

March 2, 2012

Suction Dredge Program  
Revisions to Proposed Amendments  
Department of Fish and Game, Northern Region,  
601 Locust Street, Redding, CA 96001

Re: Newly Released Suction Dredge Mining Regulations

Department of Fish & Game,



I am writing to comment on the California Department of Fish & Game's release of draft regulations for their suction dredge mining permit program. We have reviewed these regulations, issued on February 17, and have some serious concerns about both the content of these regulations and the process the Department is using to seek public input on the regulations:

**1. Inconsistent with Legislative mandate:** In August of 2011 the legislature enacted and the Governor signed into law, as part of AB 120/Budget Committee Trailer Bill, a moratorium on Department of Fish and Game issuing permits for suction dredge mining until "**a new regulatory program is enacted that protects the environment from harm and has a fee structure in place that covers the cost of implementing and enforcing that program...**" These regulations fall far short of this standard by neither mitigating the environmental impacts of suction dredge mining (as described below) nor including a proposed new fee structure. The Department has failed to create regulations consistent with the legislative mandate to create regulations that do not have significant impacts on the environment. *These regulations need to be redrafted to address these concerns, and brought forward with a proposed fee structure for adoption by the Legislature that will appropriately pay for the costs of the program.*

**2. Short timeline for comment:** Review of these regulations is difficult under the extremely short timeline provided for public comment. The draft regulations were issued on February 17 and comments are due to the Department by March 5. *This timeline should be extended to allow at least 30 working days for comment.*

**3. Environmental Impact Report not available:** The regulations were released without an accompanying Final Environmental Impact Report (FEIR) that describes the impact of these revised regulations. The EIR for these regulations is scheduled to be released on March 7 – two days after the comment period on the regulation close.

The failure to release a FEIR with the regulations is especially troublesome as the newly released regulations reflect an alternative presented in the original EIR (released in spring 2011) as the "Reduced Intensity Alternative." This alternative is described as "overall, alternative would have decreased adverse effects compared to the Proposed Program" (footnote from Table 6-1, page 6-5 of the EIR). However, the actual impacts of the "Reduced Intensity Alternative" are not detailed in the original EIR. Instead, the original EIR describes *characteristics* of the alternative (i.e., issuing fewer permits, density limitations, equipment restrictions, and restrictions on the duration of daily dredging and total number of days each individual could dredge), not their impacts.

This failure to fully document the impacts of the proposed program means that these regulations do not follow the requirements under the California Environmental Quality Act for evaluation of programs that impact the environment. *The EIR for the regulations needs to be released prior to closure of public comment on the regulations and with at least 30 days allowed for public comment.*

**4. Fails to mitigate significant environmental impacts:** Despite the lack of an EIR accompanying these regulations there are many clear and significant environmental impacts that will be created by these regulations. These include:

**a. Water Quality Impacts from mercury:** These regulations allow suction dredge miners to dredge in water bodies that have been found to be "mercury impaired" under section 303 (d) of the Clean Water Act. The listing of water bodies open to suction dredge mining include river stretches in the Yuba, Feather and Bear Rivers that are known to be severely contaminated with elemental mercury. In addition to being contaminated with elemental mercury, Sierra Nevada Rivers and streams are also contaminated with mercury-enriched fine grained sediment which on the whole is much more easily methylated than elemental mercury and can in no way be recovered by a suction dredge. The Department of Fish & Game's own research shows that 67 % of suction dredge miners routinely encounter mercury in their operation. A primary concern of the State Water Resources Control Board has been the impact of suction dredge mining activities in rivers, creeks, streams and lakes that are already known to be contaminated with mercury. It has been clearly established that suction dredge mining for gold in these water bodies disturbs and changes mercury into a more reactive and deadly toxic in our state's water. Mercury recovery is not even mentioned in the regulations.

**b. Cultural Impacts:** These regulations do not even discuss the need for suction dredge miners to observe the most basic law surrounding sacred and cultural site protections.

**c. Impacts on wildlife and birds:** These regulations allow activities that pose threats to wildlife species and their habitats, including on passerines (birds listed as special status). The only mitigation for impact on these species seems to be the reduced number of permits and density of suction dredges allowed. It is impossible to gauge whether these measures will mitigate impact as there is no EIR.

*The regulations need to be redrafted to reflect real and substantial measures to reduce these environmental impacts, including prohibiting suction dredge mining for gold in water bodies known to be impaired for mercury; and protections for cultural resources and wildlife.*

**5. Allows suction dredge mining in places where this activity is prohibited by law:** The list of areas where suction dredge mining is allowed under the Department's permit includes a number of areas where suction dredge mining is considered illegal by other governmental agencies. It lists as areas where suction dredge mining is permitted areas such as national and state parks where only "hands and pans" are allowed. This puts park rangers in a nearly untenable position of trying to shut down suction dredge miners when their own permit states that they are allowed to mine.

*These regulations need to be redrafted to be consistent with the rules governing state and national parks and other agencies that have the authority to restrict or prohibit suction dredge mining under their own statutes.*

The Department of Fish and Game needs to act immediately to correct both the content and process issues outlined in this letter. Thank you for your attention.

Sincerely,



Elizabeth "Izzy" Martin  
CEO