

Question: Can I use a highbanker or power sluice to recover gold?

Answer: Yes, under the following conditions:

1. The Fish and Game Code, the Clean Water Act, and the California Water Code prohibit you from discharging water and waste sediment from your highbanker or power sluice to an area such that it may enter a stream, river, lake, or other surface water body without a permit from the Regional Water Quality Control Board (Regional Water Board) responsible for the area where you'll be mining. Currently there is no general permit available for discharges of water and waste sediment from highbankers or power sluices to streams, rivers, lakes, or other surface water bodies.
2. You can discharge water and waste sediment from your highbanker or power sluice to land but you must first apply for a permit from the Regional Water Board responsible for the area where you'll be mining. To apply for a permit, you must file a Report of Waste Discharge with the Regional Water Board. You cannot begin mining until the Regional Water Board approves your Report of Waste Discharge and notifies you that either your permit has been issued or that a permit is not required because the discharge will not create or threaten to create a condition of pollution or nuisance. The minimum fee for the permit is \$1120.00 but may be higher depending on the threat the discharge poses to water quality and the complexity of the discharge as determined by the Regional Water Board. **See below** for legal details.
3. If you are diverting water from a riparian parcel for use on that parcel, you must have a riparian water right or be legally entitled to use riparian water rights for the parcel and you must file a Statement of Water Diversion and Use (Statement) with the State Water Resources Control Board's (State Water Board) Division of Water Rights for each point of diversion. The fee for filing a Statement of Diversion and Use is \$50.00. For general information about riparian water rights, and whether you have one, go to:
http://www.swrcb.ca.gov/waterrights/board_info/faqs.shtml. For information about Statements of Diversion and Use, and how to file one, go to:
http://www.swrcb.ca.gov/waterrights/board_info/faqs.shtml.
4. If you plan to divert water for use on non-riparian land, or to divert water that would not be there under natural conditions for use on riparian land, you must apply for and receive a permit to appropriate water from the State Water Resources Control Board. For information about applying for water rights, go to:
http://www.swrcb.ca.gov/waterrights/board_info/faqs.shtml

Question: What are the penalties if I don't comply with the conditions?

Answer: Violating conditions 1 and 2 may result in fines of up to \$10,000 for each day, or if the matter is referred to the courts, fines up to \$25,000 for each day in which the violation occurs.

Violating condition 3 may result in a fine of up to \$1,000 plus \$500 for each day the violation continues after 30 days of the State Water Board notification of the violation. Go to: http://www.waterboards.ca.gov/waterrights/board_info/faqs.shtml#toc178761086 for details.

Violating condition 4 may result in a fine of up to \$500 per day of unauthorized diversion and use. Go to: http://www.waterboards.ca.gov/waterrights/board_info/faqs.shtml#toc178761086 for details.

Legal Information:

In many instances mining activities, including high banking require one or more permits from the State Water Resources Control Board (State Water Board) or appropriate Regional Water Quality Control Board (Regional Water Board). Various federal and state law requirements necessitate permitting and notification of mining activities as they affect the waters of the state of California. The federal Clean Water Act was enacted by Congress “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”¹ Section 301 of the Clean Water Act prohibits “the discharge of any pollutant by any person” except in compliance with the Clean Water Act; i.e., except without obtaining a permit.² The “discharge of any pollutant” means any addition of any pollutant to navigable waters from any point source. As defined by the Clean Water Act, “pollutants” include numerous metals and toxic substances (e.g., mercury) as well as dredged spoil, rock, sand, and earthen materials.³ In California, the State Water Board and the Regional Water Quality Control Boards (Regional Water Boards) are the state agencies that administer the Clean Water Act.⁴

California’s counterpart to the Clean Water Act is the Porter-Cologne Water Quality Control Act (Porter-Cologne).⁵ Pursuant to Porter-Cologne, any person discharging waste, or proposing to discharge waste that could affect the quality of the waters of the state must file a report of the discharge with the appropriate Regional Water Board.⁶ While certain waters and activities may be beyond the jurisdictional reach of the Clean Water Act, Porter-Cologne is much broader in reach and comprehensive in coverage. Porter-Cologne defines “waste” to include any and all waste substances associated with

¹ 33 U.S.C. § 1251(a).

² 33 U.S.C. § 1311(a).

³ 33 U.S.C. § 1362(6).

⁴ Wat. Code, § 13160.

⁵ Wat. Code, § 13000 et seq.

⁶ Wat. Code, § 13260, subd. (a).

human habitation or resulting from any producing, manufacturing, or processing operation, including mining waste.⁷ Similarly, “waters of the state” is much broader than what is considered the “nation’s waters” under the Clean Water Act. Waters of the state includes “any surface water or groundwater, including saline waters, within the boundaries of the state.”⁸

When discharging to waters within California’s borders, compliance with both the federal Clean Water Act and the state Porter-Cologne Water Quality Control Act is required in most instances. This includes most federal lands located within California.⁹ Any person violating these water quality laws may subject that person to fines imposed by the State or Regional Water Boards of up to \$10,000 for each day in which the violation occurs plus \$10 per gallon of discharge. If the matter is referred to the courts, that court may impose civil fines as high as \$25,000 for each day in which the violation occurs.¹⁰

In addition to the discharge or proposed discharge of pollutants or waste to the waters of the state, any person or organization who diverts water from a surface stream or other body of surface water or pumps groundwater from a known subterranean stream must file a statement of its diversion and use.¹¹ A Statement of Water Diversion and Use (Statement) must be filed with the State Water Board’s Division of Water Rights for each point of diversion and should identify the amount of water used during the first calendar year. The Statement must be filed with the Division of Water Rights on or before June 30 of the following year. Failure to file a Statement for each diversion that occurred after January 1, 2009, may be subject to civil liabilities that carry a maximum fine of \$1,000 plus \$500 for each day the violation continues after 30 days of the State Water Board notification of the violation.¹² For more information on how to file a Statement and when filing is required, please see:
http://www.swrcb.ca.gov/waterrights/water_issues/programs/diversion_use/index.shtml

⁷ Wat. Code, § 13050, subds. (d) and (q).

⁸ *Id.*, subd. (e) (emphasis added).

⁹ E.g., see 36 C.F.R. § 228.8 (Mining operators on Forest Service lands and shall comply with applicable federal and state water quality standards, including regulations issued pursuant to the Clean Water Act.)

¹⁰ Wat. Code, §§ 13350, 13385.

¹¹ Wat. Code, § 5101.

¹² Wat. Code, § 5107.