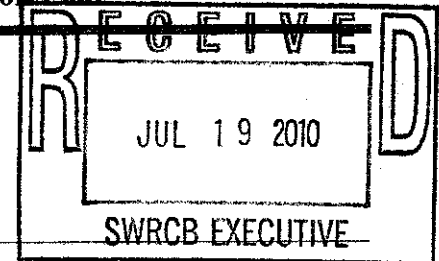


commentletters - Klamath River Total Maximum Daily Loads and Action Plan

From: Tom Chambers <tcplace2go@sbcglobal.net>
To: <commentletters@waterboards.ca.gov>
Date: Monday, July 19, 2010 12:48 AM
Subject: Klamath River Total Maximum Daily Loads and Action Plan



North Coast Regional Water Quality Control Board
5550 Skylane Blvd, Suite A
Santa Rosa, CA 95403

July 19, 2010

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

To Katharine Carter & the NCRWQC Board,

Thank you for considering my comments regarding Klamath River TMDL Action Plan.

First let me identify myself as an environmentalist. My family and I have been operating various sized suction dredges for 31 years now. We don't spill oil or gasoline on shore or in the water. We don't litter, we pick up garbage left by others. We love the Earth, it's our home. If I SAW through my experience with suction dredging that it was harming the environment, I would stop doing it. I have not seen this. What I have seen while suction dredging through the years is hundreds of fish feeding around me and my dredge. Pounds of lead and mercury removed from the rivers and streams where I mine. Loosened and aerated gravels where Salmon can spawn. Dredge holes that are used by migrating fish for cool water refuges.

Frankly I am alarmed at some statements made by the NCRWQC Board, here are some with my comments;

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

My comment: This precaution is unreasonable, arbitrary and capricious. It amounts to a private property "taking" by the agency on nothing more than supposition. Who are the biologists that made this recommendation? I understand that the only fisheries biologists that were consulted by the agency were those that have an unfavorably bias regarding suction dredge mining. What these biologists have said is nothing more than opinion, not science. Regulations must be based on the best available science, not opinion.

"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."

My comment: Identified by whom & in who's OPINION? The biased biologist's? Furthermore..."To regulate for potential for harm, where no harm has been shown to exist is unjustifiable and must be challenged." (U.S. Army Corps of Engineers).

"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."

My comment: Regulations must be reasonable. Any regulation that is prohibitive is unreasonable. This paragraph also mentions "excess sediment". Material that is processed through a suction dredge produces no "excess" sediment or any other substance that was not already in the river. The dredge adds nothing. There is no "excess" from a suction dredge. And the California Dept. of Fish and Game already regulates suction dredging and that no suction dredge mining be allowed during salmon spawning periods.

Also... In 1866 the 39th Congress of the United States enacted a law that still stands today. It is commonly referred to as the Mineral Estate Grant of 1866. Its federal register designation is: HR 365.

One excerpt from this document states: "That the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States". This document makes mining claims "private property" in the truest sense. It grants the actual minerals and land to the claimant and severs ownership from the Federal Government.

Since the congress has declared that the mineral lands are free and open, and this is the supreme law of the land, it follows that no state or agency can prohibit what Congress has enacted.

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The Supremacy Clause of the US constitution provides that no rule or regulation imposed by any state agency is valid if it conflicts with Federal Law. The State Attorney General must be consulted by Water Boards. The question to ask counsel is: "Can Water Boards regulate mining on Federal Public Domain Lands"? For Water Boards staff to answer this question is unethical, it must be answered by the AG.

Sincerely,

Tom Chambers

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