

PETE CONATY & ASSOCIATES  
GOVERNMENTAL RELATIONS

Dave McCracken, President  
The New 49'ers, Inc  
27 Davis Road  
Happy Camp, CA. 96039

Dear Dave,

On behalf of your organization, your members and your many supporters, Pete Conaty and Associates attended the board meeting of the State Water Resources Control Board (SWRCB) today (Jan. 6, 2009) to monitor and provide testimony on the board's consideration of a proposed resolution to allocate the \$500,000 to the Dept of Fish and Game for the EIR for suction dredge regulations.

Ultimately and after much testimony and discussion, the SWRCB voted to approve the \$500,000 to the DFG. The vote was 4-1.

The board had originally intended to pass this item on consent, but decided to hear comments on the issue because of a petition filed by the Karuks, Cal Trout, Friends of the North Fork, and the Sierra Fund contesting the proposed transfer of the \$500,000 for the EIR. The petition was addressed jointly to the SWRCB and the DFG. The petition was filed too late to be accepted by the Board, but they were allowed to read the letter as part of their public comments.

Senator Pat Wiggins (D-Santa Rosa, North Coast) also sent a staff person to read a letter into the record supporting the Karuk's petition (see attached). The letter was co-signed by Senator Pavley, Chair of the Senate Natural Resources Committee; Senator Wolk, author of AB 1032; Assemblyman Huffman, Chair of the Assembly Water, Parks, and Wildlife Committee; and Assemblyman Chesbro, represents North Coast areas.

In anticipation of the Karuks and their allies bringing legislative support to this hearing, I had arranged for 3 legislative and county representatives to testify on behalf of our position. David Weir, Legislative Director to Assemblyman Jim Nielsen (R-Northern California, Doug LaMalfa's old district) spoke in support of the money being granted to DFG to carry out the study. Phil Nails, Consultant to the Republican Caucus spoke about the legislative and legal history of the suction dredge issue and stated the Republican Caucus' support of the money for DFG. Tom Renfree, lobbyist for the County of Siskiyou spoke of the economic stimulus brought to the county by suction dredge miners. He also pointed out that the money to be allocated was the result of a court order and that this is a question of due process and science, not perception.

The testimony by these individuals helped to show the board that this issue is complicated, has a long history, and that the money should be allocated so as to get an EIR on this subject completed.

The opposition sent the following representatives to testify:

Jeff Shalito - Karuks and Cal Trout  
Michael Garabedian - Friends of the North Fork  
Izzy Martin - Sierra Fund  
Michael Ortiz - Tsi-Akim Band of Maidu Indians

The opposition's main point was that they wanted the SWRCB to not approve the \$500,000 unless the money was tied to DFG adopting emergency regulations which would essentially halt suction dredge mining while the study was conducted. They stated that the EIR could take 2 or more years and that this would preserve a regulatory status quo in which further degradation would be done to the Salmon and the environment. Furthermore, they stated that suction dredge miners are a small user group that should not benefit from the status quo. The emergency regulations that they proposed looked pretty much like AB 1032.

The board called the DFG's representative, Mark Stoffer, to the podium to answer questions and explain the DFG's process for conducting the study. Stoffer explained that the DFG would make a determination on the letter submitted by the Karuk's, et al by or before Jan 25. The board wanted to be sure that the EIR would address water quality issues. Stoffer replied that the money would be used to study water quality and that once done, the EIR would serve as a CEQA document that could be utilized by other state agencies. He also assured the board that adding water quality issues to the study would not make the study take longer, but merely broaden the scope of the study. There was some discussion about whether flowering of mercury contributes to the methylation process of mercury.

There was much discussion and concerns about the process of the study and the board stated it would like DFG to establish an interagency agreement with the SWRCB to make rules for the study. The board would like to make the study an integrated program between the SWRCB and the DFG. The board also wants to see a lot emphasis on methyl mercury and mercury. The overall cost of the study was also discussed and some board members were concerned that the study could cost more than the \$1.5 million allocated, thereby impacting general funds within DFG.

The DFG expects to receive and review proposals for the study from private consultants by the first part of February and then award the contract by about the beginning of March.

The SWRCB is a 5 person board and the vote to approve the resolution to allocate the \$500,000 was 4-1. The one person opposed was outgoing Vice Chair Gary Wolff, who will be resigning his seat on the board. He felt that suction dredge mining could violate the Federal Clean Water Act and that NPDES permits should possibly be required to do this activity. An NPDES permit is required for those who discharge into the state's waters. Wolff felt that allocating the money would put the SWRCB in the position of funding an illegal activity and as such, the board should

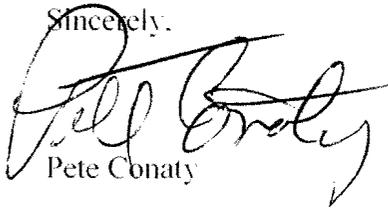
put interim conditions (shut down most s.d. mining) while the study is conducted. Wolff asked the staff counsel about this and the staff counsel felt that the board would be overstepping its role in regards to another agency and that it was not his opinion that the SWRCB would be aiding and abetting violations of the Clean Water Act by approving the money for an EIR.

Board member Arthur Baggett thought that denying the allocation should require a high burden of proof and that the board should not halt another agency. He noted that the court did not issue a moratorium: it just required a CEQA document. Baggett felt that a good CEQA document is essential to understanding the issue and that better science is needed.

Chair Doduc instructed staff to include this issue in the report for the federal meeting.

We will continue to monitor on your behalf, and will be working closely with yourself and James Buchal (attorney) in a strong effort to overcome the Application filed by mining adversaries to prompt the Department of Fish & Game to enact unnecessary Emergency Regulations to curtail suction dredging.

Sincerely,



Pete Conaty