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Director Charlton H. Bonham  
California Department of Fish and Wildlife  
1416 Ninth Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

Mr. John Laird  
Secretary for Natural Resources  
California Natural Resources Agency  
1416 Ninth Street, Suite 1311  
Sacramento, CA 95814

Mr. Mark Stopher  
Senior Policy Advisor  
California Department of Fish and Wildlife  
601 Locust Street  
Redding, CA 96001

Mr. John Mattox  
Senior Staff Counsel  
California Department of Fish and Wildlife  
1416 Ninth Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

Mr. Thomas Howard  
Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

## **Sent electronically and via registered mail**

10 June 2013

Dear Mr. Bonham and Mr. Stopher;

We are in receipt of your letter dated 7 June 2013 indicating your proposed emergency rulemaking.

We are disappointed you did not consult with us during this process as we requested in our Petition dated 28 March 2013 of which we have provided the relevant request below:

*“In light of the existing regulations under Section 5653 and the Center’s proposed amendments, the Western Mining Alliance respectfully requests that any such rulemaking and consultation of any proposed amendments necessarily include the Western Mining Alliance as an affected party.”*

*Pursuant to Section 11346.45 of the California Government Code the Western Mining Alliance is providing you notice that as an affected party to the proposed rulemaking, we hereby request discussions with the Department prior to the rulemaking.”*

Our interpretation of the word “shall” in Section 11346.45 would indicate it is mandatory. We find it surprising and disheartening you would spend so much effort consulting with anti-mining interests yet would fail to consult with the only mining organization that explicitly expressed an interest in your proposed rulemaking.

We advise you again the situation you describe does not meet the criteria of an emergency and it appears you are only using the emergency rulemaking set out in Section 11346.1 to merely avoid public discussion. We’re sure you are well aware of the requirements of this section as you have chosen to cite this section for your rulemaking thus eliminating any public discussion, but we choose to remind you of the definition of an emergency:

*“A finding of emergency based only upon expediency, convenience, best interest, general public need, or speculation, shall not be adequate to demonstrate the existence of an emergency. If the situation identified in the finding of emergency existed and was known by the agency adopting the emergency regulation in sufficient time to have been addressed through nonemergency regulations adopted in accordance with the provisions of Article 5 (commencing with Section 11346), the finding of emergency shall include facts explaining the failure to address the situation through nonemergency regulations.”*

It is clear you were aware of the alternative methods of mining as early as last summer and have responded to public inquiry in regards to this in written and oral communications. You received two requests for rulemaking in regards to this in March 2013. You have certainly had sufficient time to involve the public in your rulemaking yet you disregard the requirements of the Administrative Procedures Act in favor of responding to a small minority of vocal activists.

While the presence of miners and businesses attempting to salvage the summer mining season may annoy you and the activists you are supporting, it does not reach the level of emergency and you have demonstrated no harm or no imminent danger to the public, fish or wildlife. The report you are basing your “emergency” on merely documents miners on Federal mining claims – it does not document harm. As stated in Section 11346.1 you may not use speculation as the basis for emergency rulemaking. Lacking any documentation of harm to the public or fish and wildlife it is sheer speculation that mining has caused any harm.

The “evidence” you refer to in your notice is merely the observations of anti-mining activists of miners on the rivers. They are observations of people mining but lack any statements of harm to fish, wildlife or the public. We don’t believe miners’ presence on the river constitutes an emergency. We’re unclear when the very act of mining became illegal. We don’t read Section 11346.1 as allowing emergency rulemaking to include an agency being annoyed that miners have figured out how to continue to mine despite the complete prohibition on mining in violation of Federal law and Congressional intent. (See South Dakota Mining Association v. Lawrence County, 1998)

Again we advise you that the existing regulations and any amendments qualify as “Major Regulations” as defined in Section 11342.548. “Major regulation” means any proposed adoption, amendment, or repeal of a regulation subject to review by the Office of Administrative Law pursuant to Article 6 (commencing with Section 11349) that will have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000), as estimated by the agency.”

It is our opinion the emergency rulemaking is a clear violation of the Administrative Procedures Act, especially in light of our request nearly two months ago to be involved in any proposed rulemaking. Why the Department chose to ignore the miners' request and honor the activists' request is beyond us.

Respectfully,

A handwritten signature in black ink that reads "Craig A. Lindsay". The signature is written in a cursive style with a large, looping initial "C".

Craig A. Lindsay  
President, The Western Mining Alliance

Copy Furnished to Others, including the following:  
(See next page)

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