Regulation of Suction Dredge Mining

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Karuk Tribe

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Diversity is the Spice of Life

- **Akraah** – Pacific lamprey
- **Ishyaat** – Spring Chinook
- **Achvuun** – coho salmon
- **Sa’ap** - steelhead trout
- **Áama** - Fall Chinook
- **Ishrixihara** – Green sturgeon
Native People Have Lived in the Basin since Time Immemorial

And continue traditional practices today
Karuk Tribe’s Interest

• Ensuring sustainable fishery with harvestable surplus of fish
• Ensuring water quality to meet traditional uses of the Klamath and tributaries
• Protecting cultural sites and cultural practices
• Focused on Karuk Aboriginal Territory in the Middle Klamath
Dredges Impact Culture and Environment

- Introduces inert elemental mercury to water column – natural bacteria converts it to methyl mercury
- Affects morphology of river channel damaging fish habitat
- Mining camps pollute and degrade ceremonial areas and areas used to gather basketry materials
How was mercury used in gold mining?

Elemental mercury is used in artisanal and small-scale gold mining. Mercury is mixed with gold-containing materials, forming a mercury-gold amalgam which is then heated, vaporizing the mercury to obtain the gold.
1961 CA enacts Fish and Game code 5653
1990s Proliferation of private mining clubs
1994 CA revamps statewide dredge regulations
1997 Coho ESA listed
2002 Coho CESA listed
2004 Karuk files suit vs. USFS for violation of ESA
2005 Karuk files suit vs. CDFG for failing to revise regulations due to Coho listing
2006 PLP tank Karuk/CDFG settlement, court orders CDFG to revamp regs
2008 CA has not complied with court order. Karuk, California Trout, and Friends of the North Fork formally petition California Fish and Game to restrict suction dredge mining. The petition was supported by the Tsi-Akim Maidu Tribe, the Sierra Fund, PCFFA, and a host of conservation organizations.
2009 CDFG denies petition.
2009 Group of brave taxpayers sue CDFG for using taxpayer dollars to fund and operate an illegal program – the suction dredge mining program - with legal counsel provided by the Environmental Law Foundation. Plaintiffs cite violation of court order to amend mining rules.
2009 Judge issues moratorium on issuances of new dredge permits
2009 Gov Schwarzenegger signs SB 670 – no permits until new regulations developed.
2011 CDFG releases draft regulations and EIR
2011 Governor Brown Signs AB 120, which amends statute governing suction dredge mining such that there will be a moratorium on suction dredge mining until 2016 or an EIR is certified and regulations are implemented that fully mitigate all significant impacts of the program AND the program pays for itself.
2012 Final regulations and Final EIR issued by DFG. New rules would go into effect in 2016. New rules would open sections of the Klamath, Salmon, Shasta, and Scott Rivers up to dredge mining, yet close many other Klamath tributaries. Tribe and host of conservation groups file suit.
2012 Governor Brown Signs SB 1018, The new law makes the ban permanent unless the California Department of Fish and Game can develop dredge mining regulations that pay for the monitoring and enforcement and mitigate or prevent all significant impacts to water quality, wildlife, and cultural sites.
2012 9th Circuit rules in favor of Karuk in ESA case, has little affect on USFS policy
2015 Governor Brown Signs SB 637. Broadens definition of dredge to include virtually any motorized suction devise use to mine, requires all environmental impacts be mitigated, and requires miners to get permit or waiver from Water Resources Control Board before Fish and Wildlife can issue permit.
2017 SWRCB begins process to determine what miners will be required to do in order to comply with CWA
Quite the Battle since 2004

- At least 12 lawsuits filed by various parties in state court.
- One federal court fight that went all the way to the steps of the SCOTUS.
- Four successful legislative efforts spanning two gubernatorial administrations.
- Two rule making processes and associated EIRs.
Current Status

SB 637 was introduced by Ben Allen, passed and signed into law in 2015.

• Broadens definition of a dredge
• Requires ALL environmental impacts be mitigated
• Requires consultation with Tribes
• Requires permit or waiver from SWRCB demonstrating CWA compliance prior to DFW issuing a permit
Current Status

- SWRCB is considering how to (or whether to) permit suction dredge mining.
- Recently closed a public comment period.
- Will likely lead to a permit program or statewide waiver.
- Expect another opportunity to file comments as the Water Board’s process moves forward.
Miner filed federal pre-emption claim.
Branden Rinehardt criminally charged and convicted of violating dredge moratorium in 2012.
State Appeals court reversed conviction.
CA Supreme Court disagreed saying that Rinehart failed to prove that the purposes and objectives behind federal mining laws required the displacement of California’s ban.
Rinehardt appealed to SCOTUS.
Win or lose, both CA DFW and SWRCB must address permit requirements; since SWRCB authority is pursuant to CWA, probably no preemption argument.
If Preemption argument wins, could broadly affect CA's ability to regulate mining activities.
Partners

The Sierra Fund ● PCFFA ● Klamath River Keeper
Friends of the River ● Environmental Law Foundation
Center for Biological Diversity ● California Trout
Northern California Council, Federation of Fly Fishers
Butte Environmental Council ● Friends of the Trinity River
Foothills Angler Coalition ● Upper American River Foundation
Friends of the North Fork ● Granite Bay Flycasters
Southern California Watershed Alliance
Environmental Justice Coalition for Water
Klamath-Siskiyou Wildlands Center ● Rogue River Keeper
Environmental Protection and Information Center
California Sportfishing Protection Alliance
Mid-Klamath Watershed Council ● Friends of the Eel River