

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: N/A

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

(Address)

Project Title: Suction Dredging Definition; Readoption of Emergency RegulationProject 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:
Readoption of regulatory definition of suction dredging found in California Code of Regulations, Title 14, section 228, subdivision (a), as previously amended, effective June 28, 2013. Readoption, if approved by the Office of Administrative Law, will extend the effective date of the definition for 90 days.

Name of Public Agency Approving Project: California Department of Fish and WildlifeName 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: _____

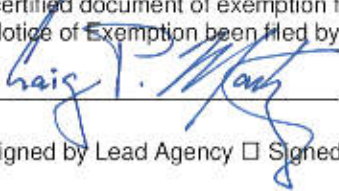
Reasons why project is exempt:

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:  Date: 12/16/2013 Title: Regulations Unit Manager Signed by Lead Agency Signed by Applicant

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: _____

RECEIVED

DEC 16 2013

STATE CLEARING HOUSE

Revised 2011



December 16, 2013

ATTACHMENT TO NOTICE OF EXEMPTION Suction Dredging; Readoption of Emergency Regulation

The California Department of Fish and Wildlife (CDFW), by and through its Director, has taken final 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 December 16, 2013, CDFW submitted a request to the Office of Administrative Law (OAL) for approval of the readoption of the existing regulatory definition of "suction dredging." (Cal. Code Regs., tit. 1, § 52, and tit. 14, § 228, subd. (a).) The definition as readopted follows a previous, related emergency regulatory action by CDFW under the APA, effective June 28, 2013. (Cal. Reg. Notice Register 2013, No. 28-Z, pp. 1034-1035.) CDFW's regulatory definition of suction dredging as currently in effect and as readopted implements and interprets Fish and Game Code section 5653. (See also Fish & G. Code, § 5653.9.)

In taking final action for purposes of the California Environmental Quality Act (CEQA), CDFW readopted the regulatory definition relying on the statutory exemption for emergencies. (Pub. Resources Code, § 21080, subd. (b)(4); CEQA Guidelines, § 15269, subd. (c).)¹ CDFW also readopted the definition 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 readoption 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).) 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.4th 529.)

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

CDFW has determined that readopting the existing definition of suction dredging is an action properly subject to the statutory exemption for emergencies. Substantial evidence supporting that determination is set forth in detail in the APA rulemaking record for the initial adoption of the now in-effect definition by emergency action in June 2013 (OAL File No. 2013-0618-02E). For purposes of the readoption, CDFW incorporates the prior rulemaking file by reference in its entirety. (Cal. Code Regs., tit. 1, § 52, subd. (c).) Further support for the emergency finding is detailed in the Updated Statement of Emergency prepared by CDFW and released to the public on December 9, 2013; in the Subsequent Environmental Impact Report (SCH No. 2009112005) certified by CDFW in March 2012; and in the April 29, 2013 declaration of Mark Stopher, and April 30, 2013 declarations of Stafford Lehr and Elizabeth Haven, all filed on or about the same days by CDFW in San Bernardino County Superior Court. (*Suction Dredge Mining Cases*, Sup.Ct. San Bernardino County, Judicial Council Proceeding No. JCPRS4720.)

In short, use of any vacuum or suction dredge equipment for instream mining purposes is currently prohibited by statute throughout California. (Fish & G. Code, §§ 5653, subd. (a), 5653.1, subd. (b).) Use of the equipment is prohibited, among other reasons, because related instream mining activities are known to cause adverse environmental, cultural, and public health impacts. CDFW took emergency action in June 2013 to close a regulatory "loophole" being exploited by certain members of the mining community to avoid regulation under Fish and Game Code sections 5653 and 5653.1, specifically. CDFW has readopted the existing definition to ensure the "loophole" prompting prior emergency action does not reopen at the end of December 2013.

Categorical Exemptions to Protect Natural Resources and the Environment

In readopting the now in-effect regulatory definition of suction dredging, 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 statutory authority in the present case to readopt the definition to ensure the regulation is consistent with controlling statute. (Fish & G. Code, § 5653.9.)

Readopting the existing regulatory definition will ensure that related deleterious effects to fish do not occur. (*Id.*, § 5653, subd. (b).) Readoption will also have the incidental benefit of protecting other wildlife, important natural and cultural resources, and the environment generally. CDFW's readoption, as a result, is the proper subject of CEQA's Class 7 and 8 categorical exemptions.