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CHAPTER 62

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INTRODUCED BY Senator Wiggins  
(Principal coauthor: Assembly Member Huffman)  
(Coauthor: Senator Wolk)  
(Coauthors: Assembly Members Evans and Jones)

FEBRUARY 27, 2009

An act to add Section 5653.1 to the Fish and Game Code, relating to dredging, and declaring the urgency thereof, to take effect immediately.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 670, Wiggins. Vacuum or suction dredge equipment.

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 Game. Under existing law, it is unlawful to possess a vacuum or suction dredge in areas, or in or within 100 yards of waters, that are closed to the use of vacuum or suction dredges. A violation of the permit requirement is a misdemeanor. The department is authorized to close areas otherwise open for dredging and for which permits have been issued if there is an unanticipated water level change and the department determines that closure is necessary to protect fish and wildlife resources. Existing law requires the department to adopt regulations to implement certain of the vacuum or suction dredge equipment requirements and authorizes the department to issue regulations with respect to other requirements. Existing law requires that the regulations be adopted in accordance with the requirements of the California Environmental Quality Act (CEQA).

CEQA requires a lead agency, as defined, to prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. The act exempts from its

provisions, among other things, certain types of ministerial projects proposed to be carried out or approved by public agencies, and emergency repairs to public service facilities necessary to maintain service.

This bill would designate the issuance of permits to operate vacuum or suction dredge equipment to be a project under CEQA, and would suspend 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. The bill would prohibit the use of any vacuum or suction dredge equipment in any river, stream, or lake, for instream mining purposes, until the director of the department certifies to the Secretary of State that (1) the department has completed the environmental review of its existing vacuum or suction dredge equipment regulations as ordered by the court, (2) the department has transmitted for filing with the Secretary of State a certified copy of new regulations, as necessary, and (3) the new regulations are operative.

This bill would declare that it is to take effect immediately as an urgency statute.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 5653.1 is added to the Fish and Game Code, to read:

5653.1. (a) The issuance of permits to operate vacuum or suction dredge equipment is a project pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and permits may only be issued, and vacuum or suction dredge mining may only occur as authorized by any existing permit, if the department has caused to be prepared, and certified the completion of, an environmental impact report for the project pursuant to the court order and consent judgment entered in the case of Karuk Tribe of California et al. v. California Department of Fish and Game et al., Alameda County Superior Court Case No. RG 05211597.

(b) Notwithstanding Section 5653, the use of any vacuum or suction dredge equipment in any river, stream, or lake of this state is prohibited until the director certifies to the Secretary of State that all of the following have occurred:

(1) The department has completed the environmental review of its existing suction dredge mining regulations, as ordered by the court in the case of Karuk Tribe of California et al. v. California Department of Fish and Game et al., Alameda County Superior Court Case No. RG 05211597.

(2) The department has transmitted for filing with the Secretary of State pursuant to Section 11343 of the Government Code, a certified copy of new regulations adopted, as necessary, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3

of Title 2 of the Government Code.

(3) The new regulations described in paragraph (2) are operative.

(c) The Legislature finds and declares that this section, as added during the 2009-10 Regular Session, applies solely to vacuum and suction dredging activities conducted for instream mining purposes. This section does not expand or provide new authority for the department to close or regulate suction dredging conducted for regular maintenance of energy or water supply management infrastructure, flood control, or navigational purposes governed by other state or federal law.

(d) This section does not prohibit or restrict nonmotorized recreational mining activities, including panning for gold.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The Legislature finds that suction or vacuum dredge mining results in various adverse environmental impacts to protected fish species, the water quality of this state, and the health of the people of this state, and, in order to protect the environment and the people of California pending the completion of a court-ordered environmental review by the Department of Fish and Game and the operation of new regulations, as necessary, it is necessary that this act take effect immediately.