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MEMORANDUM

To: Dave McCracken
From: James L. Buchal
Date: May 23, 2009
Re: Litigation Summary

Recent developments in the litigation have been fast and furious. After many months of inaction, the Karuk Tribe reached yet another private side deal with the California Department of Fish & Game (hereafter, the “Department”) to schedule a hearing for a preliminary injunction motion to shut down suction dredge mining on June 9th. The side deal of the Tribe and Department limited the brief in opposition to the Tribe’s motion to only twenty pages, manifestly insufficient to address the long and complicated history of the two cases.

The Tribe and Department presented their deal to the court on April 24th, while the assigned judge in the case, Judge Frank Roesch, was on an extended vacation. We opposed the schedule, because it did not allow sufficient time to receive responses to discovery before our proposed May 18th deadline to oppose the injunction. However, the substitute judge enacted the schedule and limitations sought by the Tribe and Department.

We then served discovery demands on the Department and Tribe anyway, with a motion to accelerate the responses, other procedural improvements in the case. The Tribe and Department opposed our motion, and the same substitute judge denied it. Although claiming to represent environmental interests, the Tribe and its environmentalist allies actually opposed consolidation of the two cases, which under California’s peculiar rules has roughly doubled the paper volume of all filings—and the Department’s new lawyer actually demanded sanctions for our having presenting the consolidation question to the Court on an accelerated basis over his objection.

We next moved to hold the Department in contempt of court for failure to complete its CEQA obligations, filing extensive pleadings laying out the history of the case. With considerable difficulty, we managed to get that motion scheduled for the same day as the preliminary injunction motion, which should afford the judge the option of telling the Department to do its job, rather than shut down the miners.

Thereafter, we filed extensive pleadings opposing the Tribe and environmentalists’ motion for a preliminary injunction, together with a separate motion to strike most of the evidence presented by the Tribe and environmentalists, which consisted largely of unsworn e-mails and letters.

A reform group of Karuk Tribe members has also emerged, filing intervention papers which outline the unsavory history of the Tribe’s current leadership, and the degree to which the Tribe’s entire jihad against suction dredge mining is actually motivated by a desire to protect marijuana growers, rather than protecting the environment.

The Department and Tribe then responded with another side deal, pursuant to which the Tribe attacked our contempt motion against the Department as insufficient, and attacked the reform group's intervention papers. We cross-moved to bolster the contempt motion, and we also assisted the reform group in resisting the Tribe's attack. After a third lengthy hearing before a second substitute judge, the judge denied the Tribe's motions, and denied ours as well, thus leaving our motion to hold the Department in contempt on the calendar for June 9th. This has provoked more dire threats of sanctions from the Department's new lawyer. Most recently, the Tribe and environmentalists threaten to return to court unless we stipulate to give them more time to respond to the discovery requests that we served upon them (responses are due June 1st).

These developments tend to continue to confirm the Tribe and its allies are working hand in glove with the Department against suction dredge mining interests, with the ultimate goal of shutting down the mining pending a CEQA process that the Department manifestly has no intention of completing in any timely fashion.

I expect that we will remain in a continuous, heated battle over all of these connected issues right up to the point where the judge decides what to do about the Tribe's pending motion for a preliminary injunction and our request to hold the Department in contempt (or otherwise require them to get moving on the CEQA process). If the injunction is granted, there is some possibility of seeking a related injunction in federal court barring the State of California from enforcing any moratorium on suction dredge mining.

I appreciate you and your many supporters for trusting in me and my staff to represent the interests of small-scale gold miners in this California litigation. If I can answer any further questions, please do not hesitate to contact me.