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THE NEW 49'ERS, INC., a California corporation, and
6 RAYMOND W. KOONS, an individual

7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
11

12 KARUK TRIBE OF CALIFORNIA and LEAF
HILLMAN,

13 Plaintiffs,

14 v.

15 CALIFORNIA DEPARTMENT OF FISH
16 AND GAME and RYAN BRODDRICK,
17 Director, California Department of Fish and
Game,

18 Defendants.
19
20

Case No. RG05 211597

**SECOND DECLARATION OF DENNIS
MARIA IN SUPPORT OF THE REPLY
MEMORANDUM IN OPPOSITION TO
PROPOSED STIPULATED
JUDGMENT OF THE NEW 49'ERS
AND RAYMOND W. KOONS**

Res. No.: 556514

Date: January 26, 2006

Time: 9:00 a.m.

Judge: Honorable Bonnie Sabraw

Place: Department 512

Action Filed: May 6, 2005

Trial Date: None Set

21 Dennis Maria, being duly sworn, deposes and says:

22 1. My qualifications and experience as a watershed biologist are biologist are
23 set forth in the Declaration filed in this action as Exhibit D to the Declaration of Neysa Fligor. In
24 particular, I have made field observations in the Klamath River and its tributaries, including the
25 Scott and Salmon Rivers, for many years, including underwater surveys of fish abundance.
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27 2. As indicated in the Declaration of James L. Buchal, I was previously
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1 unavailable to provide any Declaration in this action, but have now returned to Yreka, California.
2 Mr. Buchal correctly represented my opinions that the lower reaches of the Scott and Salmon
3 Rivers are generally too warm in the summertime to provide habitat for juvenile coho in particular
4 and to a large extent most other salmonid species, and that there is therefore no biological basis for
5 closing those portions of the river to suction dredge mining. Mr. Buchal also correctly reported my
6 opinion that I had never observed, nor have I been provided, any evidence of fish spawning in the
7 mainstem Klamath River between September 15th and September 30th that would provide a
8 biological basis for curtailing the dredging season to exclude that time period.

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10 3. In my many years of field surveys, I have observed sturgeon in the Klamath
11 River on only one occasion, and have not evidenced or received any information regarding the
12 presence of adult sturgeon spawners in the Salmon River during July or August. I note that Mr.
13 Neil Manji reports that sturgeon have been documented to occur and spawn successfully in the
14 Salmon River. I have never seen any data to support that statement in reference to sturgeon
15 spawning in July, and I specifically requested such data of Mr. Soto in late 2004 and again early in
16 2005 when I was an employee of the Department.

17 4. I am unaware of any data that would support the suggestion that sturgeon
18 actually spawn in the Salmon River in July, and fish trap data has not been provided that would
19 prove such spawning occurred in July. I have conducted numerous snorkel dive surveys on the
20 spawning grounds in July in the Salmon River for many years, and have never seen any evidence
21 of any sturgeon or adult sturgeon spawning activity in July.

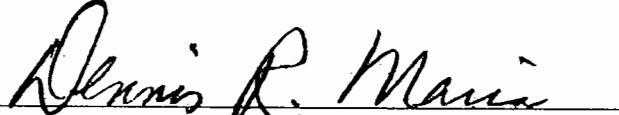
22 5. I have handled thousands of lamprey over the years, without losing a single
23 one. They are, in my professional judgment, a hardier species than salmonids, and are less likely
24 to be affected by suction dredge mining activities. I am unaware of any
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professional literature which documents any harm arising to lamprey from suction dredge mining.

6. In all my years of experience, I have never seen evidence of a single fish killed by suction dredge mining, even juvenile fish, because the Department has restricted such activity in the only period when such mining is likely to cause actual injury by digging into fish redds or areas where alevins (sac-fry) would be present. To the extent that otherwise lawful activities are to be restricted because of *potential* impacts to fish, a very great number of activities, including boating on the Klamath River, swimming in the Klamath River, any disturbance of the earth near the Klamath River, and fishing while wading in the Klamath River could all be restricted with equal biological justification.

I certify under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed on January 25, 2006.


Dennis R Maria