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 14 and Leaf Hillman

15 SUPERIOR COURT OF CALIFORNIA
 16 COUNTY OF ALAMEDA
 17 HAYWARD DIVISION

18 Karuk Tribe of California;
 19 and Leaf Hillman,

20 Plaintiffs,

21 vs.

22 California Department of Fish
 23 and Game; and Ryan Broddrick,
 24 Director, California Department of
 25 Fish and Game,

26 Defendants.

) Case No.: RG 05 211597

) DECLARATION OF LEAF HILLMAN IN
) SUPPORT OF PLAINTIFFS' RESPONSE
) TO MOTION TO INTERVENE

) DATE: January 26, 2006

) TIME: 9:00 a.m.

) DEPT: 512 (Hayward)

) JUDGE: Hon. Bonnie Sabraw

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 28
 29
 Declaration of Leaf Hillman in Support
 of Plaintiffs' Response to Motion to Intervene
 C/A No. RG 05 211597

1 **DECLARATION OF LEAF HILLMAN IN SUPPORT**
2 **OF PLAINTIFFS' RESPONSE TO MOTION TO INTERVENE**

3 I, Leaf Hillman, hereby declare:

4 1. I am one of the Plaintiffs in this action, and I am Vice-Chairman of the Plaintiff
5 Karuk Tribe of California ("Tribe"). I make this declaration in support of the Plaintiffs'
6 response to the motion to intervene filed by the New 49'ers and Raymond W. Koons
7 (hereinafter "Proposed Interveners"). In particular, this declaration responds to certain
8 statements regarding the Tribe in the papers filed by the Proposed Interveners. I have personal
9 knowledge of the matters hereinafter set forth, and would be competent to testify thereto if
10 called as a witness herein.

11 2. The papers filed in support of the motion to intervene contain a variety of
12 allegations about meetings between the New 49'ers and the Tribe and the activities of the Tribe.
13 In particular, they allege that the Tribe is acting in bad faith in filing this lawsuit because the
14 New 49'ers reached voluntary "handshake" agreements with the Tribe that "satisfied the Tribe"
15 that its concerns about suction dredge mining had been adequately addressed. See Comp. ¶ 12;
16 Declaration of David McCracken ("McCracken Dec.") ¶¶ 12 -48. Their papers also allege that
17 the Tribe's commitment to protect fish species is in conflict with "their desire to kill and eat
18 these species," based on the asserted observation that we have engaged in illegal fishing with
19 "dip nets." Comp. ¶ 29. Finally, they allege that the Tribe has engaged in "logging activities"
20 which "created thousands of times more surface disturbance" than all of the suction dredge
21 mining combined. McCracken Dec. ¶ 9. None of these allegations is true, and I will respond to
22 each of them in turn.

23 **[The New 49'ers]**

24 3. For this purpose, it is important first to understand the nature of the New 49'ers
25 and its role in suction dredge mining in areas of concern to the Tribe. I have become familiar
26 with its operations as a result of personal encounters with the "members" of the New 49'ers, the
27 statements of Mr. McCracken in the meetings he describes in his declaration, and through
28

1 examining materials posted by the New 49'ers on its website at "www.goldgold.com."

2 4. The rivers and streams of concern to the Tribe where suction dredging takes place
3 are largely within the boundaries of National Forests administered by the United States Forest
4 Service. The New 49'ers does not itself engage in mining in these areas, but leases mining
5 claims from others so that it can sell "access" to people to conduct suction dredge mining.
6 These people pay a substantial fee to become "members" of the New 49'ers "Club" in order to
7 gain access to the claims leased by the New 49'ers. In general, the members are not therefore
8 doing "assessment work" on their own mining claims. From my own observation of the
9 activities of the suction dredgers, it is apparent that this is largely a recreational endeavor for
10 them, rather than an attempt to discover or develop commercially valuable minerals. The home
11 page of the New 49'ers website invites people to become members so that they can start their
12 "gold prospecting adventure today," and claims that the New 49'ers "[p]rovides very
13 comfortable services, where whole families can prospect together in search of high-grade gold."
14 I have attached hereto as Exhibit 1 true and correct copies of the web pages of the New 49'ers
15 which contain this information.

16
17 5. Several years ago, there was a significant increase in suction dredge mining on the
18 Salmon River, where the Tribe conducts many of its traditional religious ceremonies. Also,
19 increasingly, these dredgers were disrupting our religious ceremonies and other activities - in
20 some instances with a decided militancy. Gunshots were fired in several incidents. I and other
21 members of the Tribe became concerned not only for the protection of our sacred religious
22 observances, but also for the safety of members of the Tribe. We were also increasingly
23 concerned about the impact that the suction dredging was having on the fish species inhabiting
24 the Salmon, Klamath and Scott Rivers and their tributaries, particularly those listed under
25 federal or state law as endangered or species of special concern.

26 **[The Assertions that the New 49'ers Met all of the Tribe's Concerns]**

27 6. I was present at many of the meetings described by Mr. McCracken in his
28 declaration, was briefed on the course and outcome of other such meetings, and was responsible

1 for ensuring that the Tribe's positions were accurately represented at those meetings. As Mr.
2 McCracken himself describes them, much of the discussion at those meetings concerned the
3 avoidance of the kinds of disruptive behavior that the Tribe had experienced from suction
4 dredgers. While Mr. McCracken claims in his declaration that he sought to avoid such conflicts,
5 he also was quick to state at those meetings that he had no real control over the members of the
6 New 49'ers and how or where they conduct their suction dredging.

7
8 7. Despite Mr. McCracken's alleged respect for the sensitive nature of areas where
9 Tribal members conduct religious ceremonies and other Tribal activities, the strictures that he
10 says he agreed to were not always respected by suction dredgers thereafter. The militancy of
11 some of these people continues to be of concern to the Tribe. For example, a December 7, 2005
12 posting on the Internet about this lawsuit by one of the moderators on the New 49'ers website
13 refers to "dfg rats" and "those scum of the earth Karuk's" and states that "150 years ago the
14 miners would have just killed them all for this." Another posting of December 8, 2005 from the
15 New 49'ers' website refers to playing "cowboys and indians again." Other web postings I have
16 seen are of a similar tenor. I have no way of knowing how representative these remarks are of
17 the New 49'ers membership. True and correct copies of the web pages containing the above
18 referenced postings are included within Exhibit 1.

19
20 8. Mr. McCracken's declaration describes other meetings at which the impact of
21 suction dredging on fisheries was discussed, but those were not meetings at which the Tribe
22 sought to have representatives of the New 49'ers present. Rather, the Tribe had sought to have
23 direct "government to government" consultations with representatives of the Forest Service
24 about these concerns. As a federally recognized tribe, the Karuk Tribe believes that it is entitled
25 to that kind of consultation. Nevertheless, the Forest Service insisted on having Mr. McCracken
26 present at these meetings over our objection. At the meetings I attended, the concessions by Mr.
27 McCracken to avoid suction dredging in certain areas were clearly made in an effort to induce
28 the Forest Service to act favorably on the upcoming notices required for suction dredging
activities within the National Forests. However, he repeatedly stated that he did not have control

1 over the activities of the members of the New 49'ers, and the strictures that he agreed to have in
2 fact been "violated" by some suction dredgers since that time.

3 9. At no time during any of these meetings did I say that the Tribe was "satisfied"
4 that Mr. McCracken's concessions were sufficient to alleviate our concerns for the impacts on
5 special status fish species, and to my knowledge no other representative of the Tribe made any
6 such statement. Nor was there ever any "handshake" agreement to this effect. We did not attend
7 these meetings for the purpose of "negotiating" with the New 49'ers and did not do so.

8 10. In those meetings at which fishery impacts were discussed, the Tribe consistently
9 stated its position that the Forest Service was required to conduct an environmental evaluation
10 under the National Environmental Policy Act ("NEPA") of any proposed suction dredging
11 within National Forests. When the Forest Service refused to do so, we filed suit against the
12 Forest Service in the Federal District Court for the Northern District of California, alleging a
13 failure to comply with NEPA and other statutes. Part of that lawsuit was settled by the Forest
14 Service agreeing to comply with NEPA for some actions affecting suction dredging, and the
15 remainder of the suit was ultimately dismissed by the court on the ground that NEPA and the
16 other statutes did not apply to the Notices of Intent that suction dredgers were required to file.

17 11. At the same time that the federal lawsuit was being litigated, the Tribe was also
18 convinced that the California Department of Fish and Game ("DF&G") was not administering
19 its permit program for suction dredge mining in accordance with the requirements of state law.
20 We endeavored to obtain an informal resolution of this issue with DF&G by a letter of March
21 17, 2005 to the DF&G Director (as detailed in paragraph 28 of our complaint), but when we
22 received no response to that letter, this suit was filed.

23 12. Thus, in filing these lawsuits, the Tribe has not reneged on any alleged
24 "agreement" or understanding with the New 49'ers, as Mr. McCracken's declaration seems to
25 imply. Nor has there been any "bad faith" or "collusion" in the Tribe's pursuit of the present
26 lawsuit. I have been involved in the decisions made by the Plaintiffs in pursuing this lawsuit,
27 and present for all meetings with DF&G at which settlement was discussed. From the outset it
28

1 appeared that the matter would have to be tried, and it was only in the early Fall that there
2 appeared to be a chance that it could be settled. The settlement finally reached involved
3 significant compromises by the Plaintiffs of the scope of protections we believed were
4 necessary against the impacts of suction dredging.

5 **[The New 49'ers' Allegations that the Tribe Engages**
6 **in Illegal Fishing and Harmful Environmental Practices]**

7 13. Paragraph 29 of the proposed Verified Complaint in Intervention alleges that
8 members of the Karuk Tribe have engaged in illegal fishing – not authorized by DF&G fishing
9 regulations – with dip nets below the Ishi Pishi Falls. In fact, while DF&G's Freshwater Fishing
10 Regulations provide in Sub-section 7.50(b)(91.1) of Title 14 of the California Code of
11 Regulations that “[n]o fishing is allowed from the Ishi Pishi Falls road bridge upstream, to and
12 including Ishi-Pishi Falls, from Aug. 15 through Nov. 1,” there is an explicit “exception”
13 providing that “members of the Karuk Indian Tribe listed on the current Karuk Tribal Roll may
14 fish at Ishi Pishi Falls using hand-held dip nets.”

15 14. Our fishery is a well-documented ancient fishery of the Karuk people and it is
16 conducted primarily at the falls which is within the Karuk aboriginal territory at *katimin* and
17 *utimin*. The Karuk cultural belief that *katimin* is the center of the universe may be one of our
18 people's most sacred tenets. The ceremonial fishery is a central element to our culture and goes
19 to the essence of life for Karuks. Many of our people believe that eradication of the fishery
20 would mean the end of life for Karuks. It is impossible to separate fishing at the falls from the
21 religious practices of the Karuk people, making the fishery central to all that is Karuk
22 historically, culturally, and ceremonially. Uninterrupted subsistence and ceremonial fishing are
23 the primary reasons the Karuk people have survived as a people with an intact culture. The
24 continuous practice of the traditional ceremonial and subsistence fishery continues to be
25 acknowledged by the United States Department of the Interior, the Department of Agriculture,
26 the Environmental Protection Agency, the State of California, and other tribes on the Klamath
27 River. The Karuk Tribe is fully recognized as a federal-tribal fishery resource co-management
28

1 agency within the Klamath River Basin.

2 15. In his declaration, Mr. McCracken also alleges that the Tribe has engaged in
3 "logging activities" which "created thousands of times more surface disturbance" than all of the
4 suction dredge mining combined. McCracken Dec. ¶ 9. The activity described by Mr.
5 McCracken was a multi-year effort by the Tribe to de-commission old logging roads to prevent
6 catastrophic washes of sediment from these roads into streams during heavy rainstorms. Its
7 purpose was to aid in protecting fisheries' habitat, and it is only one example among many of
8 the Tribe's activities to this end. It is surprising that Mr. McCracken would attempt to
9 characterize this as a harmful environmental activity.

10 16. The papers submitted by the Proposed Interveners also contain assertions about
11 the absence of any environmental harm to fisheries from suction dredging and, indeed, claim
12 that it benefits fisheries. These assertions are contradicted by numerous studies and expert
13 opinions. To the extent that these kinds of allegations are made in the Proposed Interveners'
14 opposition to the entry of the Stipulated Judgment herein, Plaintiffs will respond appropriately
15 at that time.

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

17 Executed this 12th day of January, 2006 at Happy Camp, California.

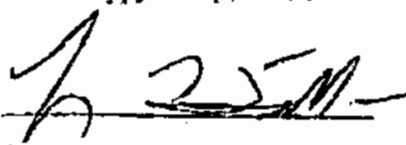
18
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21 
22 Leaf Hillman

EXHIBIT 1

60 Miles of Mining Property

- ◆ Information About the Club
- ◆ Events & Schedule
- ◆ More About Gold
- ◆ Site Index
- ◆ Learning Through Experience
- ◆ About the Area
- ◆ How to Find Gold
- ◆ Legal Affairs
- ◆ Camping & Lodging
- ◆ What's New
- ◆ Gold Mining Adventures
- ◆ Join
- ◆ Mining Properties
- ◆ Products
- ◆ Message Forums
- ◆ Contact

Happy New Year!!

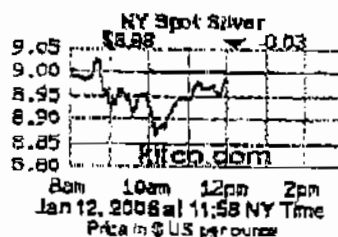
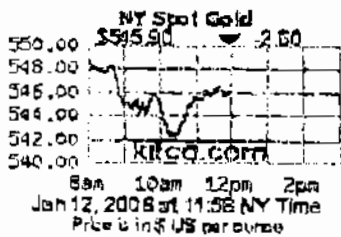


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People online (in the last 15 minutes) - 0 members, 0 anon and 1 guests. (Most ever was 15 at 02:39:35 Sun Nov 23 2003)

Pages: [1 2]

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49'er Mike

Karuk win- Klamath Basin miners lose! (21:42:59 Wed Dec 7 2005)

[Interact](#)

Offline
330 posts
Moderator



Reply

Well, talk about an "end-around"! Unknown to anyone in the dredging industry (at least that I am aware of), the Karuk Tribe sued the State of California Department of Fish & Game on May 5th of this year. Filed in Superior Court of California, Alameda County case #RG-05211597, I understand the suit was in regards to the handling of suction dredge permits and the Endangered Species Act along with 5653B regs. I have not seen the actual suit or settlement, yet but the following was explained to me this morning by Lori Heier of the DFG. (She by the way was a very nice person to talk with and had no input in the decision made.) The following is not a complete list but is the settlement reached in a nutshell:

Klamath River, Salmon River, and Scott River only open to dredging 7/1 thru 9/15. Open tributaries those same dates. Indian Creek, Elk Creek, Independence Creek and Clear Creek closed to any dredging. Dredging closed 500 feet upriver and 500 feet downriver from any thermal refuga(sp?) (read that as any creek or spring.) I will post more on this as I get the info.

Mike


(49er) Mike
New 49'ers Member #191

desert_rat Re: Karuk win- Klamath Basin miners lose! (23:10:07 Wed Dec 7 2005)

Offline
12 posts
Reply
Bad news! Will it be enforced for the coming season? Or is it unknown at this point? Thanks for the update,talk about being blindsided

Del

Jim_Alaska Re: Karuk win- Klamath Basin miners lose! (01:38:21 Thu Dec 8 2005)

Offline
374 posts
Administrator

Reply
As far as anyone knows at this point it begins jan. 1, 2006. We need to make ALL miners aware of this travesty. The Internet is great, but not all miners are online. We are going to need all miners everywhere to be aware and rise up in indignation.

I don't know about anyone else, but I for one have had enough of one small tribe trying to run roughshod over a whole industry.

Stay tuned.....

Jim (Alaska)
Administrator
New 49'ers Member #104
[Jim Foley's Alaska](#)
jfoley8@hotmail.com

Rattlesnake_Jim Re: Karuk win- Klamath Basin miners lose! (01:54:31 Thu Dec 8 2005)

Offline
1 posts
Reply
I haven't played cowboys and indians since I was a kid.
Hummm!
RSJ

MarshallAK Re: Karuk Win- Klamath Basin miners lose! (03:21:41 Thu Dec 8 2005)

Offline
24 posts
Reply
That's sad. The decision needs to be appealed or challenged somehow, especially seeing as how those of us affected were never informed of the suit. Goes to show you how important they consider dredgers to be: not a one of us was told until too late.

Marshall

skunkpemining Re: Karuk win- Klamath Basin miners lose! (03:40:43 Thu Dec 8 2005)

Offline
32 posts
Reply
This could turn around and bite them in the foot. I have a vision of a longer season on class G sections!

The first reaction of course is anger ! Now with a little cooling off time, I am still angry! Okay,now I am more calm.

[Go back to previous topic](#)

Forum name: Prospecting Forum

Topic subject: RE: KARUK WIN, Klamath Basin dredgers lose!

Topic URL: http://www.49ermike.com/dc/dcboard.php?az=show_topic&forum=181&topic_id=64504&msg_id=64511

64511, RE: KARUK WIN, Klamath Basin dredgers lose!

Posted by Reed Lukens, Wed Dec-07-05 05:03 PM

And it happened behind our backs. That tells you a lot about the low life judge and dfg rats that concealed it from public view. The fact is THIS SUCKS! Those guys going behind our backs was just the only way that those scum of the earth Karuk's could win this. We basically just got caught with our pants down... 150 years ago the miners would have just killed them all for this. I can't wait to hear more on this.