

11/28/05

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA  
HAYWARD DIVISION

Karuk Tribe of California;  
and Leaf Hillman,

Plaintiffs,

vs.

California Department of Fish  
and Game; and Ryan Broddrick,  
Director, California Department of  
Fish and Game,

Defendants.

)  
) Case No.: RG 05 211597  
)  
) JOINT STIPULATION FOR ENTRY OF  
) JUDGMENT  
)  
)  
) DEPT: 512 (Hayward)  
) JUDGE: Hon. Bonnie Sabraw  
)  
)  
)  
)  
)  
)



11/28/05

1           2.     No Admission of Liability: Defendants expressly deny fault or liability for any  
 2 and all claims made in the Complaint in this matter. The Parties expressly acknowledge that this  
 3 Joint Stipulation and Stipulated Judgment are the result of a compromise of disputed civil claims  
 4 and that there is no adjudication of any claim.  
 5

6           3.     Entry of Stipulated Judgment: The Parties stipulate and agree to the entry by the  
 7 Alameda County Superior Court of a Stipulated Judgment in this action in the form attached  
 8 hereto as Exhibit A. Upon execution of this Joint Stipulation by the Parties and their counsel, the  
 9 Parties agree within 10 days thereafter to jointly present this Joint Stipulation to the Court with a  
 10 request that the Court enter the Stipulated Judgment in the form attached hereto as Exhibit A.  
 11 The Parties agree to cooperate in taking whatever further action is necessary and in preparing  
 12 such further documents as are necessary to secure the Court's entry of Exhibit A. The Parties  
 13 further agree to make such changes in Exhibit A as may be requested or required by the Court for  
 14 its issuance, so long as such changes do not alter the basic terms of the agreement between the  
 15 Parties. In the event that the Court requires any changes to Exhibit A that would alter the basic  
 16 terms of the agreement between the Parties, the Parties agree to negotiate in good faith to  
 17 determine if they can stipulate to such a change in Exhibit A.  
 18  
 19  
 20

21           4.     Joint Stipulation and Stipulated Judgment Does Not Bind Any Other Agency:  
 22 This Joint Stipulation and Stipulated Judgment is made and entered into by and on behalf of the  
 23 California Department of Fish and Game and Director Ryan Broddrick only. Except as  
 24 expressly provided in this Joint Stipulation and Stipulated Judgment, nothing in this Joint  
 25 Stipulation and Stipulated Judgment is intended or shall be construed to preclude the Attorney  
 26 General from exercising his or her authority as an independent Constitutional officer under any  
 27 law, statute, or regulation. Furthermore, except as expressly provided in this Joint Stipulation  
 28

11/28/05

1 and Stipulated Judgment, nothing in this Joint Stipulation and Stipulated Judgment is intended  
2 or shall be construed to preclude any state, local, or federal agency, board, department, office,  
3 commission, or entity from exercising its authority under any law, statute, regulation, or  
4 ordinance.  
5

6 5. Plaintiffs' Release of the Defendants: Except as provided in Paragraph 6 below,  
7 the Plaintiffs shall and do release, discharge and covenant not to sue Defendants for any and all  
8 claims or causes of action alleged in the Complaint herein, provided that Plaintiffs retain their  
9 rights to enforce the terms of this Joint Stipulation and the Stipulated Judgment and provided  
10 further that the foregoing release in this Paragraph 5 shall not be effective until the termination of  
11 the injunction against DF&G in the Stipulated Judgment. In the event that DF&G adopts  
12 amendments to its regulations which provide for the closures of the water bodies in Exhibit 1 of  
13 the Stipulated Judgment for periods identical to or longer than the periods set forth therein,  
14 Plaintiffs agree not to file suit against Defendants challenging such amendments under either  
15 CEQA or the Administrative Procedure Act.  
16  
17

18 6. Reservation of Rights: Plaintiffs and Defendants reserve their respective rights to  
19 initiate judicial or administrative action against each other for any matter not covered by this  
20 Joint Stipulation. Nothing in this Joint Stipulation shall constitute or be construed as a  
21 satisfaction or release from liability for any conditions or claims arising as a result of past,  
22 current, or future operations or activities of Defendants that are not matters covered by this Joint  
23 Stipulation. Nothing herein is intended or shall be construed as a waiver of Plaintiffs' right to  
24 institute an action to compel compliance with this Joint Stipulation or the Stipulated Judgment of  
25 the Court when entered. In addition, nothing in this Joint Stipulation is intended or shall be  
26 construed to preclude Plaintiffs from exercising their rights under any statute, regulation,  
27  
28

11/28/05

1 ordinance, or other law, including Plaintiffs' right to participate in any process held pursuant to  
2 the Administrative Procedure Act to amend the suction dredge mining regulations.

3 7. Interpretation of Stipulation: This Joint Stipulation shall be deemed to have been  
4 drafted equally by the Parties, and shall not be interpreted for or against either Party on the  
5 ground that any such Party drafted it. This Joint Stipulation and Stipulated Judgment shall be  
6 governed by and construed in accordance with the laws of the State of California.

7 8. Integration: This Joint Stipulation contains all of the terms and conditions agreed  
8 upon by the Parties relating to the matters covered by this Joint Stipulation and Stipulated  
9 Judgment, and supersedes any and all prior and contemporaneous agreements, negotiations,  
10 correspondence, understandings, and communications of the Parties, whether oral or written,  
11 respecting the matters covered by this Joint Stipulation and Stipulated Judgment. This Joint  
12 Stipulation and Stipulated Judgment may be amended or modified only by a writing signed by  
13 the Parties or their authorized representatives, and then by order of the Court.

14 9. Knowing, Voluntary Agreement: Each Party to this Joint Stipulation  
15 acknowledges that it has been represented by legal counsel, and that each Party has reviewed,  
16 and has had the benefit of legal counsel's advice concerning all of the terms and conditions of  
17 this Joint Stipulation and Stipulated Judgment.

18 10. Authority to Execute: Each Party to this Joint Stipulation represents and warrants  
19 that the person who has signed this Joint Stipulation on its behalf is duly authorized to enter into  
20 this Joint Stipulation, and to bind that Party to the terms and conditions of this Joint Stipulation.

21 11. Notice Information/ Party Communications: Whenever, under the terms of this  
22 Joint Stipulation or the Stipulated Judgment of the Court, notice is required to be given or  
23  
24  
25  
26  
27  
28

11/28/05

1 documents to be served on or to either Party or Parties, the communication shall be directed to  
2 the following persons:

3 For Plaintiffs:

4 Leaf Hillman  
5 Karuk Tribe of California  
6 64236 - 2nd Avenue  
7 P.O. Box 1016  
8 Happy Camp, CA 96039

9 With copies to:

10 James R. Wheaton  
11 Iryna A. Kwasny  
12 Joshua J. Borger  
13 Environmental Law Foundation  
14 1736 Franklin Street, 9<sup>th</sup> Floor  
15 Oakland, CA 94612

Roger Beers  
2930 Lakeshore Ave., Suite 408  
Oakland, CA 94610

16 For Defendants:

17 Don Koch, Regional Manager  
18 Northern California – North Coast Region  
19 California Department of Fish and Game  
20 601 Locust Street  
21 Redding, CA 96001

22 With copies to:

23 Banky Curtis, Deputy Director  
24 Habitat Conservation Division  
25 California Department of Fish and Game  
26 1416 Ninth Street, 12<sup>th</sup> Floor  
27 Sacramento, CA 95814

Ann S. Malcolm, General Counsel  
Office of the General Counsel  
California Department of Fish and Game  
1416 Ninth Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

28 Mark W. Poole  
29 California Department of Justice  
30 455 Golden Gate Avenue, Suite 11000  
31 San Francisco, CA 94102

32 12. Attorneys' Fees and Costs: DF&G agrees to pay Plaintiffs' reasonable attorneys'  
33 fees and costs incurred in this action. The Parties will negotiate in good faith in an attempt to  
34 reach agreement on the amount of such fees and costs, with the object that such fees and costs

11/28/05

1 can be included in a proposed order to be submitted to the Court concurrently with the  
 2 submission of the Joint Stipulation and Exhibit A. In the event that the Parties are unable to reach  
 3 agreement on the amount of such fees and costs (either before or after such submission),  
 4  
 5 Plaintiffs will file a motion to have the Court determine the amount of reasonable fees and costs  
 6 to be paid by Defendant DF&G. DF&G shall pay such attorneys' fees and costs within 90 days  
 7 of entry of judgment, consistent with Government Code section 948, in so far as the section  
 8 applies, if an agreement has been reached between the Parties before then or within 90 days of a  
 9 subsequent Court award of such fees and costs. The Parties without court order may agree to  
 10 extend the time for DF&G to pay such attorneys' fees and costs.  
 11

12 13. Counterparts: This Joint Stipulation may be executed by the Parties in  
 13 counterpart originals with the same force and effect as if fully and simultaneously executed as a  
 14 single, original document.  
 15

16 14. Waiver of Appeal Right; Reservation of Right to Appeal Collateral Orders: The  
 17 Parties agree to waive their right to appeal from this Joint Stipulation and Stipulated Judgment.  
 18 Nothing in this Joint Stipulation and Stipulated Judgment shall be construed as a waiver of any  
 19 Party's right to appeal from an order that arises from an action to enforce the terms of this Joint  
 20 Stipulation and Stipulated Judgment.  
 21

22 15. Effective Date: The effective date of the Stipulated Judgment entered pursuant to  
 23 this Joint Stipulation shall be the date that it is signed by the Judge of the Superior Court.  
 24

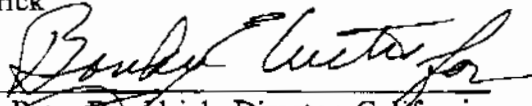
25 16. No Third Party Benefits: This Joint Stipulation and Stipulated Judgment is made  
 26 for the sole benefit of the Parties, and no other person or entity shall have any rights or remedies  
 27 under or by reason of this Joint Stipulation and Stipulated Judgment, unless otherwise expressly  
 28 provided for herein.

11/28/05

IT IS SO STIPULATED.

Dated: November 30, 2005

California Department of Fish and Game and Ryan Broddrick

By:   
Ryan Broddrick, Director, California Department of Fish and Game

Dated: December \_\_, 2005

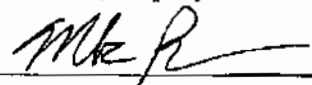
Karuk Tribe of California and Leaf Hillman

By: \_\_\_\_\_  
Leaf Hillman, Vice Chairman,  
Karuk Tribe of California

APPROVED AS TO FORM:

Dated: December 1, 2005

Bill Lockyer, Attorney General of the State of California  
Mary Hackenbracht, Senior Assistant Attorney General  
John Davidson, Supervising Deputy Attorney General  
Mark W. Poole, Deputy Attorney General

By: 

Attorneys for Defendants California Department of Fish and Game and Ryan Broddrick

Dated: December \_\_, 2005

James R. Wheaton  
Iryna A. Kwasny  
Joshua J. Borger  
Environmental Law Foundation

By: \_\_\_\_\_

Dated: December \_\_, 2005

\_\_\_\_\_  
Roger Beers

Attorneys for Plaintiffs Karuk Tribe of California,  
and Leaf Hillman



11/28/05

**IT IS SO STIPULATED.**

Dated: November \_\_\_\_, 2005

California Department of Fish and Game and Ryan Broddrick

By: \_\_\_\_\_  
Ryan Broddrick, Director, California Department of Fish and Game

Dated: November 30, 2005

Karuk Tribe of California and Leaf Hillman

By: [Signature]  
Leaf Hillman, Vice Chairman, Karuk Tribe of California

**APPROVED AS TO FORM:**

Dated: November \_\_\_\_, 2005

Bill Lockyer, Attorney General of the State of California  
Mary Hackenbracht, Senior Assistant Attorney General  
John Davidson, Supervising Deputy Attorney General  
Mark W. Poole, Deputy Attorney General

By: \_\_\_\_\_

Attorneys for Defendants California Department of Fish and Game and Ryan Broddrick

Dated: November \_\_\_\_, 2005

James R. Wheaton  
Iryna A. Kwasny  
Joshua J. Borger  
Environmental Law Foundation

By: \_\_\_\_\_

Dated: November \_\_\_\_, 2005

\_\_\_\_\_  
Roger Beers

Attorneys for Plaintiffs Karuk Tribe of California, and Leaf Hillman

11/28/05

1 **IT IS SO STIPULATED.**

2  
3 Dated: November \_\_, 2005 California Department of Fish and Game and Ryan Broddrick

4  
5 By: \_\_\_\_\_  
6 Ryan Broddrick, Director, California Department of Fish and Game

7 Dated: November \_\_, 2005 Karuk Tribe of California and Leaf Hillman

8 By: \_\_\_\_\_  
9 Leaf Hillman, Vice Chairman, Karuk Tribe of California

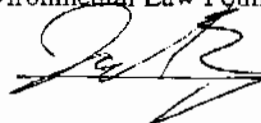
10  
11  
12 **APPROVED AS TO FORM:**

13 Dated: November \_\_, 2005 Bill Lockyer, Attorney General of the State of California  
14 Mary Hackenbracht, Senior Assistant Attorney General  
15 John Davidson, Supervising Deputy Attorney General  
16 Mark W. Poole, Deputy Attorney General

17 By: \_\_\_\_\_

18 Attorneys for Defendants California Department of Fish and Game and Ryan Broddrick

19 Dated: November 30, 2005 James R. Wheaton  
20 Iryna A. Kwasny  
21 Joshua J. Borger  
22 Environmental Law Foundation

23 By:  \_\_\_\_\_

24 Dated: November \_\_, 2005 \_\_\_\_\_  
25 Roger Beers

26 Attorneys for Plaintiffs Karuk Tribe of California, and Leaf Hillman  
27  
28

11/28/05

IT IS SO STIPULATED.

Dated: November \_\_, 2005 California Department of Fish and Game and Ryan Broddrick

By: \_\_\_\_\_  
Ryan Broddrick, Director, California Department of Fish and Game

Dated: November \_\_, 2005 Karuk Tribe of California and Leaf Hillman

By: \_\_\_\_\_  
Leaf Hillman, Vice Chairman, Karuk Tribe of California

APPROVED AS TO FORM:

Dated: November \_\_, 2005 Bill Lockyer, Attorney General of the State of California  
Mary Hackenbracht, Senior Assistant Attorney General  
John Davidson, Supervising Deputy Attorney General  
Mark W. Poole, Deputy Attorney General

By: \_\_\_\_\_  
Attorneys for Defendants California Department of Fish and Game and Ryan Broddrick

Dated: November \_\_, 2005 James R. Wheaton  
Iryna A. Kwasny  
Joshua J. Borger  
Environmental Law Foundation

By: \_\_\_\_\_

Dated: November 30, 2005 Roger Beers  
Roger Beers

Attorneys for Plaintiffs Karuk Tribe of California, and Leaf Hillman



11/28/05

**STIPULATED JUDGMENT**

1  
2 In this action, Plaintiffs Karuk Tribe of California and Leaf Hillman have filed a  
3 Complaint against Defendants California Department of Fish and Game ("DF&G"), and Ryan  
4 Broddrick, Director of DF&G. Plaintiffs alleged in their Complaint that Defendants had violated  
5 the California Environmental Quality Act ("CEQA"), Cal. Pub. Res. Code §§ 21000 *et seq.*, and  
6 Fish and Game Code § 5653(b) in issuing permits for suction dredge mining, and sought  
7 declaratory and injunctive relief. Defendants have denied these allegations. The Court has been  
8 advised that the Parties have reached a settlement of this matter and has now received a Joint  
9 Stipulation for Entry of Judgment (hereinafter "Joint Stipulation"), bearing a header dated  
10 November 28, 2005, executed by the Plaintiffs and the Defendants, in which the Parties stipulate  
11 to the entry of this Stipulated Judgment. The Court having considered the Joint Stipulation and  
12 the other papers and pleadings filed, and good cause existing therefor, hereby issues the  
13 following as its Stipulated Judgment herein.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:**

- 14  
15 1. As used in this Stipulated Judgment, "permits for suction dredge mining" refers to the  
16 permits issued by Defendants pursuant to Fish and Game Code §§ 5653-5653.9, and  
17 the regulations codified at 14 Cal. Code Regs. §§ 228, 228.5.  
18  
19 2. DF&G is hereby enjoined and restrained from issuing permits for suction dredge  
20 mining that allow suction dredge mining during any of the periods of a year  
21 prohibited in Exhibit 1 attached hereto for the Klamath, Salmon, and Scott Rivers,  
22 their tributaries and thermal refugia.  
23  
24 3. In the event that DF&G hereinafter adopts amendments to its regulations for permits  
25 for suction dredge mining, which amendments address the same areas as are covered  
26 in Exhibit 1, it may apply to this Court for a termination of the injunction set forth in  
27 paragraph 2 above. Any such application by Defendants shall be filed within 15 days  
28 of DF&G's adoption of the amendments and shall include a copy of the amendments  
to the regulations so adopted.

11/28/05

- 1 4. Plaintiffs shall have 30 days after the filing of any such application to state whether  
2 they object to the termination of the injunction, provided that Plaintiffs shall not file  
3 any such objections if the amendments to the regulations provide for the closures of  
4 the water bodies in Exhibit 1 for periods identical to or longer than the periods set  
5 forth therein. Any such objections shall include a statement of the grounds for the  
6 objections, which are limited to the scope of the claims in Plaintiffs' Complaint, and  
7 may include allegations of a failure to comply with CEQA or Fish & Game Code,  
8 section 5653. Upon the filing of proper objections by the Plaintiffs, they shall request  
9 that the Court set a hearing date to determine the merits of Plaintiffs' objections, and  
10 the Parties may request that the Court set intermediate deadlines for the filing of an  
11 administrative record for the amendments, for briefing and for such other matters as  
12 are necessary to bring the matter on for hearing. Plaintiffs may also seek to amend  
13 their Complaint herein, as provided by law.
- 14 5. In the event that the Court determines that Defendants have not complied with law in  
15 the adoption of the regulations, the Court may continue the injunction in Paragraph 2  
16 in effect or enter such other relief as the Court determines is just and proper.
- 17 6. The injunction set forth in paragraph 2 of this Stipulated Judgment shall otherwise  
18 terminate if Defendants have filed an application for termination of the injunction  
19 pursuant to Paragraph 3 above, and either (i) no proper objection has been filed  
20 thereto by Plaintiffs pursuant to Paragraph 4 above, or (ii) the Court has entered an  
21 order or judgment ruling against all of Plaintiffs' objections. In either case the  
22 injunction shall remain in effect until the amendments to the regulations submitted to  
23 the Court pursuant to Paragraph 3 have become effective under California law.
- 24 7. DF&G shall pay Plaintiffs' reasonable attorneys fees and costs incurred in this action.
- 25 8. This Stipulated Judgment is binding upon and shall inure to the benefit of the Parties  
26 and their respective agents, employees, successors, assigns, trustees, and personal  
27 representatives.  
28

11/28/05

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

9. This Court shall retain jurisdiction to interpret, modify, and enforce the terms and conditions of this Stipulated Judgment and to enforce the Joint Stipulation for Entry of Judgment until such time that the injunction is terminated pursuant to paragraphs 3 and 6 above.

Dated:

\_\_\_\_\_  
The Honorable Bonnie Sabraw  
Judge of the Superior Court

11/28/05

**EXHIBIT 1 TO STIPULATED JUDGMENT**  
**PROHIBITIONS ON SUCTION DREDGE MINING**

**I. THE KLAMATH RIVER AND ITS TRIBUTARIES**

**SUCTION DREDGE MINING SHALL NOT BE ALLOWED:**

- 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.*
- On the following tributaries of the Klamath at any time of the year: Indian, Elk, Dillon, Independence, Bluff, Red Cap, Camp and Clear Creeks.
- On all other Klamath River tributaries, *except from July 1 through September 15.*

**II. THE SALMON RIVER AND ITS TRIBUTARIES**

**SUCTION DREDGE MINING SHALL NOT BE ALLOWED:**

- 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.
- On the North and South Forks of the Salmon River, *except from July 1 through September 15.*
- 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.

**III. THE SCOTT RIVER AND ITS TRIBUTARIES**

**SUCTION DREDGE MINING SHALL NOT BE ALLOWED:**

- On the Scott River from its mouth to Headwaters, *except from July 1 through September 15.*
- 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 Shackleford/Mill), Miners Creek, Moffett Creek, Patterson



11/28/05

1 Creek, Shackleford Creek, South Fork Scott River, Sugar Creek, Tompkins Creek,  
2 Wildcat Creek, and Wooliver Creek.

#### 3 IV. THERMAL REFUGIA

4 Thermal refugia areas are located at the confluence of the tributary and the main stem of the  
5 river. Suction dredge mining shall not be permitted at the thermal refugia areas designated  
6 below within five hundred (500) feet up the named tributary from the confluence with the  
7 main stem and five hundred (500) feet up and downstream on the main stem from the  
8 confluence of the tributary with the main stem.

#### 9 SUCTION DREDGE MINING SHALL NOT BE ALLOWED AT ANY TIME IN THE 10 FOLLOWING THERMAL REFUGIA:

- 11 • The thermal refugia on all direct tributaries on the Klamath, Salmon, and Scott Rivers  
12 that are closed to suction dredge mining for the entire year as listed above.
- 13 • The thermal refugia areas at the confluence of the following tributaries with the main  
14 stem of the Klamath River: Beaver Creek, Bluff Creek, Bogus Creek, Boise Creek, Camp  
15 Creek, Clear Creek, Coon Creek, Elk Creek, Grider Creek, Hopkins Creek, Horse Creek,  
16 Hunter Creek, Independence Creek, Indian Creek, Irving Creek, Little Grider Creek,  
17 Pearch Creek, Pecwan Creek, Red Cap Creek, Rogers Creek, Salmon River, Salt Creek,  
18 Scott River, Slate Creek, Swillup Creek, Thomas Creek, Ti Creek, Tom Marten Creek,  
19 Trinity River, and Ukonom Creek.
- 20 • The thermal refugia at the confluence of all tributaries on the North Fork of the Salmon  
21 River from Eddie Gulch to the Forks of the Salmon (i.e., the confluence of the North and  
22 South Forks of the Salmon River) and Crapo Creek on the mainstem below the Forks of  
23 the Salmon.