

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN SENATE MAY 5, 2015

AMENDED IN SENATE APRIL 22, 2015

SENATE BILL

No. 637

Introduced by Senator Allen

February 27, 2015

An act to amend Section 5653 of the Fish and Game Code, and to add Section 13172.5 to the Water Code, relating to dredging.

LEGISLATIVE COUNSEL'S DIGEST

SB 637, as amended, Allen. Suction dredge mining: permits.

Existing law prohibits the use of any vacuum or suction dredge equipment by any person in any river, stream, or lake of this state without a permit issued by the Department of Fish and Wildlife. Existing law requires, before any person uses any vacuum or suction dredge equipment in any river, stream, or lake of this state, that person to submit an application for a permit for a vacuum or suction dredge to the department specifying certain information. Existing law requires the department to issue a permit, if the department determines that the use of a vacuum or suction dredge will not be deleterious to fish, upon the payment of a specified fee. Existing law designates the issuance of permits to operate vacuum or suction dredge equipment to be a project under the California Environmental Quality Act and suspends the issuance of permits and mining pursuant to a permit until the department has completed an environmental impact report for the project as ordered by the court in a specified court action. Existing law prohibits the use of any vacuum or suction dredge equipment in any river, stream, or lake of this state until the Director of Fish and Wildlife makes a

prescribed certification to the Secretary of State, including certifying that new regulations fully mitigate all identified significant environmental impacts and that a fee structure is in place that will fully cover all costs to the department related to the administration of the program.

This bill would require the department to issue a permit if the department determines that the use does not cause any significant effects on *to* fish and wildlife and would authorize the department to adjust the specified fee to an amount sufficient to cover all reasonable costs of the department in regulating suction dredging activities. This bill would prohibit the department from issuing a permit until the permit application is deemed complete, as prescribed.

Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the Federal Water Pollution Control Act and the Porter-Cologne Water Quality Control Act (state act). The state act, with certain exceptions, requires a waste discharger to file certain information with the appropriate regional board and to pay an annual fee. The state act additionally requires a person, before discharging mining waste, to submit to the regional board a report on the physical and chemical characteristics of the waste that could affect its potential to cause pollution or contamination and a report that evaluates the potential of the mining waste discharge to produce acid mine drainage, the discharge or leaching of heavy metals, or the release of other hazardous substances.

~~This bill would require, by July 1, 2017 authorize, after the director has made the prescribed certification to the Secretary of State, the state board or a regional board to establish a permitting process for suction dredge mining and related mining activities in rivers and streams in the state, consistent with requirements of the state act. The bill would require that the regulations, at a minimum, address cumulative and water quality impacts of specified issues. A person who violates these regulations would be liable for an unspecified penalty. The bill would provide that the state board is not prohibited from adopting regulations that would prohibit suction dredge mining, if the state board makes a certain finding relating to water quality objectives, to the extent consistent with federal law. The bill would prohibit these provisions from affecting any other law, including the California Environmental Quality Act and specified provisions relating to streambed alteration requirements. adopt waste discharge requirements that address water quality impacts of specified~~

issues, specify certain conditions or areas where the discharge of waste from a suction dredge is prohibited, or prohibit particular methods of suction dredge mining if the state board or regional board makes a certain determination.

The bill would specify that a suction dredge contains any of specified components for purposes of permits issued by the department and for purposes of the ~~permitting~~ regulatory process established by the state board or a regional board.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) In 2009, Governor Schwarzenegger signed Senate Bill 670
4 (Chapter 62 of the Statutes of 2009) which established a temporary
5 ban on suction dredge mining until after a court-ordered
6 environmental review was completed.

7 (b) The Department of Fish and Wildlife draft regulations and
8 draft environmental impact report were issued in February 2011.
9 The draft environmental impact report identified nine significant
10 and unmitigable impacts from suction dredge mining. The report
11 concluded that suction dredge mining for gold mobilizes and
12 discharges toxic levels of mercury, harming drinking water quality
13 and potentially poisoning fish and wildlife, harms fish, amphibians,
14 and songbirds by disrupting habitat, and causes substantial adverse
15 changes statewide in American Indian cultural and historical
16 resources.

17 (c) In July 2011, the Legislature enacted Assembly Bill 120
18 (Chapter 133 of the Statutes of 2011), extending the prohibition
19 on suction dredge mining until 2016, and requiring the department
20 to create a fee structure that would cover all of its administrative
21 costs relating to suction dredge mining.

22 (d) In 2012, the Legislature acted again on suction dredge
23 mining by enacting Senate Bill 1018 (Chapter 39 of the Statutes
24 of 2012), which eliminated the sunset provision from Assembly
25 Bill 120. Senate Bill 1018 also directed the department to consult
26 with various agencies and to provide recommendations to the
27 Legislature by April 1, 2013, regarding statutory changes or

1 *authorizations necessary for the department to promulgate suction*
2 *dredge regulations. Those recommendations were to include ways*
3 *to fully mitigate all identified significant environmental impacts*
4 *and a fee structure to cover the department's costs of administering*
5 *the program.*

6 *(e) On April 1, 2013, the department submitted the required*
7 *report to the Legislature. The department considers the*
8 *environmental impact report on its proposed suction dredge mining*
9 *regulatory permit program to be the most comprehensive review*
10 *of suction dredge mining ever compiled in California. The report*
11 *identified impacts that the department said could not be mitigated*
12 *within its legal authorities.*

13 *(f) In January 2015, the San Bernardino Superior Court issued*
14 *a tentative ruling that state-issued suction dredge mining permits*
15 *could not be required on federal land. The court noted that, while*
16 *the state clearly has the power to issue suction dredge mining*
17 *permits, the state's refusal or inability to issue the permits creates*
18 *an obstacle to conforming with federal law.*

19 *(g) Given the importance of protecting the water supply for all*
20 *Californian's from degradation, the need to protect what is left of*
21 *California native cultural sites, and the value of protecting the*
22 *state's wildlife, it is urgent that the Legislature act immediately*
23 *to clarify the laws regulating suction dredge mining and other*
24 *related forms of small scale motorized gold mining in the state's*
25 *streams and waterways.*

26 **SECTION 1.**

27 **SEC. 2.** Section 5653 of the Fish and Game Code is amended
28 to read:

29 5653. (a) The use of a vacuum or suction dredge equipment
30 by a person in a river, stream, or lake of this state is prohibited,
31 except as authorized under a permit issued to that person by the
32 department in compliance with the regulations adopted pursuant
33 to Section 5653.9. Before a person uses a vacuum or suction dredge
34 equipment in a river, stream, or lake of this state, that person shall
35 submit an application for a permit for a vacuum or suction dredge
36 to the department, specifying the type and size of equipment to be
37 used and other information as the department may require.

38 (b) (1) The department shall not issue a permit for a vacuum
39 or suction dredge until the permit application is deemed complete.
40 A complete permit application shall include copies of all required

1 permits, including permits required under the Federal Water
2 Pollution Control Act (33 U.S.C. Sec. 1251 et seq.) and the Water
3 Code, and any other applicable permit required to fully mitigate
4 all identified significant environmental impacts pursuant to
5 regulations adopted under subdivision (b) of Section 5653.1.

6 (2) If the State Water Resources Control Board or the
7 appropriate regional water quality control board determines that
8 no water quality or water rights permit is necessary for the use of
9 a vacuum or suction dredge, a letter stating this determination
10 signed by the Executive Director of the State Water Resources
11 Control Board, the executive officer of the appropriate regional
12 water quality control board, or their designee shall be part of the
13 permit application.

14 (3) For the purpose of the Permit Streamlining Act (Chapter 4.5
15 (commencing with Section 65920) of Division 1 of Title 7 of the
16 Government Code), the department shall not deem the permit
17 application complete until the applicant submits all necessary
18 permits and any required letters to the department as part of the
19 permit application.

20 (c) Under the regulations adopted pursuant to Section 5653.9,
21 the department shall designate waters or areas wherein vacuum or
22 suction dredges may be used pursuant to a permit, waters or areas
23 closed to those dredges, the maximum size of those dredges that
24 may be used, and the time of year when those dredges may be
25 used. If the department determines, pursuant to the regulations
26 adopted pursuant to Section 5653.9, that the use of a vacuum or
27 suction dredge does not cause any significant effects to fish and
28 wildlife, it shall issue a permit to the applicant. If a person operates
29 equipment other than that authorized by the permit or conducts
30 the operation in any waters or area or at any time that is not
31 authorized by the permit, or if any person conducts the operation
32 without securing the permit, that person is guilty of a misdemeanor.

33 (d) (1) Except as provided in paragraph (2), the department
34 shall issue a permit upon the payment, in the case of a resident, of
35 a base fee of twenty-five dollars (\$25), as adjusted under Section
36 713, when an onsite investigation of the project size is not deemed
37 necessary by the department, and a base fee of one hundred thirty
38 dollars (\$130), as adjusted under Section 713, when the department
39 deems that an onsite investigation is necessary. Except as provided
40 in paragraph (2), in the case of a nonresident, the base fee shall be

1 one hundred dollars (\$100), as adjusted under Section 713, when
 2 an onsite investigation is not deemed necessary, and a base fee of
 3 two hundred twenty dollars (\$220), as adjusted under Section 713,
 4 when an onsite investigation is deemed necessary.

5 (2) The department may adjust the base fees for a permit
 6 described in this subdivision to an amount sufficient to cover all
 7 reasonable costs of the department in regulating suction dredging
 8 activities.

9 (e) It is unlawful to possess a vacuum or suction dredge in areas,
 10 or in or within 100 yards of waters, that are closed to the use of
 11 vacuum or suction dredges.

12 (f) For purposes of this section and Section 5653.1, a suction
 13 dredge contains any of the following:

- 14 (1) A hose that vacuums sediment from a river, stream, or lake.
- 15 (2) A motorized pump.
- 16 (3) A motorized sluice box.

17 ~~SEC. 2.~~

18 *SEC. 3.* Section 13172.5 is added to the Water Code, to read:

19 ~~13172.5. (a) On or before July 1, 2017, the state board shall~~
 20 ~~establish by regulation a permitting process for suction dredge~~
 21 ~~mining and related mining activities in rivers and streams in the~~
 22 ~~state. The regulations shall be consistent with the requirements of~~
 23 ~~this division and, at a minimum, address cumulative and water~~
 24 ~~quality impacts of each of the following:~~

25 *13172.5. (a) After the Director of Fish and Wildlife has*
 26 *certified to the Secretary of State that all of the events described*
 27 *in subdivision (b) of Section 5653.1 of the Fish and Game Code*
 28 *have occurred, the state board or a regional board may take one*
 29 *or more of the following actions:*

30 *(1) Adopt waste discharge requirements that, at a minimum,*
 31 *address the water quality impacts of each of the following:*

- 32 ~~(1)~~
- 33 *(A) Mercury loading to downstream reaches of rivers and*
 34 *streams affected by suction dredge mining; surface water bodies*
 35 *affected by suction dredge mining.*
- 36 ~~(2)~~
- 37 *(B) Methylmercury formation in water bodies.*
- 38 ~~(3)~~
- 39 *(C) Bioaccumulation of mercury in aquatic organisms.*

1 (b) A person who violates a regulation adopted pursuant to this
2 section shall be liable in the amount of _____ (\$ _____).

3 (e) ~~Nothing in subdivision (a) shall prohibit the state board from
4 adopting regulations that prohibit suction dredge mining if the
5 state board finds that prohibition is necessary to regulate waste
6 discharges that violate or impair water quality objectives or other
7 criteria under this division, to the extent consistent with federal
8 law. In making this determination, the state board may consider,
9 but is not limited to, soil types, fueling and refueling activities,
10 and horsepower limitations.~~

11 (d) ~~This section does not affect any other law, including the
12 California Environmental Quality Act (Division 13 (commencing
13 with Section 21000) of the Public Resources Code) and the
14 Department of Fish and Wildlife's streambed alteration
15 requirements described in Chapter 6 (commencing with Section
16 1600) of the Fish and Game Code.~~

17 (D) *Resuspension of metals.*

18 (2) *Specify certain conditions or areas where the discharge of
19 waste from suction dredge mining is prohibited, consistent with
20 Section 13243.*

21 (3) *Prohibit any particular methods of suction dredge mining
22 that the state board or a regional board determines generally
23 cause or contribute to an exceedance of applicable water quality
24 objectives or unreasonably impact beneficial uses.*

25 (e)

26 (b) For purposes of this section, a suction dredge contains any
27 of the following:

28 (1) A hose that vacuums sediment from a river, stream, or lake.

29 (2) A motorized pump.

30 (3) A motorized sluice box.