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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

Coordination Proceeding
Special Title (Rule 1550(b))

Case No. JCPDS4720

SUCTION DREDGE MINING CASES

**INITIAL RESPONSE TO THE
STATE'S EX PARTE APPLICATION
AND NOTICE OF ASSERTED
POTENTIAL ADD-ON CASE**

Included Actions:

Dept.: S36J
Judge: Hon. Gilbert Ochoa
Trial Date: None Set
Incl. Action Filed: April 13, 2012

Karuk Tribe of California, *et al.* v. California
Department of Fish and Game

RG 05211597 – Alameda County

Hillman, *et al.* v. California Department of Fish and
Game

RG 09434444 – Alameda County

Karuk Tribe of California, *et al.* v. California
Department of Fish and Game

RG 12623796 – Alameda County

Kimble, *et al.* v. Harris *et al.*

CIVDS 1012922 – San Bernardino County

Public Lands for the People, Inc. *et al.* v. California
Department of Fish and Game

CIVDS 1203849 – San Bernardino County

The New 49'ers Inc. *et al.* v. California Department
of Fish and Game, *et al.*

SCCVCV 1200482 – Siskiyou County

Walker v. Harris, *et al.*

34-2013-80001439 – Sacramento County

Foley *et al.* v California Department of Fish and
Game, *et al.*

SCCVCV-13-00804 – Siskiyou County

INITIAL RESPONSE TO THE STATE'S EX PARTE APPLICATION AND NOTICE OF POTENTIAL ADD-ON
CASE

Case No. JCPDS4720

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There are no parties in common with any of the already-coordinated cases, but the Department suggests the case could be construed as a “potential add-on case” for purposes of notice Rule 3.531 since that rule covers “any potential add-on cases in which [a] party is also named *or in which [a] party’s attorney has appeared*” (emphasis added). As far as the undersigned counsel can tell, that Rule is applicable only to “pending petitions for coordination,” but in an abundance of caution, we are serving this Notice upon all parties and the Chair of the Judicial Council. We do not agree that the case is an “add-on case” within the definition provided by Rule 3.501(2), because we do not propose coordination, and indeed oppose coordination to the extent it would interfere with securing and maintaining immediate relief in Siskiyou County.

For the convenience of the Court, I am enclosing draft copies, not yet filed in Siskiyou County, of the complaint, memorandum in support of motion for a TRO, and proposed TRO as Exhibits 1, 2, and 3 to this filing. The supporting declarations are somewhat voluminous, and not all of them have been executed. I am also including the draft Declaration of David McCracken, without its voluminous exhibits (which are available on line), as Exhibit 4 hereto, because he

1 explains the unique circumstances prevailing in Siskiyou County with respect to suction dredge
2 mining.

3 We do not know the precise nature of the Department's objections to be set forth in its ex
4 parte application for relief (which by stipulation is to be filed simultaneously with this document
5 at 11:00 a.m.), and have reserved the right to reply to those objections. Some of them may be
6 anticipated and refuted in the memorandum attached as Exhibit 2. We assume the Department
7 wishes this Court to opine that plaintiffs should not file their complaint and seek relief in Siskiyou
8 County, but we are not aware of any provision of law providing for relief against filings; once a
9 filing is made, this Court would have authority to stay the proceedings ancillary to a pending
10 Department petition to coordinate the action pursuant to Rule 3.515.

11 We would ask this Court for a contrary opinion: that plaintiffs should proceed in Siskiyou
12 County because of the unique local circumstances making it appropriate for hearing there. The
13 proposed plaintiffs, all members of The New 49'ers organization, operate under a longstanding
14 and successful self-regulatory scheme. They do not believe it is appropriate for officers of the
15 State to seize thousands of dollars' worth of their mining equipment and shut down their mining
16 businesses on the basis of a fundamentally unfair statutory scheme that has been declared
17 unconstitutional after the Department had a full and fair opportunity to litigate the question. The
18 plaintiffs seek very narrow equitable relief, set forth in the proposed TRO, that will maintain the
19 ability of the State to enforce reasonable regulations in a limited geographical and we believe that
20 one court or another should enter the relief they request forthwith.

21 The California Rules of Court contemplate precisely such flexibility on the part of judges
22 appointed to coordinate complex disputes such as this. Rule 3.541(b) contemplates transfer of
23 appropriate actions to other courts, and localized hearings "appropriate with due consideration to
24 the convenience of parties, witnesses and counsel". *See also* Rules 3.542 & 2.543. Last time
25 around, in Coordinated Case No. SC SC CV 13-00804 (Siskiyou County), the Siskiyou County
26 Court entered injunctive relief and this Court then coordinated and stayed the action, but that was
27 before this Court's January ruling confirming the fundamental unfairness and unlawfulness of the
28 State's requirement of permits it refuses ever to issue. The question the proposed Siskiyou

1 County action presents is what sort of relief should be available to those parties, not parties to the
2 cases presently before the Court, and it is perfectly appropriate for such additional parties to
3 secure and maintain such relief locally.

4 **Conclusion**

5 This Court should deny the State's request for relief and allow the Siskiyou County
6 Superior Court to devise remedies implementing this Court's January ruling in the unique
7 circumstances prevailing there, and advise the State that it does not intend to stay the action,
8 whether or not coordinated.

9 Respectfully submitted,

10 Dated: April 29, 2015.

11 
JAMES BUCHAL

12 Attorney for Plaintiffs in *The New 49'ers, Inc. et al.*

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6
7 IN THE SUPERIOR COURT OF CALIFORNIA
8 IN THE COUNTY SISKIYOU
9

10 DEREK D. EIMER; DANIEL W. PARKIN;
11 BARTON L. RIEDEL; and DYTON W.
12 GILLILAND,

Case No.

PLAINTIFFS' COMPLAINT

13 Plaintiffs,

14 v.

15 CALIFORNIA DEPARTMENT OF FISH AND
16 WILDLIFE and CHARLTON H. BONHAM, in
his capacity as Director of the California
Department of Fish and Wildlife,

17 Defendants.
18

19
20 **Introduction and Parties**

21 1. Plaintiffs are DEREK D. EIMER; DANIEL W. PARKIN; BARTON L. RIEDEL;
22 and DYTON W. GILLILAND. All of them are present in Siskiyou County and wish to operate
23 suction dredges to extract minerals from federal mining claims.

24 2. Defendants are the CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE (the
25 "Department"), and CHARLTON H. BONHAM, Director of the California Department of Fish and
26 Wildlife (sued in his official capacity).

27 PLAINTIFFS' COMPLAINT
28 Case No.

1

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EXHIBIT 1
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1 **Jurisdiction and Venue**

2 3. This Court has jurisdiction over this action pursuant to §§ 382, 526, and 1085 of the
3 California Code of Civil Procedure.

4 4. Venue is appropriate within Siskiyou County insofar as the challenged conduct of
5 defendants occurred in Siskiyou County, plaintiffs reside or are present in Siskiyou County, and the
6 federal mining claims involved are within Siskiyou County.

7 **Class Action Allegations**

8 5. Plaintiffs bring this action on their own behalf and on behalf of all persons similarly
9 situated. The primary class that plaintiffs represent is composed of all members of The New 49'ers.

10 6. The persons in the classes are so numerous, consisting of at least two thousand
11 members (albeit only one hundred or so might be present in Siskiyou County at any given time),
12 such that the joinder of all such persons is impracticable and the disposition of their claims in a
13 class action rather than in individual actions will benefit the parties and the Court.

14 7. There is a well-defined community of interest in the questions of law and fact
15 involved affecting the plaintiff classes in that all questions of law and fact are common, because
16 only injunctive relief is sought.

17 8. The claims of the plaintiffs are typical of those of the class, and plaintiffs will fairly
18 and adequately represent the interests of the class.

19 9. There is no plain, speedy or adequate remedy other than by maintenance of this class
20 action.

21 10. The prosecution of individual remedies by members of the plaintiff class would tend
22 to establish inconsistent standards of conduct for the defendants and result in impairment of class
23 members' rights and the disposition of their interests through actions to which they were not parties.

24 **Factual Allegations**

25 11. The New 49'ers has operated in Siskiyou County for thirty years to provide mining
26 hassle-free opportunities for its members. The members operate under a Mining License which

27 PLAINTIFFS' COMPLAINT
28 Case No.

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EXHIBIT 1
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requires them to obey the rules promulgated by The New 49'ers, and The New 49'ers employs Internal Affairs staff to enforce those rules. Most of the federally-registered mining claims it owns or controls are along the Klamath River.

12. The plaintiffs are all members of The New 49'ers who seek to mine along the Klamath River utilizing suction dredges.

13. Section 5653 of the California Fish and Game Code requires a permit from the Department to suction dredge in the State of California, and forbids possession of suction dredges in water bodies closed to dredging. Until 2009, the Department issued such permits, but a series of statutory enactments, now set forth in § 5653.1 of the Fish and Game Code, halted permit issuance.

14. The New 49'ers, Inc. challenged these enactments in the case of *The New 49'ers, Inc., et al. v. State of California, et al.*, No. SC CV CV 12-00482 (Siskiyou County, filed April 13, 2012). The case was coordinated with a number of other suction dredging cases, pursuant to § 404.1 of the Code of Civil Procedure, before a Coordination Judge in San Bernardino County.

15. One of those other cases was *Public Lands for the People, et al. v. Department of Fish and Game, et al.*, No. CIVDS1203849 (San Bernardino County, filed April 12, 2012). Plaintiff Derek Eimer is a member of Public Lands for the People and its Area Representative.

16. Congress acted through the 1872 Mining Law, as amended, and related statutes to create federal property rights in mining claims in furtherance of general federal policy to foster mineral development on federal lands. Pertinent federal statutes and regulations include but are not limited to:

(a) The Mining Acts of 1866 (14 Stat. 251).

(b) The Federal Mining Law of 1872, as amended (30 U.S.C. § 22 *et seq.*);

(c) The Mining and Minerals Policy Act of 1970, 30 U.S.C. § 21a;

(d) 16 U.S.C. § 481 (Use of Waters); 43 U.S.C. § 661 (Appropriation of waters on public lands);

(e) The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 *et seq.*, including without limitation §§ 1732(b);

(f) Multiple Surface Use Act, 30 U.S.C. §§ 612(b), 613, 615; and

(g) Numerous sections of the Code of Regulations, including without limitation, 36 C.F.R Part 228 and 43 C.F.R. Part 3800.

17. Congress also possesses plenary power over federal property (U.S. Constitution, Article IV, § 3).

18. Defendants' enactment and amendment of § 5653.1 of the Fish and Game Code, and promulgation of prohibitory regulations set forth at 14 Cal. Code Regs. § 228 *et seq.*, are void as against the U.S. Constitution on the ground of the Supremacy Clause (U.S. Constitution, Article VI, Clause 2), insofar as they interfere with the federal purpose of fostering mineral development on federal property, and stand as an obstacle to the accomplishment and execution of the purposes and objectives of Congress.

19. On January 12, 2015, the Coordination Judge issued a ruling on cross-motions for summary adjudication confirming that the statutory scheme pursuant to which the State of California required permits for suction dredging, but refused to issue them, is unconstitutional because it is preempted by federal mining law as alleged herein. He also set aside the 14 Cal. Code Regs. § 228 provisions pertaining to suction dredge mining.

20. Plaintiffs are attempting to exercise rights to mine in federally-registered claims, but notwithstanding the Coordination Judge's ruling, defendants are continuing to enforce the unlawful scheme by:

(a) Threats of arrest and/or citation for violations of § 5653, a criminal misdemeanor;

(b) Coercion to cease mining involving seizure and/or threatened seizure of mining equipment; and

(c) Harassment and intimidation of plaintiffs and those similarly situated.

21. The New 49'ers have issued a set of Emergency Rules, together with their Claims Guide, which imposes a regulatory regime upon suction dredge mining on The New 49'ers claim as even more restrictive than pre-existing State suction dredge regulations which were in effect when the State of California commenced its unconstitutional scheme of denying permits in 2009.

22. Plaintiffs are suffering and will continue to suffer irreparable injury without equitable relief, insofar as members have already been subject to seizures of their equipment, harassment, and criminal citation by agents of the Department and all plaintiffs face financial losses as to which there is no apparent remedy at law for damages against the Department

I. FIRST CLAIM FOR RELIEF: INJUNCTION PURSUANT TO § 526 OF THE CODE OF CIVIL PROCEDURE.

23. Plaintiff realleges paragraphs 1 through 22 and 27 through 32 as if set forth herein.

24. Section 526(a) of the Code of Civil Procedure provides that this Court may issue an injunction when, among other things,

“(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.”

“(2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action.

“(3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.

“(4) When pecuniary compensation would not afford adequate relief.

“(5) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.

“(6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings.”

25. Defendants conduct falls within the scope of § 526(a) as alleged herein.

26. Plaintiffs have no adequate remedy at law, and an injunction is required to prevent immediate and ongoing irreparable injury.

II. SECOND CLAIM FOR RELIEF: COMMON LAW TORTS

27. Plaintiffs reallege paragraphs 1 through 26 and 29 through 32 as if set forth herein. Defendants' actions constitute common law torts including conversion and attempted false imprisonment.

28. Plaintiffs have no adequate remedy at law, but require injunctive relief to prevent immediate irreparable injury.

III. THIRD CLAIM FOR RELIEF: VIOLATION OF CIVIL CODE § 52.1

29. Plaintiffs reallege paragraphs 1 through 28 as if set forth herein.

30. Section 52.1(a) of the Civil Code describes the conduct of defendants here:

"a person or persons, whether or not acting under color of law, interferes by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state . . ."

Pursuant to § 52.1(b) of the Civil Code,

"Any individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of this state, has been interfered with, or attempted to be interfered with, as described in subdivision (a), may institute and prosecute in his or her own name and on his or her own behalf a civil action for damages, including, but not limited to, damages under Section 52, injunctive relief, and other appropriate equitable relief to protect the peaceable exercise or enjoyment of the right or rights secured, including appropriate equitable and declaratory relief to eliminate a pattern or practice of conduct as described in subdivision (a)."

31. Defendants are interfering and attempting to interfere by threat, intimidation and coercion with the mining rights of plaintiffs and those similarly situated. The threats include threats of arrest and prosecution, with citations being issued in recent cases, the intimidation includes shows of force with multiple trucks of game wardens, and the coercion includes seizure of plaintiffs' mining equipment (and threats of arrest).

32. Defendants have no adequate remedy at law, and require injunctive relief to prevent ongoing irreparable injury.

Prayer for Relief

Wherefore, plaintiffs pray for:

1. Injunctive relief (a) restraining defendants from continued enforcement of § 5653 upon mining claims controlled by The New 49'ers so long as members are acting in accordance with the Emergency Rules and Claims Guide and (b) returning plaintiffs' wrongfully-seized mining equipment.

2. Plaintiffs' reasonable attorney fees pursuant to § 1021.6 of the Code of Civil Procedure and § 52.1(j) of the Civil Code; and

3. For such other and further relief as may be just and proper.

Dated: April 30, 2015.

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James L. Buchal, SBN 258128
Attorney for Plaintiffs

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8 IN THE SUPERIOR COURT OF CALIFORNIA
9 IN THE COUNTY SISKIYOU

10 DEREK D. EIMER; DANIEL W. PARKIN;
11 BARTON L. RIEDEL; and DYTON W.
GILLILAND,

12 Plaintiffs,

13 v.

14 CALIFORNIA DEPARTMENT OF FISH AND
15 WILDLIFE and CHARLTON H. BONHAM, in
his capacity as Director of the California
16 Department of Fish and Wildlife,

17 Defendants.

Case No.

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR A
TEMPORARY RESTRAINING ORDER
AND OTHER RELIEF**

18
19 **Preliminary Statement**

20 This is an action filed for an injunction against unlawful enforcement actions by the
21 defendants and their agents, game wardens operating within Siskiyou County. Specifically,
22 defendants are harassing members of The New 49'ers, Inc., which controls a significant number of
23 mining claims within Siskiyou County, and allows its members to exploit those claims. Defendants
24 are seizing mining equipment, harassing members, and even issuing criminal citations for violations
25 of § 5653 of the Fish and Game Code, which prohibits suction dredging in the State of California
26 without a permit, or possessing dredging equipment within 100 yards of waters closed to dredging.

27
28 MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR A
TEMPORARY RESTRAINING ORDER AND OTHER RELIEF
Case No.

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EXHIBIT 2
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1 Defendants' position is that by virtue of § 5653.1 of the Fish and Game Code, all waters are
2 closed to dredging because the Department is unable to issue certain certifications required by that
3 statute. *See* § 5653.1(4) & (5). However, the defendants are parties in existing suits which have
4 been coordinated before the Superior Court of San Bernardino County,¹ in which the Coordination
5 Judge has issued a ruling on cross-motions for summary judgment holding § 5653.1, and the
6 Department's suction dredging regulations issued in 2012, unconstitutional because they operate to
7 prohibit mining on federally-issued mining claims such as those controlled by The New 49'ers in
8 Siskiyou County. A copy of the Coordination Judge's ruling is filed herewith as Exhibit 1 to the
9 Declaration of James L. Buchal.

10 The Coordination Judge concluded, *as has every other reported case to examine whether*
11 *states may prohibit mining on federal claims*, that "the State's extraordinary scheme of requiring
12 permits and then refusing to issue them whether and/or being unable to issue permits for years,
13 stands 'as an obstacle to the full purposes and objectives of Congress' under *Granite Rock* and a *de*
14 *facto* ban". (Buchal Decl. Ex. 1, at 21; *see also id.* at 16 ("this is fundamentally unfair"). The
15 Coordination Judge struck down § 5653.1 and certain regulations which the Department had
16 promulgated in 2012, but which had never taken effect because the Department could not issue the
17 required certifications.

18 The Coordination Judge has, however, not issued any form of relief based on this ruling.
19 (See Buchal Decl. ¶ 6 & Ex. 2.) Notwithstanding the ruling, the Department has instructed its
20 officials to continue citation of miners dredging without permits (*see id.* ¶ 7 & Ex. 3), in substance
21 enforcing a regulatory scheme that the Coordination Judge has found to be fundamentally unfair
22 and unconstitutional.

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25 ¹ Those cases include *The New 49'ers, Inc., et al. v. State of California, et al.*, No. SC CV CV 12-
26 00482 (Siskiyou County, filed April 13, 2012) and *Public Lands for the People, et al. v. Department*
27 *of Fish and Game, et al.*, No. CIVDS1203849 (San Bernardino County, filed April 12, 2012).
28 These and other cases were coordinated pursuant to § 404.1 of the Code of Civil Procedure by
Order filed October 2, 2012. (Buchal Decl. ¶ 4.)

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Argument

As the Supreme Court has explained,

“... trial courts should evaluate two interrelated factors when deciding whether or not to issue a preliminary injunction. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued.”

IT Corp. v. County of Imperial (1983), 35 Cal.3d 63, 60-70. As set forth below, plaintiffs will prevail on the merits, and the harm to plaintiffs vastly exceeds any harm to defendants.

I. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS OF THEIR CLAIMS.

A. Defendants and Their Agents Are Acting Unlawfully.

As set forth above, the Coordination Judge has held § 5653.1 and the 2012 regulations unconstitutional. His ruling is consistent with every reported case, concluding that states may not prohibit mining on federal claims. *South Dakota Mining Ass'n v. Lawrence County*, 155 F.3d 1005 (8th Cir. 1998); *Brubaker v. Board of County Commissioners*, 652 F.2d 1050 (Colo. 1982); *Elliott v. Oregon Int'l Mining Co.*, 654 P.2d 663 (Or. Ct. App. 1982); see also *Ventura County v. Gulf Oil Corp.*, 601 F.2d 1080 (9th Cir. 1979), *aff'd mem.*, 445 U.S. 947 (1980); *Skaw v. United States*, 740 F.2d 932 (Fed. Cir. 1984). It is obviously unconstitutional for the State of California to forbid mining on federal mining claims through its extraordinary scheme of requiring permits and refusing to issue them.

Defendants should not even be permitted to relitigate the issues of constitutionality here, for they are bound by doctrines of collateral estoppel. All of the required elements for application of the doctrine are present here:

“First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party

1 against whom preclusion is sought must be the same as, *or in privity with*, the party to the
2 former proceeding.”

3 *Lucido v. Superior Court*, 51 Cal. 3d 335, 341 (1990) (emphasis added). The Coordination Judge’s
4 opinion demonstrates that the State’s scheme of requiring and refusing to issue permits has been
5 found unconstitutional; it is a ruling on cross-motions for summary adjudication, and is therefore
6 final and on the merits.

7 As members of the mining organizations litigating the Coordinated Cases (*see* Buchal Decl.
8 ¶ 4), the plaintiffs standing before this Court are parties in privity with the parties who obtained the
9 ruling. *Cf. Pacific Gas & Elec. Co. v. Lego*, 141 Cal.App.3d 179, 182-83 (3rd Dist. 1983) (privity
10 among members of Indian tribe on same issue). The doctrine’s salutary purpose of preventing
11 repetitive litigation manifestly applies here, and the Department has had a full and fair opportunity
12 to litigate the issue.

13 For state officials to enforce an unconstitutional scheme is obviously wrong. There is
14 pending before the Coordination Judge requests for entry of proposed orders which would include
15 injunctive relief, which proposed orders have been lodged since early February, 2015. (Buchal
16 Decl. ¶ 6.) When the Coordination Judge took no action, the mining plaintiffs there followed up
17 with an additional filing on April 2, 2015, warning that “gold miners are beginning to operate on at
18 least some of the rivers that, prior to the moratorium, had always been open to dredging . . .”.
19 (Buchal Decl. ¶ 6 & Ex. 2, at 2.) But the Coordination Judge has still taken no action.

20 Defendants may object to this action pursuant to § 430.10 of the Code of Civil Procedure
21 because “there is another action pending between the same parties on the same cause of action”.
22 First, that defense does not apply because the “same parties” are not present here; rather, individuals
23 in privity with The New 49’ers, Inc. and Public Lands for the People wish to enforce the
24 Coordination Judge’s decision locally.

25 Second, this action is not the “same cause of action” pending in San Bernardino County,
26 insofar as it is premised on a challenge to a course of conduct by defendants beginning months after

1 the Coordination Judge issued his ruling. This suit is brought to restrain interference with the
2 business of the miners involved and those similarly situated, based on new conduct. The same *issue*
3 is present in both cases, but not the same *cause of action*: the Department caused this action
4 because it continues to enforce the unconstitutional statutory scheme after the ruling.

5 Defendants may also assert that Article 3, § 3.5 of the California Constitution makes their
6 conduct lawful insofar as it declares that defendants do not have power to “refuse to enforce a
7 statute on the basis of its being unconstitutional unless an appellate court has made a determination
8 that such statute is unconstitutional”. This provision does “not deprive the superior court of its
9 power to declare a statute unconstitutional, or to issue relief for a “class of petitioners” affected by
10 that statute. *Fenske v. Board of Administration*, 103 Cal.App.3d 590, 595-96 (1980).

11 Rather, the provision demonstrates why this action is appropriate: “If the superior court
12 order relates only to a single petitioner . . . the agency under the compulsion of § 3.5 and the
13 doctrine of stare decisis is not permitted to apply [a superior court’s order] to other persons”. *Id.*
14 Here the Coordination Judge has not issued any relief other than his declaration of the
15 unconstitutionality of the State’s scheme. It is therefore entirely appropriate through this action to
16 apply the Coordination Judge’s ruling to “other persons”—the members of The New 49’ers
17 operating on its mining claims in Siskiyou County.²

18 While the State may well seek to coordinate this action with the others pending in San
19 Bernardino County, unless and until such a request is granted, this is the appropriate court to strike
20 the balance inherent in any grant of equitable relief with respect to dredging activities in Siskiyou
21 County, and the witnesses necessary to hear that case are located in Siskiyou County.

22 ///

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24
25 ² Plaintiffs seek the injunction against all enforcement concerning use of The New 49’ers claims by
26 the class of New 49’ers members consistent with § 527(b) of the Code of Civil Procedure, which
27 provides: “A temporary restraining order or a preliminary injunction, or both, may be granted in a
28 class action, in which one or more of the parties sues or defends for the benefit of numerous parties
upon the same grounds as in other actions, whether or not the class has been certified.”

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1 California law insofar as defendants are interfering with the personal liberty of plaintiffs and others
2 similarly situated and citing members with criminal misdemeanors. *See* Penal Code § 236 (“False
3 imprisonment is the unlawful violation of the personal liberty of another”).

4 **D. Defendants Are Violating § 52.1 of the Civil Code.**

5 Section 52.1(a) of the Civil Code describes the conduct of defendants here:

6 “a person or persons, whether or not acting under color of law, interferes by threat,
7 intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion, with
8 the exercise or enjoyment by any individual or individuals of rights secured by the
Constitution or laws of the United States, or of the rights secured by the Constitution or laws
of this state . . .”

9 This conduct is described in the accompanying declarations. While the agents of the Department
10 may have behaved to date in a professional manner, as have the miners, those agents are engaging
11 in conduct constituting “threat, intimidation, or coercion” within the meaning of the statute, insofar
12 as they are threatening the miners with arrest and intimidating them. (*See* generally Eimer, Parkin,
13 Riedel, Gilliland and McCracken Declarations; *see also* Buchal Decl. Ex. 3 (excerpt from
14 Department’s website).) Miners met with the sudden show of force of multiple truckloads full of
15 Departmental personnel are intimidated, have been coerced by threat to cooperate in documenting
16 their conduct, and had their businesses coercively shut down by the seizure of their mining
17 equipment.

18 It should be noted that some California courts have held that *intentional* conduct upon the
19 part of defendants is required; under these cases, it would not constitute a violation of § 52.1 to
20 arrest members of The New 49’ers if the responsible officials were merely ignorant of the state of
21 the law. *See, e.g., Bender v. County of Los Angeles*, 217 Cal.App.4th 968, 980 (2d Dist. 2013)
22 (relevant distinction under the statute is intentional vs. unintentional conduct). Here, however, the
23 agents of the Department are fully aware of the state of the law, and of the Coordination Judge’s
24 decision.

25 It should also be noted that “speech alone is not sufficient to support an action” under § 52.1
26 (other than speech which “threatens violence”). Civil Code § 52.1(j). Here, however, the

1 Department's agents are not merely intimidating members through speech, but are also seizing
2 private property, which is itself a tort.

3 What makes this case uniquely appropriate for a finding of "threat, intimidation, or coercion,
4 or attempts to interfere by threat, intimidation, or coercion" (*id.* § 52.1(a)) is that the Departmental
5 officials are acting under color of law while at the same time taking deliberate steps to interfere with
6 the mining in a way that prevents the miners from securing relief—other than through an action
7 such as this. (McCracken Decl. ¶¶ 15-17.) Some of the miners suggested that the appropriate
8 procedure would be to arrest them immediately, so that the issue might be brought promptly to this
9 Court, but the agents refused, on the ground that the miner would "be out the back door [of the
10 courthouse] before they [the agents] would be out the front". (Gilliland Decl. ¶ 7.) In substance,
11 defendants know that they are citing miners under provisions of law which have been declared
12 unconstitutional, and are plainly unconstitutional, yet continue to pursue their unconstitutional goals
13 of prohibiting mining on federal mining claims within Siskiyou County.

14 Pursuant to § 52.1(b) of the Civil Code,

15 "Any individual whose exercise or enjoyment of rights secured by the Constitution or laws
16 of the United States, or of rights secured by the Constitution or laws of this state, has been
17 interfered with, or attempted to be interfered with, as described in subdivision (a), may
18 institute and prosecute in his or her own name and on his or her own behalf a civil action for
19 damages, including, but not limited to, damages under Section 52, injunctive relief, and
other appropriate equitable relief to protect the peaceable exercise or enjoyment of the right
or rights secured, including appropriate equitable and declaratory relief to eliminate a pattern
or practice of conduct as described in subdivision (a)."

20 In the accompanying complaint, plaintiffs seek injunctive relief against the Department and its
21 agents.

22 No damages are sought, in the hope that the Department will conform its conduct to law and
23 cease its harassment. *See also* Government Code § 820.6 ("If a public employee acts in good faith,
24 without malice, and under the apparent authority of an enactment that is unconstitutional, invalid or
25 inapplicable, he is not liable for an injury caused thereby except to the extent that he would have
26 been liable had the enactment been constitutional, valid and applicable"). Where, as here, the

27 8
MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR A
28 TEMPORARY RESTRAINING ORDER AND OTHER RELIEF
Case No.

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1 conduct is unconstitutional, an injunction is the appropriate remedy to remove whatever
2 uncertainties may motivate defendants' conduct.

3 **II. PLAINTIFFS ARE THREATENED WITH IRREPARABLE INJURY.**

4 While it may be possible to value equipment seized by defendants, and even to award
5 damages for its loss of use, the threats of arrest plainly constitute irreparable injury, for threatened
6 criminal prosecution and the associated loss of liberty is obvious irreparable injury. *McKay*
7 *Jewelers, Inc. v. Bowron*, 19 Cal.3d 595, 598 (1942); *Ebel v. City of Garden Grove*, 120 Cal.App.3d
8 399, 410 (1981) ("threatened arrest by the authorities or discontinuance of the method of conducting
9 a business because of fear of arrest and prosecution is sufficient to show 'irreparable injury'"; citing
10 *McKay*). And no provision of California law of which plaintiffs are aware permit plaintiffs and
11 their members to recover, for example, the cost of legal defense against erroneous misdemeanor
12 prosecutions, making those costs irreparable.

13 **III. THE PUBLIC INTEREST AND THE BALANCE OF HARDSHIPS FAVOR**
14 **PLAINTIFFS**

15 The State will suffer no hardship from the requested injunctive relief. In particular, there is
16 no appreciable risk of environmental harm. As explained in the Declaration of David McCracken,
17 The New 49'ers are enforcing long-standing restrictions of mining previously negotiated with the
18 Karuk Tribe, and has also promulgated emergency self-imposed Rules upon its members that are
19 more restrictive than the regulatory scheme that was in place when the illegal moratorium began.
20 The activities involved are also regulated by the U.S. Forest Service under regulations set forth at
21 36 C.F.R. Part 228.

22 Plaintiffs are also seeking judicial notice of numerous declarations filed with this Court on
23 July 1, 2013 in a related case in which this Court issued a TRO restraining defendants from
24 interfering with mining in Siskiyou County. (*See* Buchal Decl. ¶ 10). Defendants' unlawful
25 conduct has substantial and continuing adverse effects upon the economy and citizens of Siskiyou
26 County far beyond the damage to these particular plaintiffs.

27 9
28 MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR A
TEMPORARY RESTRAINING ORDER AND OTHER RELIEF
Case No.

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1 **Conclusion**

2 For the foregoing reasons, the temporary restraining order should issue and an order for
3 defendants to show cause why they should not be preliminarily enjoined.

4 Dated: April 30, 2015.

5
6 MURPHY & BUCHAL LLP

7
8
9

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5
6 IN THE SUPERIOR COURT OF CALIFORNIA
7
8 IN THE COUNTY SISKIYOU

9
10 DEREK D. EIMER; DANIEL W. PARKIN;
BARTON L. RIEDEL; and DYTON W.
11 GILLILAND,

12 Plaintiffs,

13 v.

14 CALIFORNIA DEPARTMENT OF FISH AND
WILDLIFE and CHARLTON H. BONHAM, in
15 his capacity as Director of the California
Department of Fish and Wildlife,

16 Defendants.
17

Case No.

**[PROPOSED] TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE**

**VIOLATION OF THIS ORDER IS A
CRIME PUNISHABLE UNDER
SECTION 422.77 OF THE PENAL CODE**

18 Plaintiffs having moved for a temporary restraining order and order to show cause why a
19 preliminary injunction should not issue; and

20 The Court having had a hearing attended by counsel for plaintiffs and defendants, and
21 having considered the declarations and other papers filed concerning the motion;

22 THE COURT FINDS THAT:

23 1. Plaintiffs have demonstrated that they are likely to succeed on the merits of their
24 claim that the Department of Fish and Wildlife (the "Department") is:

25 (a) interfering with their mining businesses through enforcement of an unconstitutional
26 statutory scheme of requiring suction dredging permits but refusing to issue them;

27 1
TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE
28 Case No.

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1 (b) committing what are in substance torts such as conversion by seizing mining
2 equipment and threatening arrests; and

3 (c) interfering by threat, intimidation, or coercion, with the exercise or enjoyment by
4 The New 49'ers members of rights secured by the Constitution or laws of the United States, or of
5 the rights secured by the Constitution or laws of this state through the seizure of the their equipment
6 and citation for violations of members of The New 49'ers; and

7 2. Plaintiffs have demonstrated that they will suffer irreparable injury without equitable
8 relief, insofar as several members have already been subject to seizures of their equipment,
9 harassment, and criminal citation by agents of the Department and all plaintiffs face financial losses
10 as to which there is no apparent remedy at law for damages against the Department; and

11 3. The balance of hardships and the public interest favor granting the relief.

12 IT IS HEREBY ORDERED THAT:

13 1. The Department, the Director and all those in active concert with them are restrained
14 and enjoined from enforcement of § 5653 of the Fish and Game Code against members of The New
15 49'ers operating upon any of the mining properties owned or controlled by The New 49'ers as
16 defined in their Claims Guide, a copy of which has been filed as Exhibit 1 to the Declaration of
17 David McCracken, and a copy of which is available online through
18 <http://www.goldgold.com/master-list.html>, unless either:

19 (a) The agents of the Department observe activity in violation of the Emergency Rules
20 issued by The New 49'ers, a copy of which have been filed as Exhibit 2 to the
21 Declaration of David McCracken, and a copy of which is also available at
22 <http://www.goldgold.com/emergency-rules-2015.html>; or

23 (b) The Department has provided a reasonable opportunity for suction dredge miners to
24 obtain permits for suction dredging from the Department under newly-promulgated
25 rules for suction dredging.

2. Defendants shall immediately return the mining equipment seized to date from plaintiffs and others similarly situated by delivering the equipment to The New 49'ers Inc., whose office is located at 27 Davis Road, Happy Camp, California 96039, *provided that* defendants may retain pictures and records of the equipment seized.

3. Plaintiffs are (a) excused from posting an undertaking on the ground that entry of the injunction serves the public interest [or] (b) ordered to post bond in the amount of \$ _____ to make this TRO effective.

4. The Department and Director shall appear before this Court on May _____, 2015, at _____ m. to show cause why a preliminary injunction should not be entered continuing the relief granted herein.

Dated: April _____, 2015.

Superior Court Judge

Respectfully submitted by:

MURPHY & BUCHAL LLP

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Attorney for Plaintiffs

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IN THE SUPERIOR COURT OF CALIFORNIA
IN THE COUNTY SISKIYOU

DANIEL W. PARKIN; BARTON L. RIEDEL;
DEREK D. EIMER; and DYTON W.
GILLILAND,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF FISH AND
WILDLIFE and CHARLTON H. BONHAM, in
his capacity as Director of the California
Department of Fish and Wildlife,

Defendants.

Case No.

**DECLARATION OF DAVID
MCCRACKEN**

David McCracken states:

1. I founded The New 49'er Gold Prospecting Association in Siskiyou County 30 years ago, and have managed the program since the beginning. The company is a California corporation. Its purpose is to provide abundant hassle-free mining opportunities for our members. In turn, our members pay dues to belong and gain access to over 60 miles of gold bearing streams and rivers within Siskiyou County. Most of our mining property is along the Klamath River. This is because the earlier generations of gold miners, more or less, had difficulty reaching out into the larger, deeper river where substantial reaches of original river bottom gold deposits still exist today.

DECLARATION OF DAVID MCCRACKEN
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2. We have around 2,000 active members in The New 49'ers, though usually not more than 100 or so are around at any given time. Weather conditions, winter flows and ice cold water, for the most part, prevents underwater mining except during the more mild months of the year. Having said that, I believe it is a fair statement for me to say that our activity draws more visitors into Siskiyou County than any other private enterprise.

3. The only effective way of recovering submerged river bottom gold deposits is with the use of modern suction dredges. These are portable machines which float on pontoons and use a motor and pump to suck up mostly gravel material from the river bottom and pass it over a recovery system where the gold drops out because it is heavy. The gravel flows directly back into the hole from which it came on the river bottom. For deeper dredging, a hookah compressor is also attached to the motor and directs breathing air down to the diver(s) through an extended airline.

4. Our office and headquarters are located next to the post office in Happy Camp. We employ 5 fulltime administrative staff, and bring in extra help when necessary. In addition, we have a Director of Internal Affairs (retired deputy sheriff) who is supported by two deputies. Internal Affairs enforce our Association Rules, resolve any internal disputes between members, prevent troublemakers and rule-breakers from being part of our program, work in close association with local law enforcement, and coordinate with the several government agencies which possess some level of jurisdiction over our activities in the national forest. This is mostly the U.S. Forest Service and California Department of Fish & Wildlife ("DFW"). Though we sometimes have civilized differences of opinion over how laws and regulations properly apply to small-scale mining activity, our overall relationship with these agencies has been cooperative and productive since we began 30 years ago.

5. All of our members sign a Mining License when they join our organization. The license allows members to keep the gold they recover from the properties that we manage. The license also requires each member to abide by our published Rules and other site specific restrictions that are outlined in our published Claims Guide. A true copy of our Claims Guide is

1 attached hereto as Exhibit 1; the Claims Guide may also be accessed through
2 <http://www.goldgold.com/master-list.html>.

3 6. Our Claims Guide defines the boundaries of all the properties which we manage,
4 provides useful information about the property, and outlines any site specific areas that are off
5 limits to mining or suction dredging. These off-limit areas have been established through working
6 relationships with the U.S. Forest Service, the Karuk Tribe and local communities. They include
7 popular swimming or recreation areas, areas of cultural concern and locations along the Klamath
8 River where cooler water enters from side tributaries during the hot summer months. Some fish
9 biologists believe dredging activity might frighten fish away from these cool water "refugias," but
10 we have extensive experience underwater with the fish and see how they are substantially attracted
11 to the material which flows off the back of our dredges. This is because our dredges penetrate
12 otherwise armored stream bottom where smaller critters live which the fish feed on. Even though
13 our dredge holes are so small as to have no impact on the larger waterway, the fish are certainly
14 glad to be around the discharges of our dredges. In addition, they like to take refuge in our dredge
15 holes when we are not actively mining. This is because larger rocks and boulders must be moved
16 around by hand, which creates protected habitat. Cooler ground water also flows into our dredge
17 holes which the fish seem to be attracted to during the hot summer months. All of the holes we
18 make in the waterways are erased by Mother Nature during winter storm flows.

19 7. Because we have a very attentive internal affairs staff, our management approach has
20 always been to resolve any and all problems internally, rather than have the authorities involved.
21 Since our beginnings, our relationship with the U.S. Forest Service has been such that their
22 Minerals Officer or District Ranger simply has to make a phone call to our office if there is a
23 concern about any activities associated with our program. Then we go out and immediately resolve
24 any problem if it exists. To a large extent, we have enjoyed a similar relationship with the DFW.
25 The Miners License each of our members signs allows The New 49'ers to suspend the mining
26 privileges of any member who is not following our Rules or is breaking the law. The truth is that

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1 we have more leverage to bring members into compliance than any of the agencies. Not that we
2 have many troublemakers, but there are occasional things that come up. When they do, we are all
3 over it. In 30 years of operation in Siskiyou County, there has never been a single citation or
4 reprimand against The New 49'ers by any agency, even though our membership is in the thousands.

5 8. I myself, representing The New 49'ers and larger mining community of Siskiyou
6 County, devoted countless hours during 1993 and 1994 hammering out a reasonable set of suction
7 dredge regulations with DFW. Others from the mining community were also involved, representing
8 other parts of the state. The process was very consensus, and actually took three full attempts (three
9 full EIR's) before we finally arrived at a balanced regulatory scheme that allowed suction dredging
10 while protecting fishery resources. Those set of regulations served our industry and the State very
11 well until the unlawful moratorium was imposed by the California legislature in 2009.

12 9. In addition to the California regulations, to resolve protests by the Karuk Tribe about
13 our activity, in concert with the U.S. Forest Service, we mitigated to their satisfaction every single
14 concern the Tribe expressed. The concerns and mitigation solutions are well documented. We still
15 honor those agreements today.

16 10. It was shortly after making all these agreements with the Karuk Tribe more than 10
17 years ago, that we discovered that attorneys from the DFW and the Karuk Tribe had made a secret
18 agreement to make substantial changes to our suction dredge regulations without any notice
19 whatsoever to our industry. This was a gross violation of CEQA and other California
20 administrative laws. How can an industry reinvest in business and plan for the future when a State
21 agency can secretly collude with special interest groups to completely change the regulations which
22 largely control your industry? The changes they agreed to made massive reductions in our mining
23 seasons and closed suction dredging altogether on productive waterways that have been worked by
24 prospectors even before California became a State!

25 11. We intervened on the State litigation and the judge at that time also agreed that the
26 Tribe and DFW had violated the law in the way they changed our regulations. That legal process

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1 eventually evolved into an Order from the Court to update the suction dredge regulations which
2 were adopted during 1994. Determined to get their way, DFW went through all the steps of a
3 CEQA process to arrive at nearly the very same outcome as their original Agreement with the Tribe
4 DFW's outcome-based CEQA was a corruption of the process which also required 3 separate EIR's
5 in 1993 and 1994. Consequently, the ongoing litigation was expanded into objections of
6 unreasonable over-regulation by the miners, and unreasonable under-regulation by the Karuk Tribe
7 and their anti-mining allies. All of the State litigation has been coordinated in front of the San
8 Bernardino Superior Court. The mining community has spent in excess of a million dollars in legal
9 fees. While this might not sound like much in this day and age, coming up with the money to pay
10 competent attorneys to represent our industry has been more difficult than mining activity itself –
11 which is brutally difficult.

12 12. Just at the time that DFW released very oppressive draft regulations that at least
13 would have allowed some of our activity to resume, the State legislature passed a moratorium in
14 2009 that basically made it impossible for DFW to ever issue suction dredge permits again. So
15 even after selling us suction dredge permits for 2009, the State shut us down mid-season under
16 threat of criminal prosecution. No refunds were offered or provided. But the substantial losses are
17 to the millions upon millions of dollars in capital expenditures the prospecting community had
18 invested into mining property and equipment. Entire rural business communities which provide
19 services to the mining community across California had their business plans undermined. How can
20 you make business plans in an environment where special interests have the influence to get the
21 legislature to pass unconstitutional laws to just shut you down?

22 13. In any event, the ongoing litigation recently resulted in a published ruling on cross-
23 motions for summary adjudication by the San Bernardino Court which clearly found that the
24 combination of the recently enacted 2012 suction dredge regulations and moratorium on the
25 issuance of any further suction dredge regulations is a carefully crafted scheme by the State of
26 California to defeat the intention of congress. The ruling clearly declares that the moratorium is

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1 unlawful and unconstitutional. Months have gone by, and no further orders have been issued by the
2 San Bernardino Court, though they were requested.

3 14. For lack of an Order, California DFW continues to enforce the illegal moratorium.
4 Taking the Court's ruling to heart, after ten years of active litigation, and having our dredges shut
5 down for the past six years, the California mining community has been gearing up for the fast-
6 approaching 2015 season. Some of our members are already dredging along the Klamath River.

7 15. Which brings us to the current state of affairs: DFW wardens are coming out to the
8 river and instructing suction dredgers that they are breaking the law. Said another way, they are
9 enforcing a moratorium which has already been struck down as illegal by the California court
10 system. Confident that we will overcome this in front of a judge, rather than sign a criminal citation
11 (promise to appear), several of our members have insisted upon being arrested for breaking the law
12 so the matter can be immediately resolved in front of a judge. The wardens are refusing to make an
13 arrest. Rather, they are seizing mining equipment "as evidence" from the suction dredgers. What
14 kind of evidence do the wardens need when the person is admitting that he is operating the suction
15 dredge in the first place?

16 16. The problem is that they seize the equipment and never get around to a prosecution.
17 DFW wardens seized dredging equipment from one of our members, Derek Eimer, last fall, and
18 have yet to charge him with a crime or return his gear. The problem with signing a citation is that
19 the case may never be prosecuted.

20 17. So we have this situation where the State is not confident enough in its legal position
21 to place the matter in front of a judge, but they are using their badge of authority to frighten
22 prospectors ("you will be prosecuted later") and running off with their mining gear. Said another
23 way, the warden is imposing punishment upon prospectors while refusing to provide them an
24 immediate hearing in front of an impartial judge.

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1 18. This misuse of authority has a very chilling effect on business. It is particularly
2 difficult in that we devoted 10 years of litigation to finally arrive at a ruling – which the State will
3 not honor.

4 19. Since it is unclear which, if any, suction dredge regulations the State has the
5 authority to enforce, in light of the San Bernardino ruling which we understand to mean that the
6 State cannot legally enforce the illegal moratorium, The New 49'ers have adopted a reasonable set
7 of Emergency Dredging Rules which apply to the properties which we manage. A true copy of
8 these Rules is attached as Exhibit 2.

9 20. These Rules, operating in conjunction with claim-specific restrictions in our Claims
10 Guide, are substantially more restrictive than what was allowed under the regulations which were in
11 affect during 2009 when the unlawful moratorium was imposed. For example, the 2009 regulations
12 allowed up to 6-inch suction nozzles on all of our creek properties in Siskiyou County, 8-inch
13 nozzles on the Klamath and Scott Rivers and 6-inch nozzles on our Salmon River properties. Our
14 Emergency Rules have reduced all of our waterways down to a 4-inch intake except the much larger
15 Klamath River, which was reduced to 6-inches. Since we control long stretches of waterway, we
16 reduced the number of operating dredges to no more than 10 per mile on the Klamath, no more than
17 3 per mile on any of the creeks, and no more than 5 dredges per mile on the Scott and Salmon
18 Rivers. There were no restrictions on dredge concentration in DFW's 2009 regulations. We also
19 made off limits to dredging during the warm summer months every cool water refugia that was
20 identified to exist on our properties exactly according to our agreements with the Karuk Tribe and
21 U.S. Forest Service in 2004. No such restrictions were in DFW's 2009 regulations.

22 21. The reason we enacted Emergency Rules for suction dredging was because, with the
23 uncertainty over DFW existing authority, we have no intention to allow unregulated suction
24 dredging to occur on our properties. Until a judge tells us otherwise, we will be vigorously
25 enforcing our own Emergency Rules which dramatically limit dredging activity over any previous
26 regulations in California.

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22. We do not mean to be disrespectful by enacting our own set of Rules. We are just trying to fill an important vacuum which has been created because of the San Bernardino ruling. After 10 years in litigation with State authorities, we know their clear intent is to prevent mining at any cost. Therefore, depending upon the State to fill the vacuum with a reasonable solution would be foolish.

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

Executed in Angeles City, Philippines, under penalty of perjury under the laws of California,
this 29th day of April, 2015.

David McCracken

1 PROOF OF SERVICE

2 I, Carole Caldwell, hereby declare under penalty of perjury under the laws of the State of
3 California that the following facts are true and correct:

4 I am a citizen of the United States, over the age of 18 years, and not a party to or
5 interested in the within entitled cause. I am an employee of Murphy & Buchal, LLP and my
business address is 3425 SE Yamhill Street, Suite 100, Portland, Oregon 97214.

6 On April 29, 2015, I caused the following document to be served:

7 INITIAL RESPONSE TO THE STATE'S EX PARTE APPLICATION AND NOTICE OF
8 POTENTIAL ADD-ON CASE

9 by transmitting a true copy in the following manner on the parties listed below:

10 Honorable Gilbert Ochoa
Superior Court of California
11 County of San Bernardino
San Bernardino Justice Center
12 247 West 3rd Street
San Bernardino, CA 92415-0210
13 *Via U.S. Mail*

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Court Programs and Services Division
(Civil Case Coordination)
455 Golden Gate Avenue
San Francisco, CA 94102
Via U.S. Mail

14 Bradley Solomon
Deputy Attorney General
15 455 Golden Gate Avenue, Suite 11000
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25 E-mail: fishlifr@aol.com
26 *Via E-mail & U.S. Mail*

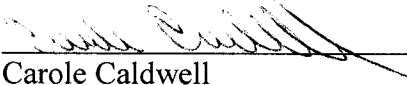
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