

Notice of Exemption

Appendix E

To: Office of Planning and Research  
 P.O. Box 3044, Room 113  
 Sacramento, CA 95812-3044  
 County Clerk  
 County of: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

From: (Public Agency): Cal. Dept. of Fish and Wildlife  
1416 Ninth Street, 12th Floor  
Sacramento, CA 95814  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ (Address)

Project Title: Suction Dredging; Emergency Rulemaking

Project Applicant: N/A

Project Location - Specific:  
Statewide.

Project Location - City: N/A Project Location - County: N/A

Description of Nature, Purpose and Beneficiaries of Project:  
Emergency action under the Administrative Procedure Act (APA) to amend the existing regulatory definition of "suction dredging" found in the California Code of Regulations, Title 14, section 228, subdivision (a), to avoid serious harm to the public peace, health, safety and general welfare of the people of California.

Name of Public Agency Approving Project: California Department of Fish and Wildlife

Name of Person or Agency Carrying Out Project: same

Exempt Status: (check one):

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: 14 CCR 15307, 15308
- Statutory Exemptions. State code number: \_\_\_\_\_

Reasons why project is exempt:  
See attached.

Lead Agency Contact Person: Craig Martz Area Code/Telephone/Extension: (916) 653-4681

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project?  Yes  No

Signature: Craig Y. Martz Date: 6/18/2013 Title: REGULATIONS UNIT MANAGER

Signed by Lead Agency  Signed by Applicant

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Authority cited: Sections 21083 and 21110, Public Resources Code.  
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: JUN 18 2013

STATE CLEARING HOUSE



June 18, 2013

## ATTACHMENT TO NOTICE OF EXEMPTION Suction Dredge Emergency Rulemaking

The California Department of Fish and Wildlife (CDFW), by and through its Director, has taken final agency action under the Fish and Game Code and the Administrative Procedure Act (APA) with respect to the project mentioned above. Following earlier related notice required by the APA, on June 18, 2013, CDFW submitted an emergency amendment of the existing regulatory definition of "suction dredging" to the Office of Administrative Law (OAL). (See generally Gov. Code, § 11346.1; Cal. Code Regs., tit. 1, §§ 48, 50.) The definition amended by CDFW implements and interprets Fish and Game Code section 5653. (Cal. Code Regs., tit. 14, § 228, subd. (a)(1); see also Fish & G. Code, § 5653.9.)

In taking its final agency action for purposes of the California Environmental Quality Act (CEQA), CDFW approved the amendment relying on the statutory exemption for emergencies. (Pub. Resources Code, § 21080, subd. (b)(4); CEQA Guidelines, § 15269, subd. (c).)<sup>1</sup> CDFW approved the emergency amendment also relying on two categorical exemptions relevant to government agency actions to protect natural resources and the environment. (*Id.*, §§ 15307, 15308.) Each exemption as relevant to the amended definition is discussed below.

### Statutory Exemption for Emergencies

For purposes of CEQA, "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. 'Emergency' includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage." (Pub. Resources Code, § 21060.3; see also CEQA Guidelines, § 15359.) By statute, specific actions necessary to "prevent or mitigate an emergency" are exempt from CEQA. (Pub. Resources Code, § 21080, subd. (b)(4); see also CEQA Guidelines, § 15269, subd. (c).) In short, the statutory exemption for emergencies applies to events that involve clear and immediate danger, and demand immediate action. (See, e.g., *CalBeach Advocates v. City of Solano Beach* (2002) 103 Cal.App.4<sup>th</sup> 529.)

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<sup>1</sup> The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

CDFW has determined that amending the existing definition of suction dredging consistent with broad statutory language regarding the "use of any vacuum or suction dredge equipment" is an action properly subject to the statutory exemption for emergencies. Substantial evidence supporting that determination is set forth and included in the APA Statement of Emergency prepared by CDFW and released to the public on June 7, 2013. Specifically, as of the end of May 2013, substantial evidence exists that various members of the mining community are modifying vacuum and suction dredge equipment, and related practice to exploit the existing regulatory definition of "suction dredging" to avoid regulation under Fish and Game Code section 5653, and importantly the letter and spirit of a statutory moratorium prohibiting the use of any vacuum or suction dredge equipment for instream mining purposes throughout California. Both statutes exist to safeguard against related adverse environmental effects, and immediate action is necessary to close the "loophole" various miners are using to avoid state regulation regarding the use of vacuum and suction dredge equipment. (Fish & G. Code, §§ 5653, 5653.1; see also Stats. 2009, ch. 62, § 2.)

### **Categorical Exemptions to Protect Natural Resources and the Environment**

In adopting the amended regulation consistent with broader statutory language in the Fish and Game Code, CDFW also relied for purposes of CEQA on the Class 7 and 8 categorical exemptions. In general, both exemptions apply to agency actions authorized by statute to protect natural resources and the environment. (CEQA Guidelines, §§ 15307, 15308.) As the state's designated trustee agency for fish and wildlife, CDFW has specific authority in the present case in the context of the regulations at issue to amend the definition of "suction dredging" to ensure its consistency with controlling statute. (Fish & G. Code, §§ 5653, subd. (b), 5653.9.)

That the unregulated use of vacuum and suction dredge equipment for instream mining purposes causes adverse impacts on fish and wildlife, water quality, and cultural resources is well documented. These impacts are detailed in the Subsequent Environmental Impact Report (SCH No. 2009112005) certified by CDFW in March 2012. The adverse environmental impacts caused by the unregulated use of vacuum or suction dredge equipment for instream mining are also detailed in the April 29, 2013 declaration of Mark Stopher, and the April 30, 2013 declarations of Stafford Lehr and Elizabeth Haven, filed on or about the same days in support of CDFW opposition to a mining interest motion for a preliminary injunction in San Bernardino County Superior Court. (*Suction Dredge Mining Cases*, Sup.Ct. San Bernardino County, Judicial Council Proceeding No. JCPRS4720.) Because the emergency amendment of the existing regulatory definition of "suction dredging" will help protect, avoid and minimize these adverse environmental effects, CDFW's related approval is an activity that is the proper subject of CEQA's Class 7 and 8 categorical exemptions.