955, as amended, 30 U.S.C. § 621 (2000), the Department is required to engage in a weighing or balancing of the benefits of mining against the injury mining would cause to other uses of the land. Mining may be allowed where the benefits of placer mining outweigh the detriment that placer mining causes to other uses. Central to the balancing test is the concept that the competing uses must be substantial if they are to be used to prohibit placer mining. Thus, even if the Secretary determines that placer mining would substantially interfere with other uses of the land, he may still appropriately grant a general permission to engage in placer mining operations if the competing surface uses have less significance than the proposed placer mining operation. The importance of the competing uses, which must be compared and judged on whatever grounds are relevant in the individual case, need not be economically quantifiable and may include the preservation of cultural, geological, or scenic resources.

APPEARANCES: Rose Miksovsky, Esq., Office of the General Counsel, U.S. Department of Agriculture, San Francisco, California, for appellant Forest Service; Steven J. Lechner, Esq., Lakewood, Colorado, for appellee Donald E. Eno.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

The Forest Service, U.S. Department of Agriculture, has appealed the December 4, 2003, decision of Administrative Law Judge William E. Hammett, determining that placer mining operations in connection with the Hound Dog placer mining claim, CAMC-269556, would not substantially interfere with other uses of the claimed lands and granting a general permission to engage in such operations. By order dated February 13, 2004, the Board denied the Forest Service's petition for a stay of the effect of Judge Hammett's decision pending appeal.

The Hound Dog placer mining claim is a 40-acre claim situated in the SW¼SW¼ sec. 3, T. 25 N., R. 9 E., Mount Diablo Meridian, Plumas County,

California, within the Plumas National Forest. The claim is basically coextensive with what is commonly known as the "Soda Rock Area." 1/

The lands included in the Hound Dog claim were originally part of the Delaware 3 placer mining claim, which was located on January 1, 1907, at a time when the lands were open to mineral entry. 2/ That claim remained in existence until 1993, when it was declared abandoned for failure to pay required rental fees. See Ex. 23, Mineral Report for Hound Dog Placer Mining Claim Plumas National Forest PL-359 Hearing (P.L. 359 Mineral Report), at 9; Ex. 15, B&R Quarries, IBLA 98-94 (Order dated Feb. 17, 1998). Harry Forcino had acquired the claim in 1965 and quarried the travertine deposit on the claim for building stone until May 24, 1984, when he transferred the claim to B&R Quarries (d.b.a. Feather River Travertine), which continued mining the travertine until the claim was abandoned in 1993.

In 1981, the Forest Service sought a temporary restraining order against Forcino, alleging that he was mining travertine without an approved plan of operations. United States v. Forcino, Civil No. S-81-398-PCW (E.D. Cal. 1981). The parties resolved the action by reaching a compromise settlement that was approved by the Court on November 18, 1985. See Ex. 14, United States v. Forcino, Civil No. S-81-398-PCW (E.D. Cal. Nov. 18, 1985) (Stipulation and Order). Under the agreement, the Forest Service waived any claims for damages at the site and agreed not to seek other relief to prevent removal of the travertine, but did not admit that the claim was valid. Forcino agreed not to conduct mining without an approved plan of operations and not to mine sites identified as Maidu religious, historical, and cultural areas and as scenic areas. The agreement incorporated a plan of operations approved on March 30, 1984, which limited quarry operations to 6.1 acres on the travertine outcrop. Id. and Ex. A attached thereto; see also Ex. 23, P.L. 359 Mineral Report, at 9-10. The terms of the compromise settlement terminated when the Delaware 3 claim was abandoned in 1993. Id. at 10.

1/ Soda Rock encompasses a travertine dome structure rising very steeply 70 to 120 feet above Indian Creek. The dome occupies much of the claimed lands at issue here. Indian Creek flows 2,250 feet along the northern and western edges of the dome and is generally confined by a narrow canyon as it passes through the claimed lands.

2/ Because the Delaware 3 claim was located in 1907, it was not subject to the Common Varieties Act of July 23, 1955, 30 U.S.C. § 611 (2000), which withdrew common varieties of stone from location under the mining laws unless the deposit had some property giving it a distinct and special value. The abandonment of the claim in 1993 ended the claim's exemption from that Act.

In January 1982, following a request from the Forest Service, [3/] the Keeper of the National Register of Historic Places (Keeper) determined that the Soda Rock Area (also known by the historic Maidu name of Ch'ichu'yam bam) was eligible for inclusion in the National Register of Historic Places under criteria set out at 36 CFR 60.4(a) and (d). [4/] See Ex. 4, Executive Order (E.O.) 11593, Determination of Eligibility Notification (Eligibility Determination), at unnumbered pp. 1-3; see also Ex. 5, Mar. 2, 1982, notification of eligibility determination. On September 25, 2003, the Soda Rock Area was officially listed on the National Register of Historic Places. See Statement of Reasons (SOR), Attachment 1.

On August 26, 1988, the Regional Forester, Pacific Southwest Region, issued the record of decision (ROD) and the Plumas National Forest Land and Resources Management Plan (LRMP), which designated an unspecified 30 acres within the Soda

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[3/] The Forest Service request was based on eight iconographic cultural features associated with the Maidu genesis mythology, beliefs, and cultural practices, as described in Exhibit 27, A Brief Examination of Cultural Values and the Potential Effects of Placer Mining at Soda Rock (Elliott Report), at Archaeological Record continuation sheet 1-3: (1) Whippoorwill frozen in the face of the rock, consisting of a figure located on the face of the travertine deposit visible from Highway 89 which resembles a dog's head and is popularly referred to as Dog Rock; (2) the landslide scar formed where, according to Maidu mythology, the Ancient Women would urinate to wash away and drown those trying to travel through the canyon; (3) the travertine pools located just below the wet meadow at the northeast portion of the area adjacent to Indian Creek in which the Maidu historically bathed for their medicinal power; (4) the salt grass meadow where the Maidu historically gathered, collected, and used salt grass; (5) the salt-secreting meadow spring feeding the upper wet meadow at the northeast margin of area; (6) the Ancient Women's sweat lodge encompassing the largest and southernmost in a series of north-south trending sinkholes just west of the quarry where the three evil Ancient Women once lived, a spring once flowed, and salt grass once grew; (7) the Earth Maker's heart or thumping rock represented by a spring located at the southwestern end of the travertine dome enclosed by a concrete spring box, the sound of which is said to be the sound of the Earth Maker's heart; and (8) the spring between the sweat lodge/ sinkhole and Indian Creek said to have a bad taste and be curative of urinary problems, the location of which has not been found. See also Ex. 4, Eligibility Determination, National Register Of Historic Places Inventory Nomination Form continuation sheet Description, Item Number 7, at 1-2.

[4/] A site is eligible under 36 CFR 60.4(a) if it is associated with events that have made a significant contribution to the broad patterns of our history. A site that has yielded or may be likely to yield information important in prehistory or history is eligible under 36 CFR 60.4(d).

Rock Area as a special interest area (geological area) to protect its unique geologic, scenic, and cultural values. See Ex. 16, LRMP, at 4-254, 4-255; see also Ex. 17, ROD, at 3. The LRMP described the Soda Rock Area as a unique and continually developing deposit of multi-colored travertine containing mineral springs, stalactites, sinkholes, and terraced travertine pools of geologic interest that also formed a focal point of Maidu Indian mythology. See Ex. 16, LRMP, at 4-251. Although the LRMP recommended the withdrawal of the Soda Rock Area from mineral entry (id. at 4-48, 4-254), i. e., location of mining claims under the Mining Law of 1872, 30 U.S.C. §§ 28-28e (2000), [5/] it plainly contemplated that the travertine on the site would be at least partially mined, presumably as a common variety under the Materials Act of July 31, 1947, as amended, 30 U.S.C. § 601 et seq. (2000). Thus, the LRMP provided management standards and guidelines specifically authorizing travertine extraction within established limits; administering quarrying operations in accordance with the approved plan of operations; ensuring that mined areas were backfilled sufficiently; seeking designation of the area as a National Natural Landmark; and, only upon completion of mining, constructing trails and interpretive signs for public use. Ex. 16, LRMP, at 4-254, 4-255. Despite the recommendation in the LRMP, the area was not closed to mineral entry until September 1997.

On August 15, 1996, prior to the 1997 segregation and the 1999 withdrawal (discussed in more detail immediately below), Gordon K. Burton, Roberta L. Burton, Jimmy A. Brewer, and Steven H. Draper (Burton, et al.) located the Hound Dog placer mining claim pursuant to the Mining Claims Rights Restoration Act of 1955 (MCRRA), as amended, 30 U.S.C. §§ 621-625 (2000) (commonly known as "P.L. 359"). See Ex. 7. Although these lands had been withdrawn from mineral entry under the 1920 Federal Power Act and identified as Power Site No. 179 in 1927 (see 16 U.S.C. § 818 (2000)), in 1955 MCRRA opened lands withdrawn for powersite purposes to location and patent under the United States mining laws. The opening was subject to certain conditions, including the requirements that a locator file a notice of location with the Bureau of Land Management (BLM) within 60 days of location and refrain from conducting any mining operations for a period of 60 days after the filing of the location notice. 30 U.S.C. §§ 621 and 623 (2000). Burton, et al., complied with the filing requirement on August 16, 1996. [6/] BLM notified the

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[5/] As noted immediately below, the lands had been opened to mineral entry in 1955 pursuant to the Mining Claims Rights Restoration Act, infra.

[6/] On Dec. 28, 1994, Donald and Carol Dingel located the Delaware Placer mining claim on the lands previously included within the Delaware 3 claim for the purpose of quarrying the travertine, but failed to file the notice of location with BLM identifying the claim as a P.L. 359 claim as required by 30 U.S.C. § 623 (2000). On Apr. 27, 1995, they transferred the claim to B&R Quarries, and on Mar. 6, 1997, the claim
(continued...)

Forest Service of the location of the claim during the 60-day no-operations period. The Forest Service objected to placer mining of the claim, and on September 12, 1996, BLM sent a letter to each of the claimants informing them that a public hearing would be held in accordance with 30 U.S.C. § 621(b) (2000) to determine whether placer mining operations would substantially interfere with other uses of the land. The Forest Service also advised that, in accordance with 30 U.S.C. § 621(b) (2000), the suspension of operations on the claim would continue pending the outcome of the hearing. See Ex. 6. Burton, et al., transferred the claim to Donald E. Eno on July 28, 1998 (Ex. 9), and BLM was notified of the transfer on August 26, 1998. [7/]

On August 5, 1997, the Forest Service filed an application with BLM to withdraw the lands within the Soda Rock Area from location and entry under the mining laws, subject to valid existing rights. [8/] On September 16, 1997, BLM published a notice of the proposed withdrawal in the Federal Register, segregating the land "from mining" for 2 years from the date of publication, but providing that the "land will remain open to mineral leasing and the Materials Act of 1947." See Ex. 10, 62 FR 48668 (Sept. 16, 1997). On August 31, 1999, BLM issued Public Land Order (PLO) No. 7406, which, subject to valid existing rights, withdrew the 40-acre Soda Rock Area "from location and entry under the United States mining laws for 50

[6/] (...continued)
was properly filed under P.L. 359. Although the Forest Service challenged this claim as well as the Hound Dog claim, the parties settled the dispute, with B&R Quarries relinquishing and abandoning the claim. See Ex. 23, P.L. 359 Mineral Report, at 10.

[7/] Because Eno is the sole adverse party at the present time, the Board styled the case on appeal as United States v. Eno, instead of United States v. Burton as captioned below. See Stay Order at 2. The Board also noted that a proceeding under P.L. 359 is a public hearing, not a contest, and that the use of the terms contestant and contestee to identify the Forest Service and Eno, respectively, is therefore inappropriate. Id. at 2-3 n.3.

[8/] Interestingly, in contrast to later mineral reports which concluded that the area had minimal mineral potential, the July 11, 1997, withdrawal application forwarded to BLM on Aug. 1, 1997, and received by BLM on Aug. 5, 1997, concluded that the area had a moderate to high potential for discovery of locatable minerals. See Ex. 11, Excerpts of Final Environmental Assessment (EA) for Soda Rock Special Interest Area Mineral Withdrawal (Withdrawal EA), at unnumbered last page; compare with Ex. 11, Dec. 4, 1998, Mineral Potential Report for Proposed Mineral Withdrawal for the Soda Rock Area (Withdrawal Mineral Report), at 11-12, and Ex. 24, Aug. 6, 1999, Supplemental Withdrawal Mineral Report, at 4-5.

It appears that the record contains two separate documents denominated as Ex. 11, the Withdrawal EA and the Withdrawal Mineral Report, which we have differentiated by their titles.

years to protect the Soda Rock Special Interest Area." However, the PLO noted that the "land has been and will remain open to mineral leasing," (see Ex. 12, 64 FR 47515 (Aug. 31, 1999)), thus keeping open the possibility that common variety travertine could be mined and sold under the Materials Act.

Judge Hammett held the public hearing from June 1 through June 5, 2002. At the hearing, the Forest Service offered testimony and documentary evidence supporting its prima facie case that other uses of the land, specifically cultural resources and values, geological values, and scenic values, constituted substantial uses of the land warranting prohibition of placer mining operations; that the mineral value of the land, including its value for placer gold mining and travertine quarrying, was insufficient to outweigh the value of the other uses of the land; and that placer mining operations, including Eno's planned suction dredging in Indian Creek and possible quarrying of the travertine deposit, would substantially interfere with the other substantial uses of the land. The witnesses testifying on behalf of the Forest Service included Forest Service employees Michael Allen Hall (assistant resource officer and records custodian), Richard Teixeira (mineral examiner), Dan Elliott (district archaeologist and cultural resource manager), Linda Reynolds (heritage resources and tribal relations programs manager), and Allen King (geologist), as well as Maidu Indians Donald Ryberg, Thomas Merino, and Farrell Cunningham.

Eno countered with testimony and documentary evidence indicating that the other uses of the land cited by the Forest Service were not substantial uses; that the land had a high potential value for gold and travertine; and that placer mining operations, which he asserted did not include travertine quarrying, would not substantially interfere with any other uses of the land. In addition to testifying on his own behalf, Eno called as witnesses Vivian Hansen (a Maidu), JoAnn Hedrick (a research genealogist who has interviewed numerous Maidu and is familiar with Maidu family histories and legends), Gordon K. Burton (the claim locator), Gerald Hobbs (a miner with expertise in suction dredging and evaluating stream deposits for gold), Ronald L. Curtis (a mining engineer and mineral property evaluator), and Tom Anderson (an economic geologist). Eno proffered the written testimony of David A. Laskey (a recreational miner) as an exhibit (Ex. V). The parties also submitted extensive post-hearing briefs addressing the relevant issues.

Judge Hammett issued his decision on December 4, 2003. He first set out the applicable legal standards, including that the Forest Service had the burden of establishing, as a prima facie case, the existence of a substantial use of the land for purposes other than mining that warranted a prohibition on placer mining, after which the burden shifted to Eno to show by a preponderance of the evidence that the benefits of mining outweighed the injuries or detriments to the other uses of the land. Applying these standards, he concluded that no showing had been made that there were substantial uses of the land other than mining justifying a prohibition on placer

mining. He therefore granted Eno a general permission to engage in placer mining operations on the Hound Dog claim. (Decision at 3-4.)

Judge Hamrnett rejected the Forest Service's assertion that placer mining should be prohibited because cultural resources and values, geologic values, and scenic values would be destroyed if placer mining were allowed. He held that the competing uses had to be substantial uses and that the substantiality of those uses had to be proven by objective evidence of the economic value of the uses. According to the Judge, comparing purely subjective values such as the preservation of cultural resources with the objective potential economic value of placer mining was not feasible. He regarded the Forest Service's evidence concerning cultural resources to be primarily subjective in nature and lacking any attempt to attach any economic value to the site's cultural significance. Although noting that the lack of economic factors associated with the site's cultural significance seriously weakened the Forest Service's position, he found it unnecessary to decide whether it was fatal to its position as a matter of law because the evidence in the record failed in any event to establish a substantial cultural use of the land within the Hound Dog claim. (Decision at 6-8.)

Based on his weighing of the evidence and credibility determinations, the Judge found that the lack of current Maidu use of the site and the fact that their stories about Soda Rock varied substantially undermined the Forest Service's assertion that the site possessed cultural values worthy of preservation. He also considered the evidence insufficient to establish that the majority of Maidu considered Soda Rock to be culturally significant and wanted the area to be preserved. He held that the withdrawal of the land from mineral entry, the LRMP's designation of the land as a geologic special interest area, and the Keeper's eligibility determination were not determinative of the issues before him, because (1) the withdrawal was subject to valid existing rights and the claim's validity had not yet been determined; (2) the LRMP designation simply represented the Forest Service's opinion that the land had unique geologic and culturally significant features worth preserving and was not entitled to deference; and (3) the cultural significance of the area had to be determined in this context based on the documentary evidence and testimony adduced at the hearing rather than on Forest Service information advocating the site's inclusion, which information formed the basis of the site's listing. He further observed that the Forest Service had conceded that the land had no archaeological significance. Judge Hammett concluded that the subjective cultural value and significance the Soda Rock Area had to certain individuals of Maidu ancestry did not mandate preservation of the Soda Rock Area as a cultural landmark and therefore did not establish that cultural resources and values were substantial uses of the land warranting the prohibition of placer mining. (Decision at 8-14.)

Judge Hammett also found that the evidence did not establish that the geologic values that made the Soda Rock Area of interest to geologists were substantial uses of the area warranting the prohibition of placer mining operations. He noted that, although Forest Service witnesses Teixeira and King had testified that the area was of geological interest, no evidence had been presented that the area had been used by the scientific community to gather information about the processes leading to the formation of the topography or that it contained valuable information about the geologic history of the region yet to be extracted by the scientific community. He further observed that travertine deposits were not that rare in California, pointing out that the evidence indicated that there were three or four other travertine deposits in California, including a deposit between 1 and 1-½ miles from the Hound Dog claim. (Decision at 14-16.)

Judge Hammett also rejected the Forest Service's contention that the Soda Rock Area had important scenic values that would be destroyed if placer mining were allowed. While acknowledging that Dog Rock was clearly visible from Highway 89, he noted that other features could not easily be seen from the highway and that the poured concrete evident along the bank of the highway and the power line observable from the highway undermined the scenic value of the area. He added that there was no evidence in the record objectively establishing that the site was visited for scenic purposes by significant numbers of the public or that destruction of Dog Rock would have tangible economic effects on the local economy. He considered Forest Service evidence that the public had been observed stopping and taking pictures of Dog Rock insufficient to establish the scenic values of the area, especially since the Forest Service brochure listing Soda Rock as a point of interest (Ex. 21, "An Ancient Trail of the Mountain Maidu Indians, an Automobile Tour") explicitly stated that there was no safe turnout available there and that stopping was not advised. He therefore concluded that the evidence failed to establish that the purported scenic features of the Soda Rock Area constituted a substantial use of the area warranting prohibition of placer mining operations. (Decision at 16-18.)

Judge Hammett noted that the Forest Service's failure to establish the existence of other substantial uses of the land did not require the automatic granting of a general permission to engage in placer mining operations, because the allowance of placer mining in a P.L. 359 proceeding also required that there be a reasonable expectation of gold recovery. He stated that P.L. 359 proceedings were preliminary in nature in that the mining claimant did not need to demonstrate a discovery of a valuable mineral deposit to establish his right to continue to explore the mineral values of the claim, and that, therefore, the amount of evidence needed was not the same as that required to establish the validity of the claim, but simply required the claimant to show the possibility that the claim might contain a profitable gold mining opportunity that merited further exploration of the mineral values of the claim. (Decision at 18-19.)

Judge Hammett reviewed the relevant evidence presented at the hearing, including the sampling conducted by the Forest Service and the Withdrawal Mineral Report (Ex. 11) and the P.L. 359 Mineral Report (Ex. 23) prepared based on that sampling, as well as Eno's evidence, part of which was derived from sampling conducted downstream of the Hound Dog claim and would not be relevant in a contest proceeding. The Judge concluded that there was ample proof to support the existence of sufficient quantities of gold to demonstrate the possibility that Eno's claim might contain a profitable gold mining opportunity. (Decision at 20-23.)

In reaching this conclusion, the Judge cited the table found in both the mineral reports showing the results of the suction dredge samples:

TABLE 1–GOLD RECOVERED FROM SUCTION DREDGE SAMPLE
[Gold weight in milligrams (mg)]

SAMPLE NO.	COARSE GOLD	FINE GOLD	TOTAL GOLD
HD-1	0	15.6	15.6
HD-2	3721	334.2	4055.2
HD-3	1004	74.2	1078.2
TOTAL	4725	424.0	5149.0

See Ex. 11 at 9; Ex. 23 at 14; Decision at 20. He also adopted the reports' common finding that, based on the average recovery rate for the three samples, 25 hours of dredging would produce 20,303 mg of gold. See Ex. 11 at 10; Ex. 23 at 15; Decision at 21 Teixeira set out his calculations of the hourly gold production rate in Table 2 of the P.L. 359 Mineral Report:

TABLE 2–GOLD PRODUCTION RATE AND GRADE OF DEPOSIT

SAMPLE NUMBER	DREDGING HOURS (hrs)	SAMPLE VOLUME (cy)	GOLD RECOVERED (mg)	PRODUCTION RATE (mg/hr)	GRADE (mg/cy)
HD-1	2.00	2.7	15.6	7.8	5.8
HD-2	2.17	3.8	4055.2	1868.8	1067.2
HD-3	2.17	3.8	1078.2	496.9	283.7
TOTAL or AVERAGE	6.34	10.3	5149.0	812.1	499.9

(Ex. 23 at 14; see also Ex. 11 at 10.). [9/]

Judge Hammett pointed out that the Forest Service had neither estimated the volume of workable placer material on the claim nor calculated the total value of gold on the claim. He therefore computed the total gold value by adopting Eno's estimated volume of 32,160 cubic yards (cy) of workable placer (Ex. U, see Tr. 1050-1052), multiplying that volume by Teixeira's estimated 499.9 mg/cy average grade of the gold (see Ex. 23, P.L. 359 Mineral Report, at 14, Table 2, reproduced in note 8, supra), and then multiplying the product of those numbers (16,076,784 mg) by the $321.00 per troy ounce (or $0.010 per mg) gold price on the date of segregation (see Ex. 23, P.L. 359 Mineral Report, at 14), yielding an estimated total gold value of $160,768.84. (Decision at 23.) Although that amount was less than the $650,000 total value estimated by Eno's witnesses (see Tr. 1052; Ex. U), the Judge found it sufficient to establish the possibility that the claim might contain a profitable gold mining venture. (Decision at 23.)

Judge Hammett also found as a matter of law that MCRRA did not apply to the quarrying of travertine because quarrying did not fall within the common definition of "placer mining" as extraction of minerals from a placer deposit by concentration in running water, including ground sluicing, panning, shoveling gravel into a sluice, scraping by power scraper, and excavating by dragline. (Decision at 23, citing U.S. Department of the Interior, A Dictionary of Mining, Mineral, and Related Terms (1968).) He concluded not only that the removal of travertine was irrelevant to this proceeding, but also that his granting Eno a general permission to engage in placer mining operations did not extend to any potential quarrying of the travertine deposit at Soda Rock. (Decision at 24.) He added that the issue of whether the travertine was a common or uncommon variety of mineral remained to be determined and that, whatever that determination, the Forest Service would still be required to manage the site in accordance with applicable environmental and historic preservation laws. Id.

Judge Hammett further determined that the evidence established that placer mining operations in Indian Creek would not substantially interfere with any other uses of the land. Having eliminated the impacts of travertine quarrying from the equation, he focused on Eno's proposed suction dredging of Indian Creek in weighing the impacts of placer mining on the uses of the land for cultural, geologic, and scenic

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[9/] The reports and decision used 25 hours of dredging as the basis for their calculations because Teixeira had determined that each hour of dredging required 1.5 hours of actual work time and that, therefore, a 40-hour work week would include 25 hours of actual dredging time, with the rest of the time spent transporting supplies to and from the dredge site, cleaning up the sluice after dredging, panning concentrates, work breaks, and repair and maintenance. See Ex. 11 at 10; Ex. 23 at 15.

purposes. He observed that the only cultural feature potentially affected by the mining operations would be Dog Rock, which was directly adjacent to the creek, and concluded that there was no evidence in the record showing that placer mining operations would necessarily result in the modification, degradation, or destruction of that rock formation. He based this conclusion on Eno's credible testimony that California law prohibiting dredging into the bank of a waterway effectively proscribed suction dredging under Dog Rock; that dredging near Dog Rock would undermine the feature, causing it to collapse on him while he was working the area; and that he would be able to suction dredge the entire length of Indian Creek within the claim without having to walk on the top of Dog Rock. The Judge noted that the Forest Service had conceded that suction dredge mining had only limited potential to physically damage any cultural features any further than they had already been damaged, citing Ex. 27, Elliott Report, at 11. (Decision at 24-25.)

Judge Hammett also found that the dredging operations would, at worst, have a minimal impact on the scenery of Indian Creek because those operations would not require the building of an access trail, would not create a semi-permanent campsite, and would not result in the piling up of gravels and rocks outside the permanent river channel. He observed, parenthetically, that the Forest Service had not always espoused the position that placer mining operations involving travertine quarrying and suction dredging would be inconsistent with maintaining the cultural and geologic significance of Soda Rock, citing the LRMP standards and guidelines recommending the authorization of travertine extraction within established limits and the submission of a plan of operations for mining of gravel deposits, consistent with protecting geologic and cultural features, as indicia of the Forest Service's earlier conclusion that travertine quarrying and placer mining were not entirely incompatible with protection of the area's geologic and cultural features but could be managed in a manner that protected those features. (Decision at 25-26.)

Based on his conclusions and analysis, Judge Hammett issued Eno a general permission to engage in placer mining operations on the Hound Dog claim. (Decision at 26.) The Forest Service appealed this decision.

On appeal the Forest Service asserts that neither MCRRA nor the applicable balancing test requires that the competing uses for the land within MCRRA placer claims be substantial uses, contending instead that the substantiality of a use must be evaluated by a comparison of the importance of the benefits of the competing uses. The Forest Service also maintains that the Judge erred in focusing on an economic evaluation of the alternative uses, pointing out that the case law does not limit the value of competing uses to economics, but also recognizes other benefits, such as recreational, archaeological, scenic, wildlife, wildlife habitat, and preservation qualities. (SOR at 11-15.)

The Forest Service argues that Judge Hammett erred in holding that cultural resources and values are not substantial uses of the lands. According to the Forest Service, the Judge's characterization of those values as subjective ignores the objective evidence of the site's cultural and historic significance documented in the Keeper's eligibility determination and the subsequent listing of the Soda Rock Area on the National Register of Historic Places, which, the Forest Service submits, establish by legal definition that the site's cultural and historic use and value are substantial and significant. The Forest Service avers that the laws and regulations supporting the preservation of historically significant sites and Native American culture discredit the Judge's restriction of his evaluation to economic factors, as does relevant precedent. (SOR at 15-19.) The Forest Service contends that the LRMP's designation of the Soda Rock Area as a special interest area, the application for the withdrawal of the lands to protect the cultural values, and the subsequent withdrawal of the lands all provide objective evidence of the area's cultural use and values and deserve deference. Id. at 19-21. The Forest Service also cites the testimony of three Maidu Indians concerning the historical uses and significance of the Soda Rock Area as providing sufficient evidence of the value of the land for cultural uses. The Forest Service maintains that it was error for the Judge to substitute his judgment for that of the Forest Service and the Secretary of the Interior. Id at 21-22.

The Forest Service insists that Judge Hammett erred in construing the term "use" to require actual physical use and in focusing on whether the Maidu currently physically use the Soda Rock Area. The Forest Service asserts that the term "use" also includes passive use such as the Maidu use of the land as a living part of their present culture. The Forest Service also notes that the land has been closed to the public since 1963 because of mining, which necessarily prevented the Maidu from physically using the land, adding that testimony at the hearing indicated that the Maidu would have used the site in the past and would use it again if it were open to the public, citing Tr. 477, 481, 542, 547, and 550. The Forest Service submits that the Judge erred in disregarding the physical impossibility of access to the site from 1963 to the present, the historical and current traditional Native American uses of the Soda Rock Area as the site of their genesis mythology, and the import of passive uses of the land. (SOR at 22-24.)

The Forest Service contends that Judge Hammett erred in holding that the geologic values were not a substantial use of the land. It asserts that the Judge impermissibly refused to accord deference to the Forest Service's determination in the LRMP that the Soda Rock Area contained unique geologic features warranting protection for their scientific geologic values, including the form and beauty of the travertine deposit, the associated karst topography (otherwise known as sinkholes) that is rare in the West, the beautiful travertine pools, the crystals of dogtooth calcite, the stalactites, the pipes, and the curtains, or to accord deference to the Secretary's withdrawal of the lands to protect and preserve those geologic values. (SOR at 23-

26, citing Exs. 23, P.L. 359 Mineral Report, and 32, Geology Report for Soda Rock Geologic Special Area (Geology Report), and Tr. 231-232, 794, 800, 803-805, and 807.) The existence of other travertine deposits in California does not undermine the value of the Soda Rock Area's geologic use, the Forest Service submits, because the other deposits do not exhibit the unique features present in the Soda Rock Area. (SOR at 25.)

The Forest Service maintains that the Judge erred in holding that the Soda Rock Area did not have important scenic values, asserting that the cultural and historic resources and values and the geologic values also give the area its scenic value. According to the Forest Service, the scenic value of the area is bolstered by its inclusion in the Forest Service brochure for automobile tours of Highways 70 and 89 (Ex. 21). (SOR at 26.) [10/]

The Forest Service argues that Judge Hammett erred in finding that there was sufficient mineral potential to warrant authorizing placer mining operations. Citing Teixiera's sampling of the claim for gold and economic evaluation of the land, the historical mining production, and the lack of significant commercial gold production either within the claim or in the area (Exs. 11, 23, and 24; Tr. 213, 214, 277), the Forest Service maintains that its evidence demonstrates that the lands within the Hound Dog claim and the Soda Rock Area have a low mineral potential for an economically viable gold deposit [11/] and that the travertine deposit is a common

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[10/] Although the Forest Service states that the area is next to Highway 70, which is a scenic byway (SOR at 26), we note that it is Highway 89, not Highway 70, that lies adjacent to the Soda Rock Area.

[11/] Because he considered suction dredging to be a labor intensive operation with the cost of labor as the major expense, Teixeira focused on the value of gold recovered in relation to the amount of time spent to recover it. He therefore calculated the gold production rate per hour for dredging the active stream gravel. See Ex. 23, P.L. 359 Mineral Report, at 14 and Table 2 at n.8, supra. Using the average value of gold for the time period between the Aug. 15, 1996, claim location date and the Mar. 7, 2002, report date, which he computed to be $297.43/troy ounce or $0.009/mg, and his production rate per hour calculations, he concluded that, based on the average recovery rate for the three samples, 25 hours of actual dredging would produce 20,303 mg or $194 per week. Id. at 14-15 and Table 3. He then computed the costs of mining, including weekly labor costs of $800 based on two people each working 40 hours per week at an hourly rate of $10; weekly operating costs of $60 covering fuel, repair and maintenance of equipment, and mobilization; and weekly capital costs of $12 for ownership of the dredge and other equipment, for total weekly mining costs of $872. Id. at 15. He concluded that the $872 weekly mining costs

(continued...)

variety deposit. It adds that the mineral potential report for the withdrawal (Ex. 11) bolsters its conclusion that the land is more valuable for uses and values other than mining. (SOR at 26-27.) The Forest Service contends that the Judge should not have accepted Eno's evidence and testimony because Eno and Burton, et al., located and conducted suction dredge activities, not as a serious mining venture, but for recreational purposes not allowable under the mining laws, and because Eno did not enter any evidence as to the costs associated with his proposed mining. Id. at 27-28.

The Forest Service complains that Judge Hammett restricted his inquiry to the values derived from the gold samples documented in the P.L. 359 Mineral Report, while ignoring the report's assessment of the costs involved in the proposed mining; incorrectly inferred values from sampling conducted downstream of the claim, which were based on an unreliable fire assay; and erroneously relied on Eno's volume of workable placer material, which improperly took into account washed bedrock lacking gravels, parts of the highway embankment containing boulders not amenable to suction dredging, and material above the water line. It also challenges the Judge's finding that the mere possibility that the existing gold values warranted further exploration was sufficient to establish the value of the lands for placer mining. Since Eno's evidence of mineral potential was speculative, in contrast to its affirmative evidence based upon actual gold values from the claim, the Forest Service argues that the Judge's holding that there was sufficient mineral potential to outweigh the detriment to other uses of the land was arbitrary, capricious, and contrary to law and should be reversed. (SOR at 28-29.)

The Forest Service also objects to the Judge's conclusion that the travertine deposit was not relevant for mineral potential purposes because placer mining operations, as that term is used in MCRRA, did not include quarrying the travertine. The Forest Service notes that, although it considers the travertine to be a common variety mineral under the Common Varieties Act, 30 U.S.C. § 611 (2000), and not

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11/ (...continued)
greatly exceeded the $194 value of the gold recovered per week, leading to a net loss of $678 per week of operation. He added that, even if the highest gold recovery rate for HD-2 (1,868.8 mg/hr) and the highest price of gold during the life of the claim ($386.20/Tr. oz.) were used, the recovery would only be $580 per week, which was still much less than the $872 weekly costs of mining. Id. He also determined that the sample HBG-1 taken from the bench gravel beneath the travertine cap on the east side of Indian Creek in the vicinity of sample site HD-2 weighed 58 pounds and contained 0.9 mg of gold, which, assuming 3,000 pounds/cy, equated to 46.6 mg/cy or $0.45/cy, and that, therefore, the costs of mining the bench gravel would far exceed the value of the gold in the gravel. Id. He further found that, even adopting the gold values and production information offered by Eno, the generated revenues would not be sufficient to pay mining costs. Id. at 17 and Table 4.

subject to location under the mining laws, Eno has submitted a plan of operations to mine the travertine alleging that the travertine is an uncommon variety of building stone. Because an adjudicator might agree with Eno and hold that the travertine is locatable, the Forest Service maintains that the Judge should have considered the benefits and detriments of travertine mining in his weighing of the competing uses of the Hound Dog claim. The Forest Service asserts that uncommon varieties of building stone are locatable as placer claims pursuant to the Building Stone Act, 30 U.S.C. § 161 (2000), and that, therefore, quarrying the travertine falls within the meaning of placer mining because it involves mining a mineral on a placer claim. According to the Forest Service, Judge Hammett's omission of the effects of travertine mining in his balancing of the competing uses of the land creates a loophole, unsupported by MCRRA, which could allow travertine mining to occur without a determination as to whether it would substantially interfere with other uses of the land, since the Secretary may only act once in determining whether the lands should be open to placer mining. (SOR at 29-30.)

The Forest Service further contends that Judge Hammett erred both legally and factually in holding that placer mining operations within the Hound Dog claim would not substantially interfere with other uses. The Forest Service contends that the Judge's limitation of his evaluation to Eno's proposed mining activities was legal error because the applicable test does not focus solely on the specific mining method proposed by the claimant, but requires consideration of all methods that a miner could reasonably use to extract minerals. The Judge erred factually, the Forest Service submits, because its witnesses and documents presented unrebutted evidence demonstrating that normal, regulated placer mining operations, subject to regulatory restraint, would irreversibly and irreparably destroy a unique, historic, and culturally and geologically significant property, the iconographic, geologic, and scenic features of which could not be restored by reclamation. (SOR at 31-32.) The Forest Service concludes that the Judge's decision is arbitrary, capricious, and contrary to law and fact and should be reversed.

In response, Eno contends that Judge Hammett correctly ruled that the Forest Service failed to establish a substantial other use of the land, noting that, contrary to the Forest Service's contention, relevant Board precedent mandates that a competing use be substantial if it is to justify prohibiting placer mining operations. (Response at 15-16.) He further asserts that the Judge properly determined that the party seeking to prohibit placer mining must present objective evidence subject to cardinal measurement of any other purported use, because the balancing test requires an objective evaluation of the potential detriments and benefits accruing from placer mining, which evaluation, by definition, precludes the use of subjective, non-quantifiable evidence to prove the substantiality of the other uses of the land. Id. at 17-20.

Eno argues that the Judge correctly found that the purported cultural resources were not a substantial other use of the land. He maintains that the listing of the site on the National Register of Historic Places is not dispositive, because the listed site includes only 15 of the 40 acres embraced by the Hound Dog claim, [12/] and because the documentation supporting the listing was prepared by Government personnel recommending the preservation of Soda Rock and therefore did not contain objective information. [13/] (Response at 21-22.) Eno denies that the Judge should have accorded deference to the listing decision and the Forest Service decisions recognizing the cultural significance of the Soda Rock Area; rather, he agrees with Judge Hammett's admonition that the cultural significance of Soda Rock had to be evaluated on the basis of the documentary and testimonial evidence presented at the hearing, because to do otherwise would have made the hearing a meaningless exercise. Id. at 22-23.

In any event, Eno submits that the Maidu did not become concerned about quarrying activities at Soda Rock until 1981, citing Ex. D; that the Maidu attached religious, not cultural, significance to the area, citing Ex. 27; and that the designation of the Area as a Special Interest Area did not constitute objective proof of the significance of the Area. (Response at 23-25.) He contends that the withdrawal is irrelevant because it occurred after the Forest Service's 1996 request for a P.L. 359 hearing which, he avers, is the critical time period to avoid his being prejudiced by the delay in holding the hearing caused by the Judge's caseload. He also discounts the probative value of the withdrawal, asserting that it was an afterthought designed to impede him from mining his claim and was based on the purported religious significance of the area. He further alleges that travertine quarrying would not substantially interfere with any purported cultural purposes, pointing out that the withdrawal did not close the land to mineral leasing and that the Forest Service therefore remained free to sell the travertine if it chose to do so. Id. at 25-27.

Eno denies that the Forest Service testimony and reports constitute objective evidence of the significance of the area's cultural resources. He avers that Elliott's testimony and report lack credibility because they were based on his interviews with only four Maidu. Eno further asserts that Elliott acknowledged that no artifacts, features, or archaeological sites had been identified at Soda Rock; that neither a

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[12/] The Elliott Report cited by Eno actually indicates that the cultural features embrace 21, not 15, acres. See Ex. 27, Elliott Report, Archaeological Record at 1.

[13/] Eno also avers that the only facts relevant to this proceeding are those existing at the time the P.L. 359 hearing was requested and that events and conditions after that time, including the National Register listing, the segregation and withdrawal of the Soda Rock Area, and the fluctuations in gold prices, have no bearing on whether placer mining operations should be allowed. See Response at 22 n.20; 25; 53 n.62.

sweat lodge nor a roundhouse ever existed on the land; that he had never witnessed a Maidu ceremony on the lands; that there was no water in the travertine pools and no current use of the salt grass; and that he did not know when the Forest Service first learned about the concrete spring box identified as the Earth Maker's Heart. (Response at 28-30, citing Ex. 27; Tr. 666, 669, 670, 673, 696, 699, and 705.) Eno also enumerates the flaws in the testimony of Linda Reynolds, including her lack of knowledge about the cultural resources in the area, evidenced by her inability to properly locate those features on the map, her lack of personal observation of the area, and her total reliance on the works of other people as the basis for her opinions. (Response at 30-31, citing Ex. 27, Tr. 283, 670-676, 724-725, 751-753, 755, 756, 757-758, and 764.) According to Eno, the Maidu witnesses testifying for the Forest Service, including Tommy Merino and Farrell Cunningham, characterized the Soda Rock Area as having religious importance, rather than cultural significance, and reinforced the subjective nature of the evidence. (Response at 31-32, citing Tr. 472-473, 505-507, 517, 522, 531, 533, 549-550.)

Eno contends that the Forest Service provided no evidence that Maidu actually physically use the purported cultural resources. He maintains that no one currently uses or gathers salt grass, a fact that the Forest Service concedes; that no one utilizes the travertine pools, which are now dry; that the sweat lodge or roundhouse never existed; that the Maidu do not conduct ceremonies at Soda Rock; and that there is no evidence that the Earth Maker's Heart is actually located at Soda Rock. (Response at 33-36, citing Tr. 118-119, 129-131, 132-133, 137, 138, 140, 142, 144, 146, 281, 285, 473-475, 497, 499, 501, 504, 515-516, 521-522, 532, 533, 542, 544-545, 549, 555, 560-562, 635, 705, 725, 790, 836-37, and 1233; Ex. 31.) Eno denies that qualifying substantial uses include passive uses of the land, averring that the common meaning of "use" denotes someone actually physically employing or deriving service from the land, an interpretation consistent with Congress' intent in enacting P.L. 359. The Forest Service's argument that the ongoing mining operations prevented the Maidu from using the land fails, Eno submits, because, although the Delaware 3 claim was abandoned in 1993, no Maidu have visited the site since then, except for meeting the Forest Service there in September 2001. He adds that the mining area now closed to the public for safety reasons consists of the 6-acre footprint of the quarry, which does not encompass the cultural features, and asserts that the possible future use of the area by the Maidu and others does not establish the requisite substantial use. (Response at 36-38.)

Eno denies that the significance some Maidu individuals attach to the land within the Hound Dog claim proves that the alleged cultural resources are a substantial other use of the land. He asserts that his witnesses presented credible evidence demonstrating that the majority of Maidu do not consider the area to be culturally significant, pointing out that Judge Hammett found Joann Hedrick's testimony persuasive because, in contrast to Linda Reynold's testimony, it was based

on her personal contact with the Maidu over several years, not just a review of existing literature and brief discussions with nine Maidu individuals. (Reply at 39-41, citing Tr. 881, 882, 883, 884, 885, 889, 898, 899-900, 901, 903, 904, 906-907, 909, and 922.) Given this lack of consensus, Eno avers that Judge Hammett correctly ruled that the purported cultural resources associated with the area are not a substantial other use of the land. (Response at 41.)

Eno asserts that Judge Hammett correctly found that the geological features were not a substantial other use of the land warranting the prohibition of placer mining operations. According to Eno, the evidence of the unique geologic features presented by King and Teixeira fails to establish that mining should be prohibited, because every piece of land and every mineral deposit is unique. Eno further alleges that the Forest Service failed to prove that the travertine deposit is so unique that its preservation is paramount, observing that, as the Judge noted, there are three or four other travertine deposits in California; that the purported singular geologic features such as sinkholes, travertine pools, stalactites, and pipes are fairly common in the United States; and that no one other than Forest Service employees has expressed any interest in these features and their formation. (Response at 42-43, citing Tr. 300-301, 794, 829, 830-835, 861, 1098, 1099, 1101, 1102, 1142, 1233, and 1235; Exs. P, Q, and Z.) Nor does the designation of the area as a Geologic Special Interest Area mandate the conclusion that the geologic features are substantial uses incompatible with placer mining, Eno submits, especially since the designation acknowledged that mining activities would continue and that the features could be protected through mitigation measures incorporated into plans of operations. Id. at 44, citing Ex. 16 at 4-254.

Eno similarly contends that the Judge correctly found that the scenic features were not a substantial use of the land. Given the unsightliness of the quarry and the Forest Service's admission that the only scenic feature associated with the claim is Dog Rock, which is visible from Highway 89, Eno maintains that Teixiera's and King's subjective testimony falls far short of demonstrating a substantial use of the lands for scenic purposes. He asserts that the Forest Service provided no objective evidence that the cultural features associated with the geologic features have scenic values, and that the Forest Service brochure for automobile tours of Highways 70 and 89 (Ex. 21), which describes religious and cultural sites, does not establish the scenic value of those features, given its warning that stopping is not advised because no safe turnout exists. He also points out that, although Highway 70 is a designated scenic byway, it lies over a mile from the Hound Dog claim and therefore does not support the purported scenic values of the area. (Response at 45-48.)

Eno maintains that the evidence supports Judge Hammett's conclusion that the Hound Dog claim might contain a profitable gold mining opportunity. He points out that the Forest Service's own sampling evidence establishes the existence of sufficient

quantities of gold on the claim to warrant issuance of a general permission to engage in placer mining, although he asserts that the values are actually much higher than those derived from the samples because the Forest Service inadequately sampled two of the three sample sites, HD-1 and HD-3. Specifically, he avers that the errors associated with sample HD-1 include Teixeira's failure to reach bedrock, where the best gold is located; his decision to start dredging in the middle of the deposit, which caused him to become "boulder bound"; and his colleague's panning of the black sands directly back into Indian Creek. He states that the key mistake undermining sample HD-3 entails Teixeira's dredging past a major crevice, which is a natural trap for gold, without cleaning it out. Eno contends that, given these flaws, Judge Hammett should have relied solely on the significantly higher recovery rate for HD-2, and that, using only the 1,868.8 mg/hr recovery rate from HD-2 (see Ex. 32, P.L. 359 Mineral Report, at 14, Table 2, supra at n.8), 25 hours of dredging would actually produce 46,720 mg of gold, significantly more than the 20,303 mg of gold underlying the Forest Service's economic evaluation. (Response at 49-52.) Eno further avers that Teixeira's estimate of the width of the active stream channel was based on a visual estimate in the dry month of August (Tr. 310), rather than an actual measurement, and was too low; that, according to a map of the area (Ex. 3), the stream width varies between 45 feet to 125 feet; and that the active stream channel actually contains between 7,700 and 21389 cy of gravel representing gold values between $78,887 and $219,133. [14/] Id. at 53.

Eno challenges the relevance of Teixeira's profitability calculations, pointing out that, as the Forest Service stipulated, this proceeding does not involve a validity determination. Even if the calculations were relevant, Eno argues that extensive errors underlying the calculations render them meaningless. Specifically, he alleges that Teixeira should not have used the results of non-representative sample HD-1; that Teixeira based his recovery rates on the use of a 5-inch dredge rather than the 6-inch dredge Eno proposed to use, which would move 50 percent more material and increase the gold recovery rate for HD-2 and HD-3 to 2,803.2 mg/hr and 745.4 mg/hr, respectively, for an average of 1,774.3 mg/hr; that Teixeira's math was wrong because, using his theory that each hour of dredging requires 1.5 hours of work, a 40-hour work week would include 26.7 hours of dredging, not the 25 hours

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[14/] Teixeira testified that the stream channel was approximately 2,200 feet long, 30 feet wide, and 3 feet deep, and that 30 percent of the stream channel was washed bedrock with no gravel resources. See Tr. 321-322. Although he estimated that, based on these numbers, there were between 3,500 and 4,000 cy of gravel in the stream, multiplying his estimated dimensions results in 198,000 cubic feet or 7,333 cy of material. Applying the 30 percent reduction for the washed bedrock leaves 5,133 cy of material in the active stream channel. See Response at 52-53. Teixeira conceded, however, that the area of washed bedrock could contain gold if there were joints, fractures, or crevices in the bedrock. See Tr. 322.

upon which Teixeira based his calculations; that, because a serious miner would not transport the dredge to and from the creek each day or include work breaks in an 8-hour work day, each hour of dredging more realistically requires 1.25, not 15, hours of actual work time, or 32 hours of actual dredge time in a 40-hour work week with the commensurate weekly recovery rate of 56,777.6 mg of gold with a value of $545.10/wk; and that Teixeira should have used the $4.75/hr minimum wage in 1996 to determine labor costs, for a total of $380 in weekly labor costs and $452 in total weekly costs, yielding a net weekly profit of $93.10. Eno points out that he plans to have two men operate 6-inch dredges side by side, paying each one $10/hr, which would increase the weekly recovery rate based on HD-2 and HD-3 to 113,555.2 mg (1,774.3 mg/hr x 64 hours) or $1,090.13/wk and, even with the doubling of operational and capital costs associated with the use of two dredges and total weekly costs of $944.00, would leave a net weekly profit of $146.13/wk. Eno therefore submits that the active stream channel can be mined at a profit. (Response at 55-57.)

Eno asserts that neither the 1999 withdrawal of the land nor Teixeira's conclusion in the mineral reports that the claim has low mineral potential establishes that the claim has no mineral potential. He states that Judge Hammett was not required to defer to the Secretary's withdrawal decision because to do so would have denied Eno due process. According to Eno, Teixeira's discovery of gold in all the samples he took from the claim undermines his low mineral potential conclusion, because the BLM Manual at 3031.3 restricts the low mineral potential category to only those situations where there are no reported mineral occurrences. Eno further contends that the admitted unreliability of the sampling conducted by Hank Jones in 1965-1966 referenced in the mineral reports negates the value of those results in disproving the existence of gold on the claim. (Response at 57-58, citing Tr. 312-313, and 315.)

Not only does the Forest Service's evidence confirm the sufficiency of the quantities of gold on the claim to indicate that the claim might contain a profitable gold mining opportunity, but, Eno submits, the evidence he produced renders that conclusion inescapable. He cites the approximately ½ oz (15,552 mg) of chunky or big gold he recovered in June 1996; the over 6 oz (186,621 mg) of chunky gold retrieved by recreational miners Steve Gardner, Rich Malone, and Dave Meyers; and the 4-4½ oz uncovered by David and Edna Laskey after moving 20 yards of gravel (6,221 mg/cy) over a 20-day period. (Response at 59, citing Tr. 934-936, 1167-1168, 1169, 1171, 1174, and 1177-1178; Exs. V and EE; see also Decision at 21-22). Eno adverts to the "primitive" sampling conducted by Jerry Hobbs and Ron Curtis on April 2, 2002, 50 feet downstream from the Hound Dog claim, which, based on a fire assay, recovered 210.8 mg of gold from a 0.1 cy sample, or 2,180 mg/cy of gold. He also notes Curtis's calculation that, based on his measurements of the active stream channel (290,000 square feet) and the Forest Service's estimated gravel depth of

three feet, the claim contained 32,160 cy of workable placer. Eno accordingly estimates that the active stream channel on the Hound Dog claim contains $650,000 worth of gold. (Response at 59, citing Tr. 975-977, 980, 981, 983, 984-985, 1046, 1049, 1050, and 1051-1052; Exs. S and U; Decision at 22.)

Eno counters the Forest Service's attempts to minimize the probative value of his evidence. He denies that he wants to use the claim solely for recreational purposes, alleging that he acquired the claim because of its commercial value and would not be paying taxes and maintenance fees for the claim if he did not want to commercially produce the claim. He asserts that Judge Hammett's acceptance of the evidence from downstream of the claim was proper given that he was precluded from sampling the claim by P.L. 359, pointing out that Board precedent allows the use of geologic inference as evidence of the extent of a deposit once the actual existence of the ore on the claim has been established. He adds that even if a fire assay is not the best assay method, the flaws in that method were offset by the loss of 20 percent of the gold because of the primitive sampling methods Hobbs and Curtis were reduced to employing. He further contends that, using Teixeira's estimate of 5,133 cy in the active stream channel, instead of Curtis's calculation, along with the grade of gold recovered by Hobbs and Curtis leads to a value of $107,423 for the gold in the active stream channel, which still supports the conclusion that the claim might contain a profitable gold mining opportunity. (Response at 60-63.) Eno maintains that the only issue here is whether the possible benefits from placer mining might outweigh the detriments caused thereby to other substantial uses of the land and that, therefore, possible impediments to additional exploration activities, such as a future validity contest, do not detract from the Judge's conclusion that the claim might contain a profitable gold mining opportunity. Id. at 64.

Eno avers that the travertine is not relevant to this proceeding because quarrying the travertine deposit does not fall within the definition of placer mining operations. Even if the travertine were relevant, Eno contends that consideration of that deposit would confirm that the benefits of mining outweigh the benefits from any other uses, because mining within the footprint of the existing quarry would produce 255,000 net tons with a gross value $19,125,000, assuming a price of $75/ton and an annual production rate of 10,000 tons, while expanding mining to include all the deposit except for a 100-foot wide strip to accommodate the pre-existing power line would yield 472,500 net tons with a gross value of $35,437,500, citing Tr. 1134, 1136, 1138-1139, and 1146, and Ex. Y at 9. See also Tr. 861 (travertine deposit is 900 feet long by 700 feet wide or 630,000 square feet); and Ex. Q at 4 (total volume of the travertine on the Hound Dog claim is approximately 600,000 cy). The Forest Service's claim that the travertine is a common variety and not locatable under the mining laws is disingenuous, Eno asserts, because a specific determination that the travertine is a common variety has not yet been made, citing Tr. 356 and Ex. 23, P.L. 359 Mineral Report, at 11. (Response at 64-68.)

Eno further argues that Judge Hammett correctly ruled that legal, normal placer mining operations, subject to statutory and regulatory restraints, would not substantially interfere with any other uses of the land. Eno points out that the Forest Service's own witnesses undermined its contention that suction dredging would interfere with cultural resources, citing Elliott's concession that mining with suction dredges within the active stream channel had only limited potential to physically damage cultural features any more than they had already been damaged (see Ex. 27, Elliott Report, at 10-11), and Ryberg's and Cunningham's admissions that placer mining in Indian Creek would not affect them (see Tr. 148, 559). Eno adds that suction dredging poses no risk to Dog Rock because California law prohibits dredging into a bank of a waterway and because suction dredging near Dog Rock could undermine the feature causing it to collapse on him while he was working the site (Tr. 1238-1239). He also avers that he will be able to dredge the entire length of Indian Creek within the claim without walking on top of Dog Rock, that suction dredging will cause an insignificant amount of additional noise when compared with the noise from traffic on Highway 89 (Tr. 411-413; Ex. Z), and that visual effects will be minimal because suction dredging is allowed only between the fourth Saturday in May and October 15 (see Ex. 23, P.L. 359 Mineral Report, at 11) and leaves no permanent or semi-permanent evidence of its occurrence (Tr. 1256, 1260). (Response at 68-69.)

The Forest Service's assertion that the Judge erred in considering only Eno's proposed activities fails, Eno submits, because the Forest Service did not present any evidence of what other legal, normal placer mining operations subject to regulatory restraints could occur on the Hound Dog claim. Eno avers that the Forest Service bases its contention that placer mining operations will irreversibly and irreparably destroy Soda Rock on a purely speculative unrestricted and unmitigated worst case scenario that unrealistically ignores the highly regulated nature of mining activities. Eno cites the regulations at 36 CFR Part 228, which vest the Forest Service with substantial authority to control and minimize the effects of mining operations on national forest lands, including 36 CFR 228.8, which requires mining operators to comply with all applicable Federal and State air and water quality and solid waste disposal standards and, to the extent practicable, to harmonize operations with scenic values, take measures to maintain fisheries and wildlife habitat, and reclaim disturbed surface areas by taking steps to prevent or control onsite and off-site damage to the environment and forest surface resources. He adds that the regulations also require him to file a notice of intent and probably a plan of operations addressing, among other things, these environmental protection measures. (Response at 69-72.)

Eno points out that the submission of a plan of operations triggers compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(2)(C) (2000), including the preparation of an EA or possibly an environmental impact statement

(EIS) analyzing the environmental impacts of the proposed mining operations, alternatives to the proposed actions, and mitigation measures to reduce any identified impacts, which could lead to modification of the proposed mining activities. Eno contends that section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f (2000), and its implementing regulations provide the Forest Service with additional authority to regulate the extent and effect of Eno's mining operations by directing it to determine whether the proposed plan of operations would have an adverse effect on Soda Rock and, if so, to develop and evaluate alternatives or modifications that could avoid, minimize, or mitigate the adverse effects. Eno avers that, should the Board decide that the removal of the travertine constitutes placer mining operations, these statutory and regulatory mandates enable the Forest Service to impose mitigation measures limiting Eno's activities to the footprint of the quarry or precluding mining of travertine in the areas of the sinkholes and springboxes, adding that the Forest Service's duty to protect the pre-existing 40-foot wide power line from interference also protects the travertine terraces and purported stalactites, curtains, and pipes. Given these restrictions and the opportunity for adversely affected parties to appeal any approval of a plan of operations for removing the travertine, Eno submits that there is no evidence that a general permission to engage in placer mining operations will actually result in any mining activities that would substantially interfere with any other uses of the land. (Response at 72-75.)

[1] As noted above, MCRRA opened powersite withdrawals for entry under the mining laws, but prohibited the locator of a placer mining claim from conducting any mining operations for a period of 60 days after the filing of the location notice. 30 U.S.C. § 621(b) (2000). If, during that time period, the Secretary of the Interior

> notifies the locator by registered or certified mail of the Secretary's intention to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land included within the placer claim, mining operations on that claim shall be further suspended until the Secretary has held the hearing and issued an appropriate order. The order issued by the Secretary of the Interior shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to those operations; or (3) a general permission to engage in placer mining.

30 U.S.C. § 621(b) (2000).

[2] To determine whether placer mining would substantially interfere with other uses of powersite lands within the meaning of MCRRA, the Department is required to engage in a weighing or balancing of the benefits of mining against the injury mining would cause to other uses of the land. United States v. Stone, 136 IBLA 22, 32 (1996); United States v. Brown, 124 IBLA 247, 252 (1992); United States v. Milender, 104 IBLA 207, 218, 95 I.D. 155, 161 (1988) (Milender II); United States v. Milender, 86 IBLA 181, 204, 92 I.D. 175, 188 (1985) (Milender I). Mining may be allowed where the benefits of placer mining outweigh the detriment which placer mining causes to other uses. United States v. Brown, 124 IBLA at 252.

Central to the balancing test is the concept that the competing uses must be substantial if they are to be used to prohibit placer mining. United States v. Brown, 124 IBLA at 253; Milender II, 104 IBLA at 215-16, 95 I.D. at 160; United States v. Mineral Economics Corp., 34 IBLA 258, 262 (1978). Thus, even if the Secretary determines that placer mining would substantially interfere with other uses of the land, he may still appropriately grant a general permission to engage in placer mining operations if the competing surface uses have less significance than the proposed placer mining operation. Milender II, 104 IBLA at 216, 95 I.D. at 160. The importance of the competing uses must be compared and judged on whatever grounds are relevant in the individual case. [15/] Id.

We begin our analysis under these guiding principles with the question of whether the Forest Service, as the party who seeks to restrict placer mining operations, has demonstrated that there are substantial other uses of the land warranting a prohibition of placer mining operations. [16/] The Forest Service alleges

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[15/] Since the other uses of the land must be substantial uses to justify prohibiting placer mining, we reject the Forest Service's contention that it need not prove the substantiality of the other uses as part of its prima facie case. See United States v. Brown, 124 IBLA at 253, citing Milender II, 104 IBLA at 215, and United States v. Mineral Economics Corp., 34 IBLA at 262 (to justify the prohibition of mining, the United States must establish a substantial use of the land for uses other than mining, which use warrants a prohibition on mining).

[16/] In Milender II, the Board clarified that the party seeking to restrict or prohibit placer mining had the burden of presenting a prima facie case, after which the burden switched to the mining claimant to overcome the prima facie case and show by a preponderance of the evidence that the benefits of placer mining outweighed the injury caused by mining to the other uses of the land. Id. at 234 n.9, 95 I.D. 171 n.9 (adopting the allocation of the burden of proof stated in the separate concurrence of Administrative Judge Burski, 104 IBLA at 236-37, 95 I.D. at 171-72); see United States v. Stone, 136 IBLA at 23; United States v. Brown, 124 IBLA at 252. Although
(continued...)

that the cultural, geologic, and scenic resources and values of the lands, and their preservation, constitute substantial competing uses of the land warranting the prohibition of placer mining. In his analysis, Judge Hammett discounted those values, in part because the Forest Service had failed to provide any objective evidence demonstrating the economic value of those uses.

Nothing in MCRRA, however, limits the other uses to only those which are economically quantifiable. Nor does Departmental precedent require that competing uses be economically measurable. To the contrary, in an analogous context, the Secretary of the Interior, in a May 15, 2000, decision reviewing the Board's decision in United States v. United Mining Corp., 142 IBLA 339 (1998), reversed the Board's holding that only economic values were relevant in determining whether lands within a claim located pursuant to the Building Stone Act, 30 U.S.C. § 161 (2000), were chiefly valuable for building stone. He concluded that the lack of quantifiable valuation would not preclude a valid comparison under the Building Stone Act and that the lack of specific statutory limitations on the uses to be considered under that comparative values test indicated Congress's intent to develop a flexible test permitting the consideration of contemporary values such as conservation and preservation. See May 15, 2000, Secretarial Decision at 4-5. He therefore remanded the matter to the Board for application of the comparative values test of the Building Stone Act in a manner allowing for a comparison of the value of all potential land uses, including those that were quantifiable and non-quantifiable. Id. at 5.

The Secretary's analysis in United Mining Corp. is equally relevant here. Accordingly, we hold that the competing uses need not be economically quantifiable and may include the preservation of cultural, geological, or scenic resources. See also United States v. Stone, 136 IBLA at 30 (recognizing use and habitation of land by the endangered Stephen's kangaroo rat as a competing use); United States v. Mineral Economics Corp., 34 IBLA at 261 (recognizing preservation of important and critical habitats for wildlife as a competing use). We therefore reverse Judge Hammett's decision to the extent it rested on the lack of quantifiable evidence of the economic value of the competing uses.

The Judge discounted the Forest Service's evidence of other uses, including the withdrawal, the LRMP designation, and the listing of part of the area on the National Register of Historic Places, as well as the testimony of the Maidu Indians about the

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16/ (...continued)
Eno objects to the allocation of the ultimate burden of persuasion to the mining claimant, we see no need to reconsider that question here.

We also note that, as the party appealing Judge Hammett's decision, the Forest Service has the burden of proving error in the appealed decision. See, e.g., Pass Minerals, Inc., 168 IBLA 183, 189 (2006).

value that the Soda Rock Area had to them. We find that the Judge failed to accord proper weight to the listing of the area which, while not dispositive of the outcome of this proceeding, clearly constituted objective evidence that the land included in the listed area contained substantial cultural resources warranting protection under the NHPA. Cf. United States v. Brown, 124 IBLA at 255 (error for Judge to fail to consider designation of river as potential addition to the wild and scenic river system which implicitly recognizes that recreational uses are substantial). We find no error in the Judge's conclusion, based in part on his credibility determinations, that the evidence establishes that the Maidu do not currently physically use the Soda Rock Area, that variations exist in the stories about Soda Rock, and that not all Maidu attach cultural significance to the Soda Rock Area. See Decision at 8-12; see also, Tr. 454, 500, 530, 718, 906, 922; Ex. 29, A Century of Testimony: The Ethnographic Record of Soda Rock (CA Plu 426): A Maidu Traditional Cultural Property. While these factors tend to diminish the substantiality of the cultural uses, they do not totally outweigh the import of the site's listing on the National Register; nor do they completely undermine the importance of the 1999 withdrawal of the Soda Rock Special Interest Area from entry under the mining laws to protect the area's cultural and geologic values. Accordingly, we find that the weight of the evidence demonstrates that preservation of the cultural resources and values constitutes a substantial use of the land within the meaning of MCRRA. Judge Hammett's decision is reversed to the extent it found otherwise.

Judge Hammett also concluded that the evidence failed to establish that the geologic values represented substantial uses of the area warranting the prohibition of placer mining. We disagree. Forest Service geologist King testified that the Soda Rock Area contains karst topography (sinkholes) that is unique in the West, as well as travertine pools, stalactites, and curtains. We acknowledge the lack of any evidence that the scientific community uses the area to gather information about the processes leading to the formation of those topographical features or that the area contains valuable information about the geologic history of the region. The admitted rarity of the rock formations in the western United States, however, supports the conclusion that preservation of those formations is a substantial use of the lands. The designation of the area as a geologic special interest area, while not dispositive, further evinces the substantiality of the geologic resources of the area as does the 1999 withdrawal of the area to protect those values. Accordingly, we reverse Judge Hammett's finding to the contrary.

We agree with the Judge that the evidence does not establish that the area has important scenic uses warranting the prohibition of mining. The only notable scenic resource is Dog Rock which is observable from Highway 89; none of the other cultural and geologic features identified by the Forest Service are readily visible to the general public. The scenic value of Dog Rock, however, is diminished by the noticeable poured concrete and power lines. The videotapes of the Soda Rock Area

admitted into evidence, Exs. 26 (Forest Service videotape) and Z (Eno videotape), show nothing so distinctive or attractive that it would lead to the area's becoming a destination point for visitors. Neither Elliott's testimony that visitors have stopped and taken pictures of Dog Rock, nor the site's listing in the Forest Service automobile tour brochure (Ex. 21), which advises against stopping to view the area because no safe turn-out exists, suffices to establish that the area's scenic features are substantial uses of the land.

The existence of one or more substantial competing uses of the land does not mandate the prohibition of placer mining; rather the focus now shifts to the value of the lands for placer mining. If the area has minimal mineral value, then, regardless of the substantiality of the competing uses, a general permission to engage in placer mining operations would not be appropriate. See United States v. Stone, 136 IBLA at 32-33. Although the Forest Service equates the evidence needed to establish the mineral value of the land with that needed to prove a discovery of a valuable mineral deposit, the true standard of proof is less than that. The evidence need only show the possibility that the claim might contain a profitable mineral mining opportunity meriting further exploration of the claim. See Milender II, 104 IBLA at 233-34, 95 I.D. at 170; see also United States v. Stone, 136 IBLA at 32 (appellant failed to demonstrate that there were any values that might reasonably be expected to accrue from mining) and 34 (claimants should be prepared to show the benefits they believe placer mining could bring). We agree with Judge Hammett that the evidence presented by the Forest Service, as well as that proffered by Eno, establishes that the Hound Dog claim might contain a profitable gold mining opportunity meriting further exploration of the claim.

The sampling done by Teixeira clearly demonstrates that gold exists in the gravel of the active stream channel that can be recovered through suction dredging. See Ex. 23, P.L. 359, Mineral Report at 13-14 and Table 1. [17/] The Forest Service does not deny that gold exists on the claim; rather it maintains that the costs of mining the gold would far exceed the value of the gold and thus that mining would be unprofitable. The Forest Service relies on Teixeira's economic analysis, which included his calculations of the hourly gold production rate found in Table 2 of the P.L. 359 Mineral Report (see Ex. 23 at 14 and n.8, supra). It also relies on his assumptions both that each hour of dredging required 1.5 hours of actual work time (so that a 40-hour work week would include 25 hours of actual dredging time, with

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[17/] We need not address Eno's challenges to the significance of the results of samples HD-1 and HD-3 because, as Judge Hammett found, even using those values, the evidence supports the conclusion that sufficient gold quantities exist to indicate that the claim might contain a profitable gold mining opportunity. See Decision at 21. Our resolution of this appeal also obviates any need for us to discuss most of the other issues raised by Eno in his appeal submissions.

the rest of the time spent transporting supplies to and from the dredge site, cleaning up the sluice after dredging, panning concentrates, work breaks, and repair and maintenance) and that the labor costs associated with suction dredging would be $10.00 per hour per person. See Ex. 23 at 15.

We find that Teixeira's economic analysis contained several flaws that undermine the persuasiveness of his calculations, including his mathematical error in determining the number of hours of actual dredging in a typical 40-hour work week (1 hour of dredging for every 1.5 hours of work equals 26.7 hours of dredging, not the 25 hours he used in his calculations) and his unsupported assumptions that break time should be included within an 8-hour work day and that labor costs should be $10 per hour. In any event, since this proceeding is not a validity determination and the evidence needed to establish the mineral value of the land is much less than that needed to prove a discovery of a valuable mineral deposit (see Milender II, 104 IBLA at 233-34, 95 I.D. at 170), the record at this point need not demonstrate that mining the claim would be profitable, just that the possibility exists that the claim might contain a profitable mineral mining opportunity meriting further exploration of the claim. Id. Thus, the Forest Service's evidence concerning the claim's profitability, or lack thereof, while crucial to a validity determination, is not critical in this proceeding.

Judge Hammett did not address the costs of mining at all in his analysis, but focused on estimates of the amount of gold present in the workable stream and the potential value of that gold. Although the Forest Service challenges the correctness of those calculations, the Judge adopted the Forest Service's own sampling results and estimates in his computations and determined that the Forest Service's evidence in and of itself demonstrated that the claim contained sufficient gold values to indicate the possibility that the claim might contain a profitable gold mining opportunity warranting further exploration. See Decision at 21, 23. The Forest Service's objection to the Judge's reliance on Eno's computation of the volume of workable placer is unpersuasive, however, because Teixeira's estimates of the dimensions of the deposit were based on visual approximations made in the dry month of August (see Tr. 321-322), rather than on actual measurements representative of average conditions, and differ from the dimensions found on the map of the area (Ex. 3). Accordingly, we find that the Forest Service has not shown error in the Judge's analysis and determination.

The Forest Service has, however, shown that the Judge erred in concluding that the travertine deposit was not relevant to this proceeding. Mining claims are located either as lode claims or as placer claims. See 30 U.S.C. §§ 23, 35 (2000). The Building Stone Act explicitly states that building stone claims may be located under the laws related to placer mineral claims. 30 U.S.C. § 161 (2000). Mining the mineral on a placer claim by whatever method necessarily constitutes placer mining

operations. Although quarrying building stone may not fall within the technical definition of placer mining found in A Dictionary of Mining, Mineral, and Related Terms (1968), it nevertheless is mining on a placer claim and, given the absence of any indication in MCRRA to the contrary, the phrase "placer mining operations" as used in that statute includes the mining of building stone on a placer claim.

Our conclusion is bolstered by MCRRA's provisions requiring notice of the location of any placer claim on a powersite withdrawal and affording the Secretary the opportunity to hold a hearing to determine whether placer mining operations would be detrimental to other uses of the land. Those statutory provisions reflect the Congressionally recognized need to protect other land uses and values from potential serious conflicts between mining activities and other land uses that can arise when placer mining and dredging operations are involved. See Milender I, 86 IBLA at 201-02, 92 I.D. at 187, quoting a July 18, 1955, letter to the Chairman, Committee on Interior and Insular Affairs, from Assistant Secretary of the Interior Orme Lewis. These concerns focus on the effects of mining on other uses of the surface of the claim. Placer mining operations, unlike lode mining activities, directly affect the surface of the land; mining building stone similarly unequivocally impacts the surface of the claimed land. Thus, the concerns animating the notice and hearing provisions of MCRRA apply to travertine mining, as well as to other types of placer mining. Accordingly, we reverse Judge Hammett's conclusion that the travertine was not relevant to this proceeding. [18/]

The final issue before us centers on whether placer mining operations, including suction dredging for gold in Indian Creek and quarrying the travertine, will substantially interfere with the cultural and geologic uses of the land. The proper standard of evaluating the potential effect of placer mining on other land uses is the extent to which legal, normal operations, subject to regulatory restraint, might interfere with other uses. Milender II, 104 IBLA at 216-17, 95 I.D. at 161; see Milender I, 86 IBLA at 198, 92 I.D. at 185. The placer mining operations subject to this test are not limited only to those activities proposed by the claimant but include all methods which a miner could reasonably use to extract minerals. United States v. Stone, 136 IBLA at 32 n.7; United States v. Bennewitz, 72 I.D. 183, 188 (1965). As we explained in United States v. Stone:

[18/] The issue of whether the travertine is an uncommon variety mineral locatable under the Common Varieties Act, 30 U.S.C. § 621 (2000), is not before us, and we venture no opinion on that issue. Assuming for the purposes of this decision only that the travertine is an uncommon variety and therefore locatable, we find that the record, including the fact that the travertine had previously been profitably extracted and sold, supports the conclusion that the claim might contain a profitable travertine mining opportunity. See Ex. 23, P.L. 359 Mineral Report, at 17. As noted below, that increases the "benefits of placer mining" in this particular case.

> The reason for this is that, under section 2(b)[, 30 U.S.C. § 621(b) (2000),] the Secretary has only a single opportunity to grant or deny a general permission to placer mine. See, e.g., United States v. Bennewitz, 72 I.D. 183, 188 (1965). Once he exercises the discretion invested in him by the statute to permit placer operations, his options under the [MCRRA,] supra, have been exhausted. Should operations thereafter proceed differently and more destructively than those proposed by the claimant at the hearing, so long as those operations were, themselves, legal, the Secretary would be powerless to intervene. It is because of this reality that the standard for evaluating the potential effect of placer mining on other land use values is "the extent to which legal, normal operations, subject to regulatory restraint, might interfere with such uses" and cannot be limited to an evaluation of the impact of the mining method proposed by the [claimant]. See Milender I, [86 IBLA] at 198, 92 I.D. at 185.

136 IBLA at 32-33 n.7.

The record in this case, including Elliott's concession that mining with suction dredges within the active stream channel had only limited potential to physically damage cultural features any more than they had already been damaged (see Ex. 27, Elliott Report, at 10-11), Ryberg's and Cunningham's admissions that placer mining in Indian Creek would not affect them (see Tr. 148-149, 559-560), and Eno's unchallenged representation that California law prohibits suction dredging near Dog Rock, supports Judge Hammett's determination that placer mining operations for gold in Indian Creek will not substantially interfere with the uses of the land for its cultural and geological values. [19/] The Forest Service does not seriously challenge that conclusion, other than to contend that the Judge erred in limiting his analysis to the suction dredging operations proposed by Eno. The flaw in this argument stems from the Forest Service's failure to identify any other legal, normal operations, subject to regulatory restraint, that could be used to mine the placer gold that would substantially interfere with those uses. [20/]

19/ The California prohibition against suction dredging the creek bank also minimizes the possibility that suction dredging the creek would substantially interfere with any other cultural features or with the geologic features associated with the travertine deposit.

20/ Any proposed suction dredging or other placer mining of the gravel deposits in the stream would be subject to the same notice, plan of operations, and environmental protection requirements addressed infra in our discussion of the

(continued...)

Judge Hammett did not address the question of whether mining the travertine would substantially interfere with the uses of the land for its cultural and geologic values. The Forest Service insists that, since the travertine itself constitutes the very features underlying those values, any removal of the travertine will necessarily irreparably destroy those values. This disregards that, for the purposes of the MCRRA analysis, any locatable travertine on the claim increases the "benefits of placer mining" side of the scale, to be weighed against the detriment that placer mining (which includes both removal of gold and of locatable building stone) has on other uses (that is, uses other than removal of locatable travertine or gold).

In any event, the Forest Service's dire predictions ignore the fact that, while the regulations and statutes governing mining operations do not grant it the authority to preclude all mining, they do authorize it to limit the effects of that mining by imposing conditions, stipulations, and mitigating measures to protect the other uses of the land. The regulations at 36 CFR Part 228 invest the Forest Service with substantial authority to control and minimize the effects of mining operations on surface resources and environmental values. See Milender I, 86 IBLA at 196-97, 92 I.D. at 183-84. Under these regulations, the Forest Service has the authority to require a plan of operations if the notice of intent filed by a mining claimant prior to conducting operations reveals that such operations are likely to cause significant surface disturbance [21] and to seek modification of a plan to minimize unforeseen significant disturbance of surface resources. See 36 CFR 228.4. The regulations also impose requirements for overall environmental protection and for reclamation of the surface to prevent or control onsite and off-site damage to the environment and forest surface resources. See 36 CFR 228.8. They further authorize the Forest Service to require the payment of a bond to ensure compliance with the plan of operations.

Consideration of proposed plans of operations is also subject to the procedural requirements of NEPA, 42 U.S.C. § 4332(2)(C) (2000), including the preparation of an EA or possibly an EIS analyzing the environmental impacts of the proposed mining

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[20] (...continued)
impacts of travertine quarrying. See also Ex. 16, LRMP at 4-254 (requiring plan of operations for any mining of gravel deposits, consistent with the intent of protecting geologic and cultural features). These regulatory requirements counterbalance Elliott's speculation that mining the gravel bar with mechanical equipment would further damage or even completely destroy the wet meadow and travertine pools. See Ex. 27, Elliott Report at 11.

[21] We note that the compromise agreement between the Forest Service and Forcino, which limited travertine mining to 6.1 acres on the travertine outcrop, arose from the requirement that the claimant file a plan of operations.

operations, alternatives to the proposed actions, and mitigation measures to reduce any identified impacts, which could lead to modification of the proposed mining activities. Section 106 of the NHPA, 16 U.S.C. § 470f (2000), and its implementing regulations provide the Forest Service with additional authority to regulate the extent and effect of Eno's mining operations by directing it to determine whether the proposed plan of operations would have an adverse effect on the listed site within the Soda Rock Area and, if so, to develop and evaluate alternatives or modifications that could avoid, minimize, or mitigate the adverse effects. Eno concedes both that these statutory and regulatory mandates enable the Forest Service to impose mitigation measures limiting Eno's activities to the footprint of the existing quarry or precluding mining of travertine in the areas of the sinkholes and springboxes, and that the Forest Service's duty to protect the pre-existing 40-foot wide power line from interference also protects the travertine terraces and stalactites, curtains, and pipes. The Forest Service has not shown that, given these regulatory and statutory constraints, any mining of locatable travertine would substantially interfere with the uses of the land for cultural and geologic purposes. [22/]

Balancing the benefits of placer mining against the potential harm to the other substantial uses of the land, we find no error in Judge Hammett's decision to grant Eno a general permission to engage in placer mining on the Hound Dog claim, although we modify his decision to reflect the additional analysis contained herein.

To the extent not specifically addressed herein, the other arguments raised in this appeal have been considered and rejected. Our decision is without prejudice to any contest against the placer claim for lack of discovery, whether of gold or of building stone.

[22/] The Forest Service claims that the testimony of the Maidu witnesses that they have observed adverse effects to the hydrology of the area since mining began in the 1960s establishes that mining the travertine will substantially interfere with the other uses of the land. The Maidus' observations do not differentiate between the impacts created by early unregulated mining activities and the effects arising from mining conducted pursuant to the compromise agreement. The record also contains evidence indicating that the causes of the changes to the hydrology and to the travertine deposit itself are not definitely known and could simply be the result of natural processes. See Ex. 32, Geology Report at 4, 5-6; see also Ex. 27, Elliott Report, at Archaeological Record continuation sheet at 2-3. Although the Forest Service speculates that continued mining would worsen the already existing deteriorated conditions, it has not shown that, given that the environmental analyses conducted before approval of any plan of operations will address these issues and prescribe necessary mitigation measures to minimize any such impacts from mining, travertine mining will adversely affect the hydrology of the area or the extant cultural and geologic features.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed in part and affirmed as modified in part.

David L. Hughes
Administrative Judge

I concur:

James K. Jackson
Administrative Judge

April 10th 2011

Public comments CDFG / SDEIR

Attached is a copy of my appeal costing some $185,000.00 compliments of my USFS buddies.

Mr. Stopher,

I object to these proposed rules in their entirety, and especially because USFS will still be harassing us under the guise of regulation simultaneously with your insane regulations. It is an outlandish ill conceived and makes no environmental sense whatsoever.

This has gotta be a Homer Simpson Plan!

I also find it worthy to note that for all the scary environmental harms that you have all fabricated about mercury, and all the scientists and experts collaborating to protect the fish from mercury in your regulations, you never bothered to mitigate in your regulations. What do we do if we happen to find a pool of mercury? I have no doubt that there must be some concern, yet you fail to even attempt to mitigate.
Considering that you mitigate woody debris, logs, stumps, fish entrainment, frog eggs, spawning fish, tad poles and the like, I find it far more than egregious that apparently you don't give a damn about blowing mercury out the tailings after all! Even if your geniuses fixed that problem now, in the final EIR, the courts couldn't see this multimillion dollar 3 year collaborative SDEIR effort as *harmless error or mere oversight.*

Also, the SDEIR discussed naturally occurring native elements like arsenic and miscellaneous others that might be polluting the water. I want to point out that any element or sulfide with specific gravity greater than the average sand, we tend to recover. This is very important because these minerals are greater near old hard rock mines in small streams - (that these proposed rules prohibit us from mining) - and we tend to collect them along with gold. Bummer.

Question? Another thing, why is it that CDFG has never bothered to find a solution to allow us to bring you lead, mercury, and heavy metals, sulfides etc?

Hypothetical situation and Question; If **3500** suction dredge miners all came to Plumas NF to dredge 6 months strait out of the year under the old rules, and no major flood events redistributed the entire stream bed, taking into account the vastness of the watershed and the massive amount of gravel available, *how long would your scientists reasonably estimate it would take to mine all the gravel*, a *decade*, or *two decades*, 50 years?
Question; Considering the number of linear miles of streams and rivers in Plumas NF, how many miners using 4" - 6" in small streams, 6" – 10" in the larger streams, how many miners would that amount to per 1/8th mile of river would that be?
I'm just looking at the perspective here.

Questions:
Can you tell me *how many public toilets* are available within Plumas and Tahoe National forests - along the rivers, and highways for the forest / river users to use?
Estimating of course all the average number of daily users use days – and correlate with the number of public bathrooms – and how likely it that there will be one near when nature calls?
Are these harmless fishermen and swimmers, and tubers etcetera going to dash to their vehicles and drive to find a crapper, 20 miles from river to unknown location of the next toilet?
I just thought I would bring it up because the reality is that compared to 3500 miners with tools, compared to millions of use days and tiny fraction of toilets, the fact is the crap everywhere and pee everywhere, but SDEIR doesn't want to go there. Just pick on the miners!

Question: How much money has it cost to date - to prepare all the work on this SDEIR since it began?

Question, Will you officially state for the record that your SDEIR proposed regulations **do** or **do not** apply to full-scale commercial – production suction dredge gold mining?

Question: How many CDFG officers do you have now to handle all the new duties you are so eager to take responsibility for under theses SDEIR proposed regulations?

I won General permission to mine my claim as you can see, and the USFS did their EA for a mineral withdrawal, and for my hearings, and the courts (2) adjudications (levels of intense environmental scrutiny) found no plausible reason to stop me from suction dredge mining this river and that is recorded in this case in detail and all of the environmental work is a matter of public record with the USFS in Plumas National Forest.

The Judges had to look at the realities that I had the right to work with whatever was lawful at that time, and since I proposed running 2 - 6" nozzles side by side, uncontested I believe under these circumstances this short stretch of river should remain as it was under the 1994 CDFG regulations, at bare minimum, because of the extensive environmental work the USFS did and found no adverse affects.

Two dredges necked down to 6" mining in this river with six inch nozzles and a Power winch, or a10" dredge necked down to 8" for production with out clogging the hose would be acceptable (if I believed that a limit on commercial dredging was even lawful which I do not). Nozzle size - to be reasonable - should be based upon the geological and size range of the aggregate intended to be dredged, not an absolute limit by an arbitrary rule. I own a mine, not a dive shop or a swimming hole. Unreasonable is when validity exam destroys and takes a rich placer mine. In light of the intense decade long battle, and having won General Permission to Mine based upon the USFS EA's etc, I reject the

notion that CDFG can or should limit my operations in any way with respect to dredge Nozzle size, Power Winching, and Stream bed alteration permits etc..

I have complied with dredging rules in the past, this is a commercial mine, as proven in this case and since gold has quadrupled since the date location and withdrawal, and even cursory calculations of the worst samples of all demonstrate that the stream is holding at least four times what the worst estimates show in this case, then it is truly a valuable mine worthy of further development.

FS has already threatened to challenge validity and any material interference by CDFG mining regulations such as you propose will be tough at best to overcome and that is not going to happen if I can stop it here and now.

I spent a vast a vast amount of energy, money and stress defending US V Burton, and the US v Eno IBLA Appeal in my MCRRA case. I won both USFS adjudications for my Hound Dog Placer Mining Claim CAMC 269556. It is in Indian Creek, about 3 miles up stream on HWY 89 from the junction of HWY 70 and Hwy 89. About 80% of the river is privately held, there is only 3 unpatented mining claims on this stretch of river all the way to the base of the Falls, and it is the main branch that joins Spanish creek at the Hwy junction previously described.
On the Topo maps you will see that from the base of Indian falls heading up stream, there will be no losses to dredging for several miles as this is Indian Valley, no gold, unless you use a bucket line or drag line dredge. So, in light of these facts the SDEIR is far to inflexible because if a valid enough placer claim, can pass the muster I went through there should be no arbitrary limit that has the potential of making a valid claim worthless in a validity exam strictly due to rigid limitations ie Material interference. And the USFS knows it, which is why I will not tolerate more FS screwing. This is a prime example why setting absolute limits on dredge nozzle size is unacceptable. This is unreasonable regulation, Material interference, and endangers my own safety in unacceptable ways thus you need to take a hard look at this river and make the necessary changes for others in similar situations, not rules on size or capacity cast in stone.

I am adopting the below is FYI concerning the Karuk Tribe's suit that was the cause of this whole mess.

> **Subject:** We defeated the Karuk's Appeal in the 9th Circuit!
>
> **It is nice to win on the big things!**
>
> This case was a continuation of the Karuk's earlier challenge of the U.S. Forest Service (USFS) regulation which allows prospecting or mining under a Notice of Intent (NOI) when the activity does not create a substantial disturbance of surface resources.
>
> The 9th Circuit overruled the Karuk's argument that a USFS Ranger's

decision to allow mining under a NOI amounted to an action that required additional consultation with other federal agencies, which would have created substantial delays before the prospecting or mining activity could proceed.

I asked our attorney James Buchal, who was the only council present that was arguing on behalf of the mining industry, to write a short summary. Here it is:

On April 7, 2011, the United States Court of Appeals for the Ninth Circuit affirmed a California district court's rejection of the Karuk Tribe's attempt to snarl any and all suction dredge mining in cumbersome interagency consultation processes under the federal Endangered Species Act. The case concerned the legal significance of miners sending notices of intent to the U.S. Forest Service under the Forest Service's 36 C.F.R. Part 228 regulations. The Forest Service had reviewed notices of intent from The New 49'ers and others, and advised those giving notice that no plan of operations would be required. The Karuk Tribe contended that the district rangers' review of such notices made the mining "agency action" that required consultation with the National Marine Fisheries Service and/or U.S. Fish and Wildlife Service pursuant to section 7 of the Endangered Species Act.

Two of the three Ninth Circuit judges (Milan Smith, the brother of former Oregon Senator Gordon Smith and James Todd, a senior district court judge from Tennessee) determined that the Forest Service's review of such notices did not make the mining "agency action" subject to the consultation requirement. Simply put, the majority determined that the Forest Service's decision not to require a plan of operations was "inaction", not "agency action". The majority also reaffirmed limitations on the authority of the Forest Service to regulate mining (regulatory authority will "materialize only when mining is likely to cause significant disturbance of surface resources"), and agreed that it was the mining laws, not the Forest Service, that authorized the mining at issue.

The dissenting judge, William A. Fletcher, wrote at great length, attempting to find "agency action" in the process by which rangers reviewed the submitted notices, and based upon the erroneous view that no miner could commence mining under a notice of intent unless and until the notice was approved by the Forest Service, thereby, in his view, "authorizing" the action.

James Foley

Property and Mining Rights Advocate

Klamath River, California

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General information so that you are aware, and cannot claim otherwise; Also excellent Legislative History exerpts.

Title 18, U.S.C., Section 1001
Fraud and False Statements

United States Code
TITLE 18 - CRIMES AND CRIMINAL PROCEDURE
PART I - CRIMES
CHAPTER 47 - FRAUD AND FALSE STATEMENTS
U.S. Code as of: 01/02/01

Section 1001. Statements or entries generally
(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United
States, knowingly and willfully -
(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or
(3) makes or uses any false writing or document knowing the same to contain any materially
false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.

Title 18, U.S.C., Section 241
Conspiracy Against Rights

Laws: Cases and Codes : U.S. Code : Title 18 : Section 241

This statute makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any person of any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States, (or because of his/her having exercised the same).

It further makes it unlawful for two or more persons to go in disguise on the highway or on the premises of another with the intent to prevent or hinder his/her free exercise or enjoyment of any rights so secured.
Punishment varies from a fine or imprisonment of up to ten years, or both; and if death results, or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title or imprisoned for any term of years, or for life, or may be sentenced to death.

Title 18, U.S.C., Section 242
Deprivation of Rights Under Color of Law

Laws: Cases and Codes : U.S. Code : Title 18 : Section 242

This statute makes it a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the U.S.

This law further prohibits a person acting under color of law, statute, ordinance, regulation or custom to willfully subject or cause to be subjected any person to different punishments, pains, or penalties, than those prescribed for punishment of citizens on account of such person being an alien or by reason of his/her color or race.

Acts under "color of any law" include acts not only done by federal, state, or local officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of any official to be done under "color of any law," the unlawful acts must be done while such official is purporting or pretending to act in the performance of his/her official duties. This definition includes, in addition to law enforcement officials, individuals such as Mayors, Council persons, Judges, Nursing Home Proprietors, Security Guards, etc., persons who are bound by laws, statutes ordinances, or customs.

Punishment varies from a fine or imprisonment of up to one year, or both, and if bodily injury results or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire shall be fined or imprisoned up to ten years or both, and if death results, or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

1905 Transfer Act - See the authority for 36 CFR 261 below.

The transfer act states:

"The Secretary of the Department of Agriculture shall execute or cause to be executed all laws affecting public lands reserved under the provisions of section 471 of this title, or sections supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, **prospecting, locating, appropriating, entering**, relinquishing, reconveying, certifying, or patenting of any of such lands.

Therefore 36 CFR 261 is not the appropriate regulatory vehicle for the FS to use on miners operating under the U.S. mining laws, rather 36 CFR 228

"Appropriating" is defined as: 1) To take and use for one's own. 2) To set aside for a special purpose.

Also note that:
The miner has complied with the location laws of the United States and applicable location laws of the state, locators of mining locations were given "the exclusive right of possession and enjoyment of all the surface included within the lines of their location," along with the subsurface rights. 30 U.S.C. s 26.

Again, a miner is not a "special use" permittee. - McClure case

See also United States v. Lex, 300 F. Supp. 2d 951 (E.D. Cal. 2003) (overturning conviction for violation of § 261.10(b) because the defendant did not occupy Forest Service land for residential purposes and the occupation was authorized by federal law); United States v. McClure, 364 F. Supp. 2d 1183 (E.D. Cal. 2005) (granting motion to dismiss misdemeanor charge for occupying national forest lands without a special use permit because such a permit is not required for mining activity).

Excerpt from **McClure:**

"“36 C.F.R. § 261.10(b) under which appellants were convicted, does not prohibit occupancy that is subject to a special use authorization or that is “otherwise authorized.” Here, because activity *960 covered by the **Forest Service's mining** regulations is excluded from the special use regulations, see 36 C.F.R. *§ 251.50(a)*,[FN6] the appellants could not obtain***1186** a special use authorization for their activity which was subject to the **mining** regulations.” Found at 36 CFR 228. See also U.S. v. Craig.

Notes Concerning USFS testimony and how cooperative they wanted to be!!

In 1974, pursuant to the Organic Act, the Forest Service promulgated regulations governing the use of surface resources in connection with the mining activities on national forests. *See* 39 Fed. Reg. 31317 (Aug. 28, 1974) (presently codified as amended at 36 C.F.R. Part 228, subpart A (referred to herein as the "Part 228 regulations")). Before the Forest Service issued the final regulations, the House Committee on Interior and Insular Affairs, Subcommittee on Public Lands (the "Subcommittee") held oversight hearings and heard testimony from the Chief of the Forest Service and representatives from both the mining and environmental communities. *Id.* Following these hearings, the Subcommittee chairman wrote the Chief of the Forest Service and stated that "the 1897 [Organic] Act clearly cannot be used as authority to prohibit prospecting, mining, and mineral processing" in national forests. *See* Letter from Rep. John Melcher to John McGuire, Forest Service Chief (June 20, 1974), reproduced in S. Dempsey, *Forest Service Regulations Concerning the Effect of Mining Operations ***1078** on Surface Resources*, 8 Nat. Res. Law 481, 497-504 (1975). He further urged that the final regulations be reasonable and not "extend further than

to require those things which preserve and protect the National Forests from needless damage by prospectors and miners." *Id.* The Subcommittee chairman also specifically expressed concerns regarding "the possibility of unreasonable enforcement of the regulations, with resulting cost increases that could make otherwise viable mineral operations prohibitively expensive." 39 Fed. Reg. 31317.

Due to the Subcommittee's concerns, the chairman ultimately recommended the adoption of a "simple notification procedure" that would enable the Forest Service to determine whether the miner would be required to submit a more comprehensive plan of operation ("PoO") before proceeding with mining operations. 8 Nat. Res. Law at 500. As the chairman explained:

> An effort [should] be made to define more precisely what sort of prospecting would be excepted from the requirement to file operating plans. The National Wildlife Federal, the American Mining Congress, and the Idaho Mining Association[ ] all seem to agree that prior notification of proposed operations is a reasonable requirement. The Subcommittee therefore recommends that the Forest Service provide a simple notification procedure in any regulations it may issue. The objective in so doing would be to assist prospectors in determining whether their operations would or would not require the filing of an operating plan. Needless uncertainties and expense in time and money in filing unnecessary operating plans could be avoided thereby.

Id.

In response, the Forest Service stated that it "recognize[d] that prospectors and miners have a statutory right, not mere privilege, under the 1872 mining law and the Act of June 4, 1897, to go upon and use the open public domain lands of the National Forest System for the purposes of mineral exploration, development and production." 39 Fed. Reg. 31317. The Forest Service also acknowledged that "[e]xercise of that right may not be unreasonably restricted." *Id.* To address the Subcommittee's concerns, the Forest Service adopted a final rule that included a provision for notices of intent ("NOIs"). The Forest Service also noted that a "specific provision [was] made in the operating plan approval section of the regulations [that] charg[ed] Forest Service administrators with the responsibility to consider the economics of operations, along with the other factors, in determining the reasonableness of the requirements for surface resource protection." *Id.* In accordance with the National Environmental Policy Act, a Final Environmental Impact Statement was prepared and filed that discussed the environmental impact of the regulations. *Id.*

The regulations, as originally promulgated, provided that, with certain exceptions, "a notice of intention to operate [would be] required from any person proposing to conduct operations which might cause disturbance of surface resources." 39 Fed. Reg. 31317. They further provided that, "[i]f the District Ranger determines that such operations will likely cause significant disturbance of surface resources, the operator [would be required to] submit a proposed plan of operations to the District Ranger." *Id.* Additionally, the regulations provided that the "requirements to submit a plan of operations [would] not apply ... to individuals desiring to search for and occasionally remove small mineral samples or specimens [or] to prospecting and sampling which will not cause significant surface resource disturbance" and that a "notice of intent need not be filed ... for operations which will not involve the use of ***1079** mechanized earthmoving equipment such as bulldozers or backhoes and will not involve cutting of trees." *Id.* at 36 C.F.R. § 252.4(a)(2). [FN1] All persons entering national forests for mining purposes were required to comply with the regulations after their promulgation. *See* 16 U.S.C. § 482.

> FN1. The current regulations are now set forth at 28 C.F.R. Part 228, subpart A.

“Power corrupts and Absolute Power Corrupts Absolutely”

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

April 10, 2011

RE: Suction Dredge Permits, Recreational mining, Suction Dredge Subsequent Environmental Impact Report

First, regarding revoked dredge permits. Let me state my dissatisfaction with the Department's failure to make refunds, or acknowledge that one is due. Permittees who applied for, paid, and received dredge permits, that were then revoked when the moratorium was enacted, have been cheated out of their money, and ability to recreate/pursue happiness. In addition I believe the moratorium has been enacted unfairly, and is unconstitutional.

In regard to the Suction Dredge SEIR, and the activity of recreational mining. I have serious concerns over the proposed regulations. Specifically, concerns over the increased regulations on mining activities. Also concerns over the proposed requirements to itemize all equipment, and to provide a list of sites and dates to recreate, not to exceed six, thereby making it unlawful to dredge elsewhere, at other locations or times. We call it prospecting for a reason! Aside from being too restrictive and intrusive, the consequences are disturbing. Locations and dates along with licensing data would be discoverable via public records. Information very helpful to a criminal mind for the purpose of theft, robbery, vandalism of equipment or even indication when one's residence would likely be vacant to facilitate a burglary. I am also concerned at the apparent imbalance. So much money, time, and resources are being focused on scrutinizing dredging/recreational mining, and not other commercial and recreational users, and their activities. Some very obvious areas for potential improvement to fish populations, and waterways may be getting overlooked. Most importantly, in my opinion would be the actual "take" of these fish. Pristine habitats could be maintained, but with little or no spawning, the populations would be unsustainable. Rivers and streams are where these fish go to spawn; it seems that the primary constant influence by Man, on a fish population is through the actual "take" of that species, whether on the open oceans, or more importantly, from the rivers. Statements being made, I then question how any regulated "take" of the fish species of concern, from a spawning river (which begins at the point it meets the ocean) can be justified, with so much scrutiny on recreational mining/suction dredging?

Countless other influences on rivers, fish, and habitats exist. Activities including, poaching, gill netting, (w/ modern equipment and methods, and not w/ hand woven native materials and methods), fishing (shoulder to shoulder at the river mouth, during a spawning run), rafting, camping, hiking, hunting, swimming, logging, road construction to name a few. There is the use of power boats, personal water craft, chainsaws, all terrain vehicles, motorcycles, lawnmowers, pumps, leaf blowers, etc. Seemingly passive recreational activities like hiking, biking, swimming on or near a river could be considered deleterious, with all the noise, disturbances and stresses associated with recreation. Like rock and debris dams that swimmers build to back up water in a pool, the gallons of sun tan oil and sun block (w/all the chemicals they contain) as swimmers frequently re-apply them. Lead weights and bullets, monofilaments, trash, erosion. What about all of the pollutants, including sediments that wash from roadways, parking lots, city streets, and storm drains? What about the thousands of gallons of chemicals, herbicides, pesticides used in both public and private sector activities? Pollutants sprayed directly into drainage ditches, vineyards, roadsides, lawns etc. Activities that frequently coincide with spring rains, that carry pollutants directly to the streams where spawning fish, reds, hatchlings are present and likely most vulnerable to pollution. There is the actual diversion of the rivers too, and riparian water use for frost control, other agricultural, commercial and residential use. Continuing at times when water temperature, quality, quantity are most critical, like late summer. In addition there are all of the illegal activities including poaching, trash dumping, chemical dumping, and point source pollution.

To think that one small natural flood event, or one season of runoff from a road system, or one

landslide, or one seasons authorized "take" of fish, likely does more than many decades of all combined recreational mining. Along with the other more obvious influences on a river, it seems such a small piece of the overall picture to warrant such increased scrutiny. Modern recreational mining does not include all the aspects associated with historical mining. Any perceived adverse affects could arguably be offset by the many benefits. Modern recreational mining activities are already well regulated. This is a waste of resources and tax payer's money. This is no surprise though, as there are how many agencies governing/performing redundant activities now? e.g. CALFED, CALIFORNIA COASTAL COMMISION, CALIFORNIA DEPARTMENT OF FISH AND GAME, CALIFORNIA DEPARTMENT OF WATER RESOURCES, CALIFORNIA NATURAL RESOURCE AGENCY, CALIFORNIA WATER COMMISSION, ENVIRONMENTAL PROTECTION AGENCY, NATIONAL MARINE FISHERIES SERVICE, REGIONAL WATER QUALITY CONTROL BOARD, U.S. COAST GUARD, and I'm sure there are more. Along with all the statutes, acts, legislation, land use regulators, and public and private commissions, it is a true wonder that it is still legal to look at a river, let alone recreate there in. One agency is all we need, or should I say, all we the people can afford. Why not use proportional scrutiny on the other groups and their activities?

It seems that the Department of Fish and Game has found itself amidst a controversy between several different interests. Maybe it's time to actually protect the resources and not the interest of one group over another. Please recognize the imbalance, work to stop the waste. These wasted resources could have been directed towards enforcement of existing regulations, and preservation. Preserve our public lands and resources in an equitable manner so all can recreate and enjoy to some equal degree in their pursuit of happiness. Remember, the recreational users and sportsman, collectively contribute the most capital, and likely have the lowest impact on a resource. I refer to the California Department of Fish and Game mission statement. ***"The Mission of the Department of Fish and Game is to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public."***

In closing, and in support of my statements, I add the following. I recently viewed a number of publicly televised episodes of the program "Wild Justice", documenting the Department's activities. I was surprised and genuinely concerned at the amount of time and resources the Department apparently is spending acting as a primary enforcement agency on marijuana related issues. There are other existing agencies that should be acting this role of primary enforcement of illegal drug laws. E.g. State and local law enforcement, Drug Enforcement Agency, Task Forces, and Eradication Teams and so on. The Department of Fish and Game should not be wasting resources on initiating enforcement of illegal drug related matters. The Department should certainly be involved where damage to resources, habitat, etc has occurred. I would just hope that the Department's resources could be directed at the enforcement of fish and game codes. Let the other agencies spend our tax dollars enforcing the drug laws, as they are entrusted to do. Thank you for your time, and continued effort in resolution.

Sincerely,

Northern Californian,
sportsman, outdoorsman, conservationist,
recreational miner, self appointed environmental steward

Subject: proposed suction dredge regulation
Date: Sunday, April 10, 2011 4:25:23 PM PT
From: ttlindseth@verizon.net
To: dfgsuctiondredge@dfg.ca.gov
Priority: High

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

Dear Mr. Stopher,

First I would like to thank you for including me in the random resident dredgers survey and for returning my telephone calls in regards to the recent public hearings on the Environmental Impact Report (DSEIR).

My family and I own property in the forest and spend a great deal of time there. I am issued a dredging permit every year and wish to continue receiving one. I believe that consistently permitted dredgers, such as myself, should automatically receive priority each year over new applications. We also spend a good deal of money that in turn boosts the local economy in that rural area.

The Department of Fish and Game, as well as Forestry, should be glad to have respectful permitted dredgers, such as myself, out in the wilderness. Especially property owners! We care about the forest, rivers, and our environment. We follow all the rules and regulations and do not allow others around us to break these rules.

In fact, with the lack of recourses available to the Forestry and Fish and Game Departments, responsible property owners and permitted prospectors are the most effective resource available to monitor our creeks, rivers, and forest. We watch over the land and do not allow illegal poachers and unlicensed dredgers to trespass or harm our environment.

If possible, I would like to request an application for a dredge permit now. If not, please advise when your department will be issuing and accepting these applications.

In closing I would like to ask that you consider our request in giving previous and consistent permit holders priority and change the currently proposed regulation. Please keep in mind that our last permit was revoked and not fully used.

Respectfully,

Todd Lindseth
890 Dearborn Place
Gilroy, CA 95020
408-848-5051
ttlindseth@verizon.net
(a signed copy of this document will be mail to you April 11, 2011)