

State Water Resources Control Board

June 20, 2013

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To Office of Administrative Law:

PROPOSED EMERGENCY REGULATORY ACTION TO AMEND CALIFORNIA CODE OF REGULATIONS, TITLE 14, SECTION 228, SUBDIVISION (A): COMMENTS ON PROPOSED ACTION

Thank you for the opportunity to comment on behalf of the State Water Resources Control Board (State Water Board) concerning the Department of Fish and Wildlife's (Department's) proposed emergency regulatory action to modify its regulatory definition of suction dredging. The State Water Board and the regional water quality control boards (collectively, "Water Boards") are tasked with the protection, control, and utilization of all waters of the state. We are appreciative of the Department's effort to address this regulatory "loophole" and to effectuate the Legislature's intent when it established the moratorium on suction dredging. The State Water Board finds that dredging under the "loophole" is harmful to water quality and, furthermore, concurs with the Department's conclusion that this proposed regulatory action is necessary to abate an emergency.

Water Quality Impacts of Suction Dredging

As noted in our March 11, 2013 letter to the Department and identified in the scientifically peer-reviewed findings of the Department's Final Subsequent Environmental Impact Report, suction dredging as a whole has a disproportionately greater ability to resuspend mercury in the aquatic environment compared to other natural events or human activities. Mercury is a potent neurotoxin that is harmful to both humans and wildlife. Additionally, suction dredging also resuspends and discharges sediment containing other trace metals that are toxic to the environment. Suction dredging at many locations frequented by dredgers has the potential to increase the levels of mercury and trace metal(s) in a water body such that they exceed the levels allowed under the state and federal regulations addressing aquatic toxic substances.

Dredging under "Loophole" Harmful to Water Quality

The Water Boards have received complaints that certain miners are detaching the sluice box from the dredge in an attempt to exploit a regulatory "loophole," thereby circumventing the legislative moratorium on suction dredging. Detachment of the sluice box does not abate the potential for mercury and other toxic metals to be mobilized. In fact, detachment only serves to increase this potential since none of the mercury or other toxic metals would be retained and all

would be re-suspended and discharged to the water body. Clarification of the definition to close the "loophole" is a necessary step to alleviate further environmental degradation.

Emergency Rulemaking Justified

The Department's proposed regulatory action clarifies any regulatory confusion and ceases detrimental activities to overtly circumvent the Legislature's intent behind the moratorium. There is a need for immediate action, given the upcoming dredging season and given the potential for remobilization of mercury, a potent neurotoxin, and other toxic metals, if dredging under the "loophole" is allowed to continue. The State Water Board supports the Department's proposed emergency regulatory action.

Again, the State Water Board thanks you for the opportunity to comment on this proposed regulatory action. If you have any questions, please contact Deputy Director Elizabeth Haven at (916) 341-5457 or Liz.Haven@waterboards.ca.gov.

Sincerely,



Thomas Howard
Executive Director

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