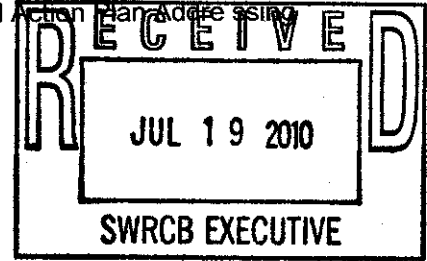


From: "outdoorjoe2@netzero.com" <outdoorjoe2@netzero.com>
To: <commentletters@waterboards.ca.gov>
Date: 7/19/2010 2:50 PM
Subject: Comments Klamath River Total Maximum Daily Loads and Action Plan Addressing Temperature, Dissolved Oxygen, Nutrient, and Microcystin Impairments.

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RE: Comments Klamath River Total Maximum Daily Loads and Action Plan Addressing Temperature, Dissolved Oxygen, Nutrient, and Microcystin Impairments."

I am going to limit my comments on the Klamath River TMDL process to mining activities.

Water Boards: Regional Water Board staff is addressing the impacts of suction dredging as a precautionary measure following the recommendation of fisheries biologists.

Comments: What "fisheries biologists" are you referring to? It is obvious that you have chosen to use biologists who have written against suction dredging activities in reports they have authored. In my opinion that would make these biologists "biased" against dredging. These same biologists have only proposed a "hypothesis" of a "possibility" that there "may be harm" from suction dredging. That is all they have done. They have done this in disregard for regulations that are already in place that afford protections against known possible harm, and have failed to recognize the volumes of studies done to date that show the impacts of suction dredging are so small they can barely be measured. Have these "biologists" you have chosen to give credit to performed one single scientific study based on proper scientific method that would withstand peer review to uphold one single "hypothesis" of potential harm that they have voiced to you or that you have personally chosen to believe? If not, this makes those statements nothing more than personal opinion. Because those opinions are in direct conflict with the multiple scientific studies done to date on dredging that were in fact performed using proper scientific methods and do stand up to peer review, in my view those opinions should not even be given the credit of being called a "professional opinion". Therefore, for the water board to use those biologist's personal opinions as proper scientific direction and enough legal reason for implementing regulations against suction dredging is in my opinion itself unethical, illegal, criminal, unreasonable, arbitrary and capricious.

Water Board:

"The implementation plan proposes a prohibition on the discharge of excess sediment to address all sediment sources in the Klamath River basin not currently regulated through an existing permit or conditional waiver. The implementation plan also proposes a prohibition on the discharge of waste in and around known thermal refugia locations in the Klamath River in California to protect their function in mitigating adverse water quality conditions."

Comments: Suction dredge mining is currently regulated under the Federal Clean Water Act by the section 404 permits under the Authority of the United States Army Corps of Engineers (USACE). The recent United States Supreme Court ruling in Coeur-Alaska, specifically stated that 404 activities are not to be held to any other part of the clean water act, "even if the USACE chooses not to require a permit for the activity. Currently, the USACE has determined that suction dredges that have an intake four inches or smaller do not create a discharge of dredged or fill material that requires a permit at all because the environmental impact is so small that it can barely be measured.

Suction dredging is currently regulated under the endangered species act by the California Dept. of Fish & Game. This state agency has performed an extensive EIR in 1994, and implemented regulations based on all potential harms found in that very extensive study. They are currently involved in a CEQA review of

those regulations and are in the current process of completing an updated EIR on suction dredging.

For this water board to implement regulations against suction dredging for water quality or endangered species protection when suction dredging is already regulated for both of those issues by the above agencies to me suggests that the water board believes it has a superior scientific knowledge of these subjects, even though this water board has not performed one single scientific study using proper scientific method on the issue of suction dredging. This is egotistical, unethical, and illegal. It also shows that you fail to recognize as stated in the above comment made by this water board, that suction dredging is already regulated through existing permit or waiver.

Water Board: "Suction dredging activities and activities that alter the stream bank are identified as having the potential to cause direct impacts to the function of refugia through sediment discharge."

Comment: Potential means nothing. Every aspect of human life along the Klamath river has the "potential" of causing direct impacts that could alter the function of thermal refugia as you have been lead to believe that those thermal refugia do indeed function. In my opinion, for this board to implement regulations against suction dredging based on environmental puffery and biased fishery biologists instead of scientific fact and study will result in a "taking" of private property as currently defined by legal precedence. For this water board to assume that it knows the true function of thermal refugia shows nothing more than the true obtuse nature of this water board.

There has not been one single scientific study ever performed using proper scientific method that shows there is any reason to believe that there is a negative impact on thermal refugia from suction dredging in any way, including "sediment discharge".

Actually to the contrary, a turbidity plume flowing through a thermal refugia may in fact offer increased protection for fish rather than cause any harm to those same fish, and in fact increases the dissolved oxygen content of the water, and the water coming off the back of a suction dredge is in fact cooler than it was before going through a dredge. I dare this water board to produce any scientific evidence to disprove this claim of benefit rather than harm to fish in thermal refugia. Also, there is no reason for any member of this board to give one single bit of credence to the issue that a suction dredge operating in a thermal refugia disturbs resting fish. The visual facts observed from thousands of suction dredgers for over forty years is that fish of all types are in no way disturbed by a running suction dredge as they in no way view the dredge or the operator as a threat to their life. It is common knowledge that fish are not threatened and do not react like they feel they are threatened by suction dredgers or dredges, and for this water board to bow down to the "hypothesis" that the presence of an operating suction dredge in a thermal refugia disturbs resting fish goes against all common sense and current observed information on this subject, and does so without one single scientific study that would uphold the reversal of currently accepted scientific facts on this subject.

In summary, it is my opinion that this water board is suggesting that it has the authority to implement regulations on suction dredging that are based on nothing more than personal opinion of biased fishery biologists, even though those opinions go against the current scientific evidence on these subjects. That this water board is suggesting to impose regulations on an activity that is currently regulated for water quality and endangered species protection by other federal and state agencies, and this water board is therefore making the indirect statement that those agencies are derelict in their duties to properly regulate suction dredging as they are legally required to do..

These actions are unethical and in direct violation of the charter of this board. Creation of suction dredging regulations by this board without any scientific study performed using proper scientific method is in violation of numerous state and state CEQA laws, numerous Federal laws, the Supremacy Clause of the US Constitution and violates my personal constitutional rights and makes every member of this board open to personal civil suit if they vote to adopt any regulations to be imposed against suction dredging that are not based on scientific studies performed using proper scientific methods.

Please accept these comments and reply via e-mail acknowledging these comments were received within the comment period.

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