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8
 9 **SUPERIOR COURT OF CALIFORNIA**
 10 **COUNTY OF ALAMEDA**

11
 12 **KARUK TRIBE OF CALIFORNIA and LEAF**
HILLMAN,

13 Plaintiff,

14 v.

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

18 Defendants.

Case No. 05211597

DECLARATION OF NEIL
MANJI IN SUPPORT OF
OPPOSITION TO THE
OBJECTIONS OF THE NEW
49'ERS, INC., AND
RAYMOND W. KOONS TO
THE PROPOSED
STIPULATED JUDGMENT

Date: January 26, 2006
 Time: 9:00 a.m.
 Dept: 512 (Hayward)

The Honorable Bonnie Sabraw
 Trial Date:
 Action Filed: May 6, 2005

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DECLARATION OF NEIL MANJI IN SUPPORT OF ENTRY OF STIPULATED JUDGMENT

I, Neil Manji, declare as follows:

1. I am currently employed by the California Department of Fish and Game ("Department") as a Supervising Biologist and I participated in settlement negotiations in the above captioned matter in that capacity. The matters set forth in this declaration are within my personal knowledge and if called on to testify to these matters I would and could so testify.

2. In my current job at the Department, I serve as the Fisheries Program Manager for the eight counties that comprise the Northern California-North Coast Region ("Region") of the Department. I oversee all fisheries programs within the Region, including programs involving: 1) fisheries habitat restoration; 2) inland and anadromous fisheries resource assessment and monitoring; 3) watershed assessment; and 4) salmon, steelhead and trout hatcheries. I hold a Bachelor of Science (1986) with a major in Fisheries from Humboldt State University and have worked as a fishery biologist since 1989. I worked on the Klamath River specifically in that capacity from 1984-1986, and from 1999 through present. Among other work during that time, I conducted spawning ground surveys and monitored adult and juvenile salmonids on the mainstem and tributaries to the Klamath River. I have also reviewed and edited several manuscripts documenting research and monitoring within the Klamath River Basin. Finally, I am a member of the Klamath Basin Fishery Task Force, Klamath Fishery Management Council and Trinity River Management Council.

3. Based on my experience with the Department, and in my professional opinion as a fishery biologist, the existing regulations governing suction dredging, which are found in sections 228 and 228.5 of Title 14 of the California Code of Regulations, serve to permit suction dredging activities while, at the same time, providing protection for spawning adult salmonids, including chinook salmon, and the developing eggs and larvae of such species, which remain in the gravel following spawning. The existing regulations provide this protection by establishing watercourse-specific closures and seasonal restrictions on suction dredging activities. For example, under the existing regulations, suction dredging on the mainstem of the Klamath River is allowed from the mouth of the mainstem to the Salmon River from the fourth Saturday in May through September 30

1 (Class G); from the Salmon River upstream to 500 feet downstream of the Scott River throughout
2 the year (Class H); from 500 feet downstream of the Scott River upstream to Iron Gate Dam from
3 the fourth Saturday in May through September 30 (Class G). From Iron Gate Dam to the Oregon
4 Border, no suction dredging is permitted at any time (Class A). (See Cal. Code Regs., tit. 14, §
5 228.5, subd. (d)(49).)

6 4. The additional restrictions agreed to by the Department in the Stipulated Judgment
7 at issue in this proceeding are structured in the same manner as the existing regulations. Those
8 restrictions are detailed in Exhibit 1 to the Proposed Stipulated Judgment, and the information
9 document the Department is including with all 2006 suction dredge permit applications. A true and
10 correct copy of that document is attached hereto as Exhibit A.

11 5. From a biological standpoint, the additional restrictions were designed to substantially
12 lessen the potential for significant impacts on various fish species that suction dredging could cause
13 in the Klamath, Scott, and Salmon River watersheds. In particular, the additional restrictions will
14 protect and benefit coho salmon, steelhead, green sturgeon, and lamprey.

15 Spawning

16 6. Chinook and coho salmon and steelhead are anadromous salmonids that spawn in
17 gravel substrates throughout the Klamath Basin at various times of the year. Surveys conducted by
18 the Department and other public agencies indicate that, in the Klamath Basin, chinook salmon spawn
19 from September through December, and coho spawn from November through January. Steelhead
20 can spawn over a longer temporal period from December through June. It is critical during those
21 periods that spawning adults and redds are not disturbed by instream activities, such as suction
22 dredging. Physical disturbance of adults and redds during pre- and post-spawning activities can
23 reduce the spawning success and subsequent survival of progeny.

24 7. Based on existing evidence regarding the distribution and abundance of coho salmon
25 and steelhead in the Klamath River Basin, the additional restrictions will reduce direct conflict
26 between suction dredging activity and spawning adult coho salmon and steelhead. Further, redds
27 created on dredge tailings have been shown to scour following high flow events moreso than redds
28 created on undisturbed substrates. Redd scouring will negatively affect the survival of incubating

1 eggs. The additional restrictions are also expected to limit suction dredge-related disturbance to
 2 spawning substrates immediately prior to spawning activity. This, the Department expects that the
 3 additional restrictions will reduce the potential for such related incidental impacts.

4 **Emergence**

5 8. It can take several months for salmonid eggs to develop and for the sac fry to emerge
 6 from the gravel. Emergence of chinook fry occurs from November through March. Coho fry
 7 emergence can occur from February through June. Steelhead emergence generally occurs from April
 8 through July. As mentioned above, it is critical that the developing eggs and sac fry are not disturbed
 9 during those emergence periods. The additional restrictions are intended to reduce those potential
 10 impacts.

11 9. Summer steelhead migrate to freshwater in late spring and oversummer in cool
 12 tributaries until they spawn in early to mid-winter. Tributaries important to summer steelhead were
 13 identified and prioritized and classified accordingly based on summer steelhead abundance from
 14 several years of surveys.

15 **Juvenile Salmonids and Rearing Habitat**

16 10. Unlike chinook salmon, juvenile coho reside in tributaries for a year or more before
 17 migrating to the ocean. Due to a flexible life history, steelhead can reside for numerous years
 18 without migrating to the ocean. Oversummering habitat is thus critical to the survival of juvenile
 19 coho and steelhead. Through reports, survey data, and other information available to Department
 20 biologists and other fisheries scientists from other public agencies and Native American tribes,
 21 tributaries in which juvenile coho rear were identified. Many of the tributaries in the Klamath basin
 22 either run dry by late summer or have temperatures that exceed the lethal threshold for salmonids.
 23 Prioritization of tributaries containing critical rearing habitat was based on professional judgment
 24 and the presence of juvenile coho or steelhead and the quality of the habitat (e.g., a stream that
 25 maintains connectivity with the mainstem is of a higher quality than a stream that loses connectivity
 26 or has high temperatures). The Department agreed to close to suction dredging (Class A) high
 27 priority tributaries and habitats as part of the Stipulated Judgment to protect those habitats, as well
 28 as to eliminate direct conflict between suction dredging activity and juvenile coho or steelhead.

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Sturgeon

11. Sturgeon are long-lived anadromous fish that reportedly reach reproductive maturity at approximately 10-15 years of age. Like salmon, sturgeon spawn in fresh water streams and rivers. Green sturgeon have been documented to occur and spawn successfully in the Salmon River, a tributary to the Klamath River. Spawning occurs from April through July while emergence occurs from April through August. Again, it is critical that spawning adults and the developing eggs are not disturbed. The additional closures and seasonal restrictions will protect the peak spawning period of adult sturgeon in areas where spawning activity has been reported by Department biologists and other agency biologists and scientific literature. Recently emerged juveniles are reportedly poor swimmers that remain close to cover while undergoing a downstream migration to rearing habitats. The additional restrictions will reduce direct conflict of the early-emerged juveniles with suction dredging activity and, where tributaries are now closed to suction dredging year round, protect spawning, incubation, early life history stages, and juvenile rearing habitat.

Lamprey

12. Lamprey are also anadromous fish that spawn in the gravel of streams and rivers. Lamprey spawning occurs from April through July. It is critical that spawning adults are not disturbed. The additional restrictions will reduce or eliminate conflict between spawning lamprey and suction dredging activity, as well as provide protection for the developing eggs. The ammocetes (i.e., lamprey larvae) can remain in the gravel for several years which makes them extremely vulnerable to impacts caused by suction dredging. The additional restrictions will provide greater protection for all freshwater life history stages for lamprey.

Thermal Refugia

13. It has been documented that juvenile salmonids use cold water thermal refugia around the mouths of numerous tributaries to the Klamath, Shasta, Scott, and Salmon Rivers from about May 15 through late September. As water temperature in the mainstem of the rivers reaches critically high levels, these cold water refugia become extremely important to salmonid survival. Information from Department biologists identified thermal refugia areas during field investigations that include fish kill investigations and juvenile fish surveys. In addition, there have been several

1 studies and observations conducted by other state, federal, and tribal biologists that have identified
2 and quantified thermal refugia within the Klamath River Basin. These summer rearing areas were
3 prioritized based on a review of current thermal refugia data and information from other agency
4 biologists, as well as professional judgment from direct observations. Designated thermal refugia
5 are closed to suction dredging year round under the additional restrictions to avoid potential
6 displacement or disturbance of juvenile coho or steelhead that may result from suction dredging
7 activities.

8 I declare under penalty of perjury that the foregoing is true and correct.

9 Executed in Redding, California on January 20, 2006.

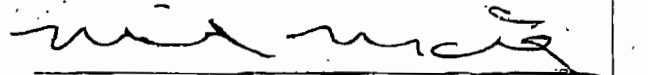
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Neil Manji

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DECLARATION OF SERVICE BY U.S. MAIL and FAX

Case Name: *Karuk Tribe of California and Leaf Hillman
v. California Department of Fish and Game, et al.*

No.: 05 211597

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On January 20, 2006, I served the attached

**DECLARATION OF NEIL MANJI IN SUPPORT OF OPPOSITION TO THE
OBJECTIONS OF THE NEW 49'ERS, INC., AND RAYMOND W. KOONS TO THE
PROPOSED STIPULATED JUDGMENT**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, California 94102-7004, addressed as follows:

Roger Beers
Law Offices of Roger Beers
2930 Lakeshore Ave., Suite 408
Oakland, CA 94610
(510) 835-9849

Neysa A. Fligor
Stein & Lubin LLP
600 Montgomery Street, 14th Floor
San Francisco, CA 94111
(415) 981-4343

James Wheaton
Environmental Law Foundation
1736 Franklin Street, 9th Floor
Oakland, CA 94612
(510) 208-4562

Additionally, I served a true copy by facsimile machine, pursuant to California Rules of Court, rule 2008, in our facsimile machine at (415) 703-5480 and faxed the documents to ((510) 835-9849, (415) 981-4343, and (510) 208-4562. The facsimile machine I used complied with Rule 2008, and no error was reported by the machine. Pursuant to Rule 2008, subdivision (e)(4), I caused the machine to print a record of the transmission, a copy of which is attached to this declaration.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 20, 2006, at San Francisco, California.

Elza Moreira
Declarant


Signature

EXHIBIT A



State of California – The Resources Agency

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>**TO:** All Suction Dredge Permittees

Attached at the end of this document are the Department of Fish and Game's current regulations applicable to suction dredging in rivers, streams, and lakes. To use the regulations, follow the steps below.

- Step 1:** Review the general regulations on suction dredging (Cal. Code Regs., tit. 14, § 228), especially the sections on "Equipment Requirements" (Cal. Code Regs., tit. 14, § 228(e)) and "Restrictions on Methods of Operation" (Cal. Code Regs., tit. 14, § 228(f)).
- Step 2:** To determine the season during which suction dredging is allowed and any special restrictions that apply to the stream, river, or lake in which you intend to suction dredge, complete the following steps:
1. Note the classifications (Classes A–G) in section 228.5(a) under "Suction Dredge Use Classifications and Special Regulations." The classifications specify the time period when suction dredging is allowed.
 2. Find the name of the river, stream, or lake in which you intend to suction dredge in section 228.5(d). Any special restrictions will be listed. If the stream, river, or lake is not listed by name in section 228.5(d), go to step 3. **If you intend to suction dredge in the Klamath, Scott, and Salmon Rivers, or their tributaries, new restrictions on suction dredging in those waters took effect on November 30, 2005. The new restrictions are discussed in the attached "Additional Information Concerning Suction Dredging."**
 3. In section 228.5(b), find the county where the river, stream, or lake you intend to suction dredge is located and note the classification. The classification for that county will govern when you may suction dredge.
- Step 3:** Carefully read the attached "Additional Information Concerning Suction Dredging" for more information.

If you have any questions regarding suction dredging, contact the Department regional office that serves the county where you intend to suction dredge. The regional offices are listed in the general and special suction dredge applications and at www.dfg.ca.gov/licensing/officelocation.html.

LAS 9008

(Rev.12/05)

Conserving California's Wildlife Since 1870

ADDITIONAL INFORMATION CONCERNING SUCTION DREDGING

1. General Information

The regulations in Sections 228 and 228.5 of title 14 in the California Code of Regulations generally govern suction dredging in California. In addition to those regulations, other laws, regulations, and policies may apply, including, but not limited to, the following:

- A suction dredge permit does not allow trespassing. Be sure you have permission from the landowner or the land managing agency before entering private and public lands.
- Substantially altering the flow, or the bed, bank, or channel, of a river, stream, or lake may require a Lake or Streambed Alteration Agreement. Contact your local Department of Fish and Game office for details.
- Waters in National Parks, National Monuments, State Parks, and designated wilderness areas may be closed to suction dredging. Contact the appropriate agency for details.
- Some waters in the San Gabriel Mountains are closed. Contact the Angeles National Forest before suction dredging in those waters.
- Portions of the Sequoia and Sierra National Forests, designated as the Kings River Special Management Area, are closed to suction dredging. Contact the appropriate U.S. Forest Service office for details.
- The Auburn State Recreation Area has special restrictions on suction dredging. Contact the Auburn State Recreation Area office for details.
- Suction dredging may be restricted in waters designated under the state and federal Wild and Scenic Rivers Acts. Waters designated under the acts include portions of the American River (North Fork and Lower American River), Big Sur River, Eel River, Feather River, Kern River, Kings River, Klamath River, Merced River, Sespe Creek, Sisquoc River, Smith River, Trinity River, and the Tuolumne River. Contact the state Resources Agency or federal land managing agency for details.

2. Special Suction Dredge Permits

The Department may not issue special suction dredge permits to suction dredge in closed areas or during closed seasons. The Office of the Attorney General has advised the Department that to the extent the regulations allow the Department to issue such special permits, they are invalid because they exceed the scope of the Department's statutory authority under Fish and Game Code

section 5653. As a result, the Department no longer accepts applications for special permits to suction dredge in closed areas or during closed seasons. However, the Department may still issue special permits to suction dredge with an intake nozzle larger than prescribed in the regulations, subject to compliance with the California Environmental Quality Act.

3. New Restrictions on Suction Dredging in the Klamath, Scott, and Salmon Rivers, and Their Tributaries

New restrictions on suction dredging in the Klamath, Scott, and Salmon Rivers, and their tributaries took effect on **November 30, 2005**. The new restrictions (attached) are the result of a lawsuit brought by the Karuk Tribe against the Department of Fish and Game. (*Karuk Tribe, et al. v. California Department of Fish and Game, et al.*, Super. Ct. Alameda County No. RG 05211597.) The Karuk Tribe filed their lawsuit in May 2005, alleging the Department was violating the California Environmental Quality Act and Fish and Game Code section 5653(b) by issuing permits to suction dredge in the Klamath, Scott, and Salmon Rivers, and their tributaries under the Department's existing regulations for suction dredging. (See Cal. Code Regs., tit. 14, §§ 228, 228.5.) The new restrictions on suction dredging in the Klamath, Scott, and Salmon Rivers, and their tributaries will substantially lessen the potential for impacts on coho salmon, a species listed as threatened under the California Endangered Species Act, and other sensitive fish species, including lamprey and green sturgeon.

Most of the new restrictions modify the existing restrictions on suction dredging in the Klamath, Scott, and Salmon Rivers, and their tributaries in the Department's suction dredge regulations. Where the new restrictions conflict with the existing restrictions, the new restrictions apply. **All persons who obtain a suction dredge permit on or after November 30, 2005, will need to comply with the new restrictions.**

NEW RESTRICTIONS ON SUCTION DREDGE MINING

EFFECTIVE NOVEMBER 30, 2005

A. THE KLAMATH RIVER AND ITS TRIBUTARIES

Suction dredge mining is NOT allowed:

1. On the main stem of the Klamath River from its confluence with the Trinity River to Iron Gate Dam *except from July 1 through September 15.*
2. On the following tributaries of the Klamath *at any time of the year.* Indian, Elk, Dillon, Independence, Bluff, Red Cap, Camp and Clear Creeks.
3. On all other Klamath River tributaries, *except from July 1 through September 15.*

B. THE SALMON RIVER AND ITS TRIBUTARIES

Suction dredge mining is NOT allowed:

1. On the main stem Salmon River from its confluence on the Klamath River to the Forks of the Salmon River (i.e., the confluence of the North and South Forks of the Salmon River) *at any time during the year.*
2. On the North and South Forks of the Salmon River, *except from July 1 through September 15.*
3. On the following tributaries of the Salmon River *at any time of the year.* Butler Creek, East Fork Knownothing Creek, Indian Creek, Kelly Gulch, Knownothing Creek, Little North Fork, Methodist Creek, Negro Creek, Nordheimer Creek, and Specimen Creek.

C. THE SCOTT RIVER AND ITS TRIBUTARIES

Suction dredge mining is NOT allowed:

1. On the Scott River from its mouth to Headwaters, *except from July 1 through September 15.*
2. On the following tributaries of the Scott River *at any time of the year.* Big Mill Creek (East Fork); Boulder Creek (South Fork), Canyon Creek, Etna Creek, French Creek, Kangaroo Creek (East Fork), Kelsey Creek, Kidder Creek, McAdam Creek, Mill Creek (Scott Bar), Mill Creek (aka Shackelford/Mill), Miners Creek, Moffett Creek, Patterson Creek, Shackelford Creek, South Fork Scott River, Sugar Creek, Tompkins Creek, Wildcat Creek, and Wooliver Creek.

D. THERMAL REFUGIA

Thermal refugia areas are located at the confluence of the tributary and the main stem of the river. Suction dredge mining is **NOT** allowed *at any time of the year* at the thermal refugia areas designated below within five hundred (500) feet up the named tributary from the confluence with the main stem and five hundred (500) feet up and downstream on the main stem from the confluence of the tributary with the main stem.

1. The thermal refugia on all direct tributaries on the Klamath, Salmon, and Scott Rivers that are closed to suction dredge mining for the entire year as listed above.
2. The thermal refugia areas at the confluence of the following tributaries with the main stem of the Klamath River: Beaver Creek, Bluff Creek, Bogus Creek, Boise Creek, Camp Creek, Clear Creek, Coon Creek, Elk Creek, Grider Creek, Hopkins Creek, Horse Creek, Hunter Creek, Independence Creek, Indian Creek, Irving Creek, Little Grider Creek, Peach Creek, Pecwan Creek, Red Cap Creek, Rogers Creek, Salmon River, Salt Creek, Scott River, Slate Creek, Swillup Creek, Thomas Creek, Ti Creek, Tom Marten Creek, Trinity River, and Ukonorn Creek.
3. The thermal refugia at the confluence of all tributaries on the North Fork of the Salmon River from Eddie Gulch to the Forks of the Salmon (i.e., the confluence of the North and South Forks of the Salmon River) and Crapo Creek on the main stem below the Forks of the Salmon River.