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

ENDORSED  
FILED  
ALAMEDA COUNTY

JAN 19 2006

CLERK OF THE SUPERIOR COURT  
BY DOROTHY DUCKETT, DEPUTY

11  
12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF ALAMEDA

14 UNLIMITED CIVIL JURISDICTION

15 KARUK TRIBE OF CALIFORNIA and LEAF  
16 HILLMAN,

17 Plaintiffs,

18 v.

19 CALIFORNIA DEPARTMENT OF FISH  
20 AND GAME and RYAN BRODDRICK,  
21 Director, California Department of Fish and  
22 Game,

23 Defendants.

Case No. RG05 211597

**THIRD DECLARATION OF DAVID  
MCCRACKEN IN SUPPORT OF THE  
MOTION FOR LEAVE TO  
INTERVENE REPLY  
MEMORANDUM OF THE NEW  
49'ERS, INC. AND RAYMOND W.  
KOONS**

Res. No.: 550443

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

24 David McCracken, being duly sworn, deposes and says:

25 1. I am President of The New 49'ers, Inc., a California corporation that is based in  
26 Happy Camp, California, Siskiyou County, and make this Declaration in further support of the  
27 motion of The New 49'ers, Inc. and Raymond W. Koons to intervene in this action, and more  
28 specifically in response to the Declaration of Leaf Hillman executed January 12, 2006.

2. In Mr. Hillman's Declaration, at ¶ 9, Mr. Hillman makes the statement that at no  
time did any representative of the Karuk Tribe express satisfaction with or shake hands upon the

1 agreements that were made between the Tribe, the U.S. Forest Service and the Miners. This  
2 statement is untrue. I have outlined numerous meetings in my first Declaration, during which time  
3 representatives of the Karuk Tribe expressed satisfaction with the mitigations we agreed to.

4 3. For example, during a meeting which occurred on or about July 2, 2003, Karuk  
5 lead fish biologist, Toz Soto, expressed satisfaction with Miner's agreement to prevent mining  
6 within certain distances of specific cold water tributaries to the Salmon River. According to Mr.  
7 Soto at that meeting, keeping dredges out of those specific areas was the only important concern  
8 he had about Miners' activities at that time. My impression was that Mr. Soto was representing  
9 the Karuk Tribe in that meeting, and that he was entirely satisfied that we had mitigated the  
10 concerns that he expressed.

11 4. There was another important meeting between Miners and the Tribe which took  
12 place during the 2<sup>nd</sup> week of July, 2003. We met at the Somes Bar store, and then moved to the  
13 George Geary Picnic area. I was present to represent the miners, along with our Director of  
14 Internal Affairs. Representing the Tribe were Harold Tripp, Sandy Tripp, Leaf Hillman (Vice  
15 Chairman of the Tribe), Norman Goodwin (acknowledged as one of the Tribe's spiritual leaders)  
16 and several others. Numerous concerns were discussed and resolved during the meeting. I have  
17 outlined those concerns and how they were mitigated in my earlier Declaration. At the end of that  
18 meeting, my impression was that each representative of the Karuk Tribe was satisfied that the  
19 Miners had mitigated every expressed concern to their satisfaction, except that we still needed to  
20 establish a boundary to an established sensitive cultural area along the Salmon River. When the  
21 meeting was over, Harold Tripp and I went together, and he showed me where he believed the  
22 boundary was located. We picked out a tree together where I could post a boundary sign for our  
23 mining claim in that area. He expressed satisfaction with that location. We shook hands; which to  
24 me, was an expression of agreement and commitment. I posted the boundary sign in that location.  
25 It has been in place ever since.

26 5. During a meeting between myself and Tribal leaders, Leaf Hillman and Norman  
27 Goodwin, in September of 2003, I was asked if the Miners would refrain from actively mining  
28 along a several-mile stretch of the Klamath River downstream of Clear Creek. Mr. Goodwin

1 expressed to me that this was another culturally-sensitive area to the Tribe. I readily agreed to  
2 remove our mining signs from this extensive area of mining claims that we were actively leasing,  
3 and also remove the area from our maps and web site. My impression was that these two leaders  
4 of the Karuks were very satisfied that I agreed to their request. We shook hands at the end of our  
5 meeting. To me, the expression of satisfaction and shaking of hands meant that we were in  
6 agreement, that the Miners were cooperating with the important concerns being expressed by the  
7 tribe, and that we thereafter were committing to not actively mine on one rich portion of the claims  
8 which we were leasing. We did not ask for anything in return.

9         6.       The Forest Service organized a very substantial meeting at their meeting-hall in  
10 Orleans on April 20, 2004. Tribal representatives were present. Many issues were discussed.  
11 After the main meeting was over, Leaf Hillman, myself and several members of the U.S. Forest  
12 Service sat down together in an effort to mitigate acceptable solutions that could resolve  
13 immediate concerns. At that meeting, Leaf Hillman was clearly representing a leadership role for  
14 the Tribe. He made it abundantly clear that any tribal decisions concerning biology had to be made  
15 by his staff in the field. So we set an appointment to meet in the field with his staff and attempt to  
16 work out solutions that would be acceptable to them. Leaf Hillman made it very clear that he  
17 would allow his staff to make final decisions on behalf of the tribe. These were statements made  
18 in the presence of the Miners, USFS executives and several of the Karuk biological staff members.  
19 My understanding of Mr. Hillman's statements was that the Tribe was formally committing to  
20 whatever was worked out in the field-meeting that would follow between the Miners, Karuk  
21 Biologists and the USFS.

22         7.       The follow-up meeting in the field happened on April 23, 2004. District Ranger  
23 William Hietler and his minerals officer were present to represent the Forest Service. Three  
24 fisheries specialists (including fishery biologist, Toz Soto) and Sandy Tripp were present  
25 representing the Tribe. During the course of the meeting, Mr. Soto and the other Karuk  
26 representatives showed us every concern that had concerning suction dredge mining along the  
27 Salmon River. My understanding was that we mitigated operational concessions for every  
28 concern that was raised by the Karuks. The reason I believe this is because the purpose of the

1 meeting was to establish operational criteria which the Miners could propose to the USFS for the  
2 2004 dredging season and District Ranger, William Hietler, would consider as not creating a  
3 significant disturbance upon surface resources. This decision was being balanced against concerns  
4 expressed by the Tribe. So at each location we visited along the river where the Karuks expressed  
5 concern, we worked out solutions that we all could live with before moving on to the next  
6 location. Karuk representatives, Toz Soto and Sandy Tripp expressed satisfaction to each solution  
7 that we mitigated. My impression was that they had the authority to make those decisions on  
8 behalf of the Tribe. We all shook hands and expressed satisfaction at the end of the meeting that  
9 we had cooperated together to work things out. After the meeting was over, William Hietler  
10 expressed to the Miners that if we proposed mining activity within the limits of the solutions we  
11 mitigated together on that day, he would not consider that our activity would rise to the level of  
12 creating a significant surface disturbance.

13 8. The mitigated solutions made by Miners to resolve concerns expressed by the  
14 Karuk Tribe add up to very substantial concessions that we have made in an attempt to help  
15 preserve the values which they hold dear. These concessions were made on the premise that the  
16 mitigated solutions would satisfy their concerns. In our view, these were agreements that were  
17 made in good faith. We are miners. We just want to be left alone to do our activity in such a way  
18 as to minimize any important adverse impacts upon other people or the environment. We made  
19 these concessions on the premise that if we altered the way we were mining according to the  
20 requests made by the Karuk Tribe, in turn, they would be satisfied and we could live and work  
21 alongside each other in Siskiyou County.

22 9. Mr. Hillman's Declaration expresses concern about the potential for violence  
23 against Tribal members by gold miners. Gold miners are also concerned about violence against  
24 themselves (and their equipment out on the river) by Tribal members and/or the marijuana-  
25 growing community that also occupies the National Forest. Mr. Hillman and I have had  
26 discussions about this in several of our meetings, and we have firmly agreed together that we  
27 would do everything possible to prevent any and all violent or illegal activity. I cannot control  
28 every action or statement made by the members of our mining organization any more than Mr.

1 Hillman can control all the actions of his Tribal members. However, our organization does have a  
2 published set of Operational Guidelines and Rules. All members are required to sign a formal  
3 Agreement to follow our Rules. These rules can be located on our web site at  
4 <http://www.goldgold.com/rules.htm> (attached as Exhibit A); location-specific rules are included  
5 property-by-property web pages, such as <http://www.goldgold.com/claims/sa4.html> (attached as  
6 Exhibit B), which describes a genuine thermal refuge for spring chinook at the mouth of  
7 Morehouse Creek and forbids mining there, consistent with our agreement with the Tribe. We  
8 have a full-time Internal Affairs Director whose job is to coordinate with law enforcement, local  
9 communities and the Karuk Tribe to investigate any instances of rule or law violation by our  
10 members. We do not tolerate rule or law-breakers in our organization, and have in the past taken  
11 steps up to and including termination of a member's membership.

12 10. The statements quoted Mr. Hillman's Declaration refers to in ¶ 7 were taken from  
13 open communication forums on the Internet. Here again, we do not control what people say on an  
14 open forum, nor do we even know who communicates there. However, we do control what  
15 remains on our own communication forum. Statements such as the ones Mr. Hillman cited are  
16 removed as soon as they are brought to our attention. While we do not control other forums where  
17 some of Mr. Hillman's quotes came from, I happen to know that those forums also have a policy  
18 of removing offensive material.

19 11. To my knowledge, there has not been a single instance of violence between Miners  
20 and the Karuk Tribe. While no one knows for certain, we suspect that the shots that were fired  
21 over one of our New 49'er camping areas in the middle of the night were not from members of the  
22 Karuk Tribe, but members of the local pot-growing community that were trying to scare the  
23 miners away. I do agree with Mr. Hillman's concern in this matter, but do not believe that a  
24 problem of violence or disrespect exists between the Tribe and Miners as a whole. As a matter of  
25 policy, we will not allow violence or disrespect to take hold within our own organization.

26 12. Mr. Hillman has expressed that he does not believe that New 49'ers has a real  
27 property interest in the mining claims that we manage in Siskiyou County. New 49ers has a real  
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1 property interest, in that all or most of the claims we make available to our members are formally  
2 leased.

3 13. All members of our organization gain access to the mining properties we control  
4 through a "Miner's License." This Miners License conveys a right to extract the minerals from  
5 our properties under a strict set of conditions. These conditions are outlined in our Rules and  
6 within the Claims Guide material that we publish. A copy of our miner's license can be found at  
7 <http://www.goldgold.com/memberagreement.htm> (attached as Exhibit C). Mining associations  
8 have long been recognized in both State and federal law. Federal mining claims can be filed by  
9 mining associations of up to 8 persons for the purpose of claiming larger areas. Mining claims are  
10 real property which can be sold, leased or willed to others just like any other real property.

11 14. Because of the heightened level of federal, state and local regulatory burdens and  
12 cost upon prospecting and mining activity, the most practical way many modern prospectors can  
13 participate in the activity is by joining up with others to pool resources so they can buy or lease  
14 mining claims and hire specialists to undertake the substantial task of negotiating operational  
15 terms with the numerous authorities which have a direct interest. This includes: BLM, USFS,  
16 Army Corps, EPA, NOAA Fisheries, State DFG, State Water Quality Control, County Planning  
17 Department, and the Karuk Tribe of California.

18 15. Associations such as ours are also formed for the purpose of protecting the  
19 individual rights of miners under the various laws. All members of the New 49'er mining  
20 association look to our organization to challenge unreasonable over-regulation of the activity, and  
21 many members make financial contributions to the organization's legal fund specifically for this  
22 purpose.

23 16. Mr. Hillman also stated his belief that our organization does not engage in mining  
24 activity, but this is not true. The New 49'ers does organize and participate in "Joint Mining  
25 Ventures" on the mining claims that we lease, have done so for many years, did so in 2005, and  
26 have roughly 11 joint ventures scheduled for the upcoming 2006 season. The schedule can be  
27 found at [http://www.goldgold.com/events schedule.html](http://www.goldgold.com/events%20schedule.html) (attached as Exhibit D). A joint mining  
28 venture is an event similar to a limited partnership that allows a group of people to come together

1 to conduct a specific mining project. In our case, the gold recovered by the project(s) is equally  
2 split up amongst each of the active participants. A generalized copy of the Miners' formal joint  
3 venture agreement can be found at <http://www.goldgold.com/studentagreement.htm> (attached as  
4 Exhibit E). I personally hold the California suction dredge mining permit for such ventures as  
5 General Manager of each project on behalf of The New 49'ers, Inc.

6 17. Mr. Hillman's Declaration confuses the right to prospect the public lands with  
7 recreational enjoyment. The mining law allows all American citizens to prospect for and lay claim  
8 to valuable mineral deposits whether they enjoy the activity or not. There are no provisions in the  
9 law saying that prospectors are not allowed to enjoy the activity, to bring the family along, or only  
10 prospect on a part-time basis. Those persons belonging to our organization would have every  
11 right to prospect for minerals on the public lands whether or not they belong to our association and  
12 regardless of what their personal motivations are. The reason they join our organization is that  
13 their combined resources with other prospectors creates more opportunity for them at lower cost.  
14 They get more for their money. These are civil matters between individuals. They have nothing  
15 to do with the basic rights of Americans to explore for minerals on the public lands.

16 18. Mr. Hillman's Declaration appears to indicate that he misunderstood my statements  
17 about the Tribe's road de-commissioning projects or ongoing fishing programs. My declarations  
18 were not attempting to express that I personally have a problem with those Tribal programs. I was  
19 only attempting to put the Tribe's ongoing programs in perspective to what the Miners are doing.  
20 While the road decommissioning program may be beneficial on the long term, it still remains true  
21 that the Tribe's extensive use of mechanized mining equipment creates so much more disturbance  
22 to surface resources than suction dredge mining, that the differences are beyond comparison. The  
23 Tribe seeks to have dredging seasons drastically reduced or eliminated altogether (we assume)  
24 because they are concerned that our activity could harm redds (nests in the gravel containing  
25 salmon eggs). But every female the Karuks net out of the river to eat is one less redd in the  
26 system. It is not that we are objecting to the Karuks taking these fish. It is that we do not know of  
27 a single instance where suction dredging activity has ever taken a fish or harmed a redd. So we  
28 are objecting to the Karuks and Department deciding in secret to drastically change

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the regulations that control our whole industry without so much as a single notice or explanation to our industry.

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

Dated: January 18, 2006

*David McCracken*  
David McCracken