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5 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
6 COUNTY OF SAN BERNARDINO

7 Coordination Proceeding  
8 Special Title (Rule 1550(b))

Case No. JCPDS4720

9 **SUCTION DREDGE MINING CASES**

**STATEMENT IN SUPPORT OF  
AMENDED PROPOSED ORDER**

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15 **Included Actions:**

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

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

RG 05211597 – Alameda County

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

RG 09434444 – Alameda County

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

RG 12623796 – Alameda County

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

CIVDS 1012922 – San Bernardino County

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

CIVDS 1203849 – San Bernardino County

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

SCCVCV 1200482 – Siskiyou County

26 Walker v. Harris, *et al.*

34-2013-80001439 – Sacramento County

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

SCCVCV-13-00804 – Siskiyou County

STATEMENT IN SUPPORT OF AMENDED PROPOSED ORDER

Case No. JCPDS4720

1 In this Court's opinion of January 12, 2015, the Court found the State's moratorium on the  
2 issuance of suction dredging permits to be unlawful, along with the 2012 regulations that operated  
3 in their totality substantially to prohibit suction dredge mining. While the Court may have  
4 entertained hopes that the parties would resolve their differences through continued settlement  
5 negotiations, the Karuk Tribe and environmentalists have procured the introduction of SB 637  
6 (copy attached as Exhibit 1), by which they intend to expand their vicious, unfounded and  
7 fraudulent attacks upon the miners.

8 For its part, the Department has publicly taken the position on March 2, 2015, that the  
9 Court's ruling does not exist, proclaiming on its website that "notwithstanding th[is] litigation,"  
10 state law continues to prohibit suction dredge mining (copy attached as Exhibit 2). The  
11 Department is telling individual miners applying for permits that without further relief from this  
12 Court, they will continue to enforce the unconstitutional prohibitions (copy attached as Exhibit 3).  
13 It is unusual, at the least, for a state agency to act as if this Court has not ruled, and to insist upon  
14 enforcing obviously unconstitutional prohibitions that a Superior Court has found  
15 unconstitutional. By doing so, the Department places its own officials at risk of being held  
16 accountable for civil rights violations.

17 With spring upon us, I have been informed that gold dredgers are beginning to operate on  
18 at least some of the rivers that, prior to the moratorium, had always been open to dredging year-  
19 round under the 1994 California dredging regulations, relying upon the authority of this Court's  
20 decision and the Court of Appeals decision whose name may not be spoken. This Court having  
21 struck down the 2012 regulations, suction dredgers are looking to what was allowed in the 1994  
22 regulations. The applicable federal regulations continue to operate on the federal land where  
23 most mining occurs. The presence of miners on streams hazarding their own interpretations of  
24 the governing law is now certain to produce further litigation, and waste a great deal of the scarce  
25 judicial resources in this or other courts.

26 It is this Court that has been appointed by the Judicial Council to hear and determine  
27 suction dredging issues and take an "active role" to provide "efficient utilization of judicial  
28 facilities and manpower". Rule 3.540(b)(2); *see also* Code of Civil Procedure § 404.1. Any

1 additional state cases that may appear will come to this Court as “add-on” cases pursuant to Rule  
2 3.544.

3         *The New 49’ers* plaintiffs had lodged, but not filed, a proposed order which simply  
4 granted their motion for summary adjudication on their Second Cause of Action. This was  
5 consistent with our understanding of the Court’s inclination at the time concerning interim relief.  
6 The developments outlined above move *The New 49’ers* plaintiffs to amend their proposed order  
7 to request the relief previously sought in their Amended Complaint: “a writ of mandate  
8 compelling the Department to continue issuing permits under the pre-existing set of suction  
9 dredging regulations” (Amended Complaint at 15 (referring to the 1994 regulations)).

10 Specifically *The New 49’ers* plaintiffs are now asking this Court to enter a ruling that will  
11 effectively provide governing rules through the 1994 regulations. We ask not only that a writ  
12 issue to require issuance of permits under those regulations (an affirmative injunction which  
13 might be stayed by appeal), but also that the Department be enjoined from enforcing § 5653  
14 unless the miner in question is operating outside the 1994 regulations. We think that such a  
15 ruling will provide a rule of law likely to be well-understood on the rivers, and avoid much  
16 further litigation while the parties await appellate review.

17         In cases involving a “procedural maze” of rule challenges such as this, the device of  
18 providing interim relief reinstating the pre-existing rule is a common remedy. *Wyoming v. United*  
19 *States Department of Interior*, 587 F.3d 1245, 1252 (10th Cir. 2009) (the Wyoming district  
20 court's interim relief decision at issue in this appeal ordered the Park Service to reinstate the 2004  
21 rule only “until such time as it can promulgate an acceptable rule to take its place”). A copy of  
22 the amended proposed order is attached hereto as Exhibit 4. Its entry can ensure that suction  
23 dredge mining proceeds in an orderly fashion under rules that are not patently unconstitutional  
24 and provided a workable solution for many, many years. We suspect that one additional benefit  
25 of entering this order is that it may cause the Department and Tribe to return to the negotiating  
26 table.

27         This need not be the Court’s last word on the subject. While we continue to believe that  
28 claims of appreciable environment harm from operation under these pre-existing regulations are

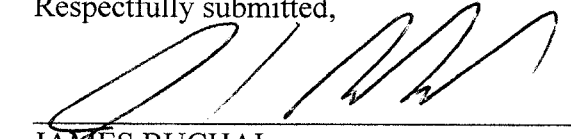
1 entirely frivolous, the Department, Tribe and environmentalists may contend to the contrary.  
2 However, they cannot be pleased with the absence of governing regulations, and may reasonably  
3 be expected to approach this Court for such interim modifications as they can prove are required  
4 by law.

5 Through the settlement negotiations, this Court has been put in the position of having a  
6 substantial background and training to quickly and effectively resolve such issues as would arise  
7 in a hearing on the question of alternative interim relief going forward. The Court could issue our  
8 proposed order without prejudice to the right of the other parties to seek further relief, or even  
9 develop that relief at a hearing on the record. Without further action by this Court, however, the  
10 Judicial Council's goals for these coordinated cases will not be realized, and a great deal of  
11 unnecessary motion practice will ensue.

12 The Court should be advised that the Department has indicated its intention to file a  
13 response to this Statement.

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15 Dated: April 2, 2015.

Respectfully submitted,



JAMES BUCHAL  
Attorney for Plaintiffs in *New 49'ers, Inc. et al.*

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Introduced by Senator Allen

February 27, 2015

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An act to add Section 13172.5 to the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 637, as introduced, Allen. Water quality: suction dredge mining: permits.

Existing law prohibits the use of any vacuum or suction dredge equipment by any person in any river, stream, or lake of this state without a permit issued by the Department of Fish and Wildlife.

Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the federal Clean Water Act and the Porter-Cologne Water Quality Control Act (state act). The state act, with certain exceptions, requires a waste discharger to file certain information with the appropriate regional board and to pay an annual fee. The state act additionally requires a person, before discharging mining waste, to submit to the regional board a report on the physical and chemical characteristics of the waste that could affect its potential to cause pollution or contamination and a report that evaluates the potential of the mining waste discharge to produce acid mine drainage, the discharge or leaching of heavy metals, or the release of other hazardous substances.

This bill would require, by July 1, 2017, the State Water Resources Control board to establish a permitting process for suction dredge mining and related mining activities in rivers and streams in the state, consistent with requirements of the state act. The bill would require that the regulations, at a minimum, address cumulative and water quality impacts

of specified issues. A person who violates these regulations would be liable for an unspecified penalty. The bill would provide that the state board is not prohibited from adopting regulations that would prohibit suction dredge mining, if the state board makes a certain finding relating to water quality objectives, to the extent consistent with federal law. The bill would prohibit these provisions from affecting any other law, including the California Environmental Quality Act and specified provisions relating to streambed alteration requirements.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 13172.5 is added to the Water Code, to  
2 read:

3 13172.5. (a) On or before July 1, 2017, the state board shall  
4 establish by regulation a permitting process for suction dredge  
5 mining and related mining activities in rivers and streams in the  
6 state. The regulations shall be consistent with the requirements of  
7 this division and, at a minimum, address cumulative and water  
8 quality impacts of each of the following:

9 (1) Mercury loading to downstream reaches of rivers and streams  
10 affected by suction dredge mining.

11 (2) Methylmercury formation in water bodies.

12 (3) Bioaccumulation of mercury in aquatic organisms.

13 (b) A person who violates a regulation adopted pursuant to this  
14 section shall be liable in the amount of \_\_\_\_ (\$ \_\_\_\_).

15 (c) Nothing in subdivision (a) shall prohibit the state board from  
16 adopting regulations that prohibit suction dredge mining if the  
17 state board finds that prohibition is necessary to regulate waste  
18 discharges that violate or impair water quality objectives or other  
19 criteria under this division, to the extent consistent with federal  
20 law. In making this determination, the state board may consider,  
21 but is not limited to, soil types, fueling and re-fueling activities,  
22 and horsepower limitations.

23 (d) This section does not affect any other law, including the  
24 California Environmental Quality Act (Division 13 (commencing  
25 with Section 21000) of the Public Resources Code) and the  
26 Department of Fish and Wildlife's streambed alteration

1 requirements described in Chapter 6 (commencing with Section  
2 1600) of the Fish and Game Code.

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[Home \(/\)](#) : [Licensing \(https://www.wildlife.ca.gov/Licensing\)](https://www.wildlife.ca.gov/Licensing) : **Suction Dredge Permits (#)**

## Suction Dredge Permits

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Page updated 3/2/2015

### Current Status

***The use of any motorized vacuum or suction dredge equipment as part of a mining operation in any river, stream, or lake is currently prohibited in California and any such activity would be unlawful.***

***The California Department of Fish and Wildlife is also currently prohibited from issuing suction dredge permits under the Fish and Game Code.***

***(See generally Fish & G. Code, §§ 5653, 5653.1.)***

The lawful use of motorized vacuum and suction dredge equipment to mine in California, and the California Department of Fish and Wildlife's (CDFW) related permitting authority under the Fish and Game Code is the subject of ongoing litigation. Related litigation is pending in the California Supreme Court. (*People v. Rinehart* (2014) 230 Cal.App. 4th 419, review granted January 21, 2015, S222620.) Related litigation is also pending by order of the Judicial Council of California in Superior Court for the County of San Bernardino. (*Suction Dredge Mining Cases*, Super. Ct. San Bernardino County, Judicial Council Proceeding No. JCPDS4720.) Notwithstanding the ongoing litigation, state law prohibits: 1) CDFW from issuing suction dredging permits; and 2) the use of any motorized vacuum or suction dredge equipment for instream mining.

With state law in effect, the use of any motorized vacuum or suction dredge equipment as part of an instream mining operation is subject to enforcement and prosecution as a criminal misdemeanor. (Fish & G. Code, § 12000, subd. (a).)

### Prohibited Use of Any Motorized Vacuum or Suction Dredge Equipment

Under CDFW regulations, the use of any vacuum or suction dredge equipment (i.e., suction dredging) is defined as the use of a suction system to vacuum material from a river, stream, or lake for the extraction of minerals. (Cal. Code Regs., tit. 14, § 228, subd. (a).)

However, CDFW's suction dredging regulations do not apply to, prohibit, or restrict nonmotorized recreational mining activities, including panning for gold. (*Ibid.*; see also Fish & G. Code, § 5653.1, subd. (e).)

Reading together Fish and Game Code sections 5653 and 5653.1, and CDFW's definition, the use of any motorized device to directly vacuum or suction substrate, sediment, and gravel as part of a mining operation in any river, stream, or lake is currently prohibited in California. The use of any motorized vacuum or suction device to assist in the extraction of minerals as part of an instream mining operation is also prohibited. Likewise, it is unlawful to possess a vacuum or suction dredge in or within 100 yards of any river, stream, or lake. (See *Id.*, § 5653, subd. (d).)

EXHIBIT 2

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Not prohibited are: (1) nonmotorized recreational mining activities, including panning for gold; and (2) the use of motorized vacuum or suction dredge equipment for regular maintenance of energy or water supply management infrastructure, flood control, or navigational purposes. (*Id.*, § 5653.1, subds. (d), (e).)

## Mining Activity Not Prohibited by the Moratorium

The ongoing statutory moratorium established by Fish and Game Code section 5653.1 prohibits some, but not all forms of mining in and near California rivers, streams, and lakes.

Individuals engaged or interested in otherwise lawful instream mining should be aware that other environmental laws may apply to these various other mining practices. Fish and Game Code section 5650, for example, prohibits the placement of materials deleterious to fish, including sand and gravel from outside of the current water level, into the river or stream. Further, Fish and Game Code section 1602 requires that any person notify CDFW before substantially diverting or obstructing the natural flow of, or substantially changing or using any material from the bed, channel or bank of any river, stream or lake. See additional related information (<http://www.dfg.ca.gov/habcon/1600/>).

You should also know that various mining practices may be subject to the authority of the appropriate Regional Water Quality Control Board ([http://www.swrcb.ca.gov/water\\_issues/programs/cwa401/suction\\_dredge.shtml](http://www.swrcb.ca.gov/water_issues/programs/cwa401/suction_dredge.shtml)). If you have questions about the authority of the Regional Water Quality Control Board, or how to comply with any permitting requirements, please contact them directly ([http://www.waterboards.ca.gov/waterboards\\_map.shtml](http://www.waterboards.ca.gov/waterboards_map.shtml)).

## 2013 CDFW Report to the California Legislature

On June 27, 2012, the State of California enacted Senate Bill 1018 (SB 1018), amending Fish and Game Code section 5653.1. (Stats. 2012, ch. 39, § 7.)

SB 1018, among other things, directed CDFW to consult with various agencies, and to provide recommendations to the Legislature by April 1, 2013 regarding statutory changes or authorizations necessary for CDFW to promulgate regulations to implement Fish and Game Code section 5653 which will, among other things, fully mitigate all identified significant environmental effects and include a fee structure that will fully cover CDFW costs to administer its related permitting program. (Fish & G. Code, § 5653.1, subd. (c)(1).)

CDFW prepared the submitted the required report to the California Legislature on April 1, 2013. CDFW's SB 1018 is available here:

- California Department of Fish and Wildlife Report to the Legislature (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=63843&inline=1>)

## General Background Information Regarding CDFW and Suction Dredging

### *Fish and Game Code Statutes and Related Regulations*

CDFW regulates suction dredging and the use of any related equipment in California pursuant to Fish and Game Code section 5653 specifically. Under that authority, the use of any vacuum or suction dredge equipment by any person in any river, stream or lake in California is prohibited, unless authorized under a permit issued by CDFW. (Fish & G. Code, § 5653, subd. (a).) Notwithstanding that authority, the use of any motorized vacuum or suction dredge equipment is prohibited in California, and CDFW is prohibited from issuing any related permits under the Fish and Game Code. (*Id.*, § 5653.1.)

EXHIBIT 2  
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CDFW regulations governing its suction dredge permitting program are found in the California Code of Regulations, Title 14, sections 228 and 228.5. CDFW adopted a comprehensive update of its suction dredge regulations effective April 27, 2012. (Cal. Reg. Notice Register 2012, No. 19-Z, p. 641.) CDFW amended the regulatory definition of suction dredging as an emergency action effective June 28, 2013. (Cal. Reg. Notice Register 2013, No. 28-Z, pp. 1034-1035.) CDFW adopted the amended regulatory definition of suction dredging through a regular noticed rulemaking action under the Administrative Procedure Act (Gov. Code, § 11340 et seq.), effective August 4, 2014. (Cal. Reg. Notice Register 2014, No. 33-Z, p. 1461.)

Key documents from CDFW's 2012 and 2014 environmental review and rulemaking efforts are available below, scrolling further down this webpage.

To access the Fish and Game Code and CDFW's suction dredge regulations, please click on the following link:

- [Access California Fish and Game Code and CDFW's regulations \(http://oal.ca.gov\)](http://oal.ca.gov)

### *Key Documents from the 2014 Environmental Review and Rulemaking Effort*

- [Notice of Public Hearing, Section 228 \(a\) Suction Dredging Definition \(PDF\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=84784&inline=1)  
(<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=84784&inline=1>)  
Rescheduled for June 11, 2014
- [OAL Form 400 \(PDF\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=81141&inline) (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=81141&inline>)
- [Notice of Proposed Rulemaking \(PDF\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=81142&inline) (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=81142&inline>)
- [Initial Statement of Reasons \(PDF\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=81144&inline) (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=81144&inline>)
- [Text of Specific Regulatory Language to be Amended \(PDF\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=81147&inline) (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=81147&inline>)
- [Economic Impact Assessment \(PDF\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=81149&inline) (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=81149&inline>)
- [Economic and Fiscal Impact Statement \(STD 399\) \(PDF\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=81151&inline) (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=81151&inline>)
- [OAL Approved Form 400 \(August 4, 2014\) \(PDF\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=88440&inline) (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=88440&inline>)
- [Approved Regulatory Text \(August 4, 2014\) \(PDF\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=88441&inline) (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=88441&inline>)
- [CEQA Addendum \(PDF\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=94438&inline) (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=94438&inline>)
- [CEQA Notice of Determination \(PDF\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=94440&inline) (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=94440&inline>)

### *Key Documents from the 2012 Environmental Review and Rulemaking Effort*

On March 16, 2012 CDFW completed a multi-year environmental review and rulemaking effort to update its suction dredge regulations implementing Fish and Game Code section 5653. The regulations as approved by the Office of Administrative Law (OAL) and filed with the Secretary of State took effect consistent with the Administrative Procedure

Act (APA) on April 27, 2012. (Cal. Code Regs., tit. 14, §§ 228, 228.5; Cal. Reg. Notice Register 2012, No. 19-Z, p. 641.)  
The updated regulations are the first comprehensive update of CDFW's suction dredging regulations since 1994.

As part of the effort, CDFW also prepared and certified a Subsequent Environmental Impact Report (SEIR) consistent with the California Environmental Quality Act (CEQA).

Key documents prepared by CDFW as part of its final action under CEQA and the APA are available here:

- [CEQA Notice of Determination \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=44209&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=44209&inline=1)
- [Final Statement of Reasons \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=44221&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=44221&inline=1)
- [Final Adopted Regulations Approved by the Office of Administrative Law \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=46636&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=46636&inline=1)
- [Final Adopted Regulations \(underline/strikeout version\) \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=46637&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=46637&inline=1)
- [CEQA Findings of Fact \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=44270&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=44270&inline=1)
- [Office of Administrative Law Notice of Approval of Regulatory Action \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=46635&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=46635&inline=1)

The Draft and Final SEIR prepared and certified by CDFW for its Suction Dredge Permitting Program are available here:

### *Final Subsequent Environmental Impact Report (FSEIR)*

- [Cover \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43700&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43700&inline=1)
- [Title Page, Table of Contents and Chapters 1, 2 and 3 \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43701&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43701&inline=1)
  - Chapter 1 - Introduction
  - Chapter 2 - Comments Received on the Draft SEIR
  - Chapter 3 - Suction Dredge Regulations and Comment Responses
- [Chapter 4 - Responses to DSEIR Comments \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43702&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43702&inline=1)
- [Chapters 5, 6 and 7 \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43703&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43703&inline=1)
  - Chapter 5 - Changes and Corrections to the EIR
  - Chapter 6 - Report Preparation
  - Chapter 7 - References
- Appendices

- Comment Letters (organized by date received in 2011)
  - [A01 02/28-03/20 \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43716&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43716&inline=1)
  - [A02 03/21-03/28 \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43717&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43717&inline=1)
  - [A03 03/28 \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43718&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43718&inline=1)
  - [A04 03/29-03/30 \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43719&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43719&inline=1)
  - [A05 03/30 Siskiyou County \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43720&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43720&inline=1)
  - [A06 03/31-04/02 \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43721&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43721&inline=1)
  - [A07 04/03-04/09 \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43722&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43722&inline=1)
  - [A08 04/10-04/13 \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43723&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43723&inline=1)
  - [A09 04/13 CSERC \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43724&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43724&inline=1)
  - [A10 04/13-04/19 \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43725&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43725&inline=1)
  - [A11 04/20-04/27 \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43726&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43726&inline=1)
  - [A12 04/28-04/30 \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43727&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43727&inline=1)
  - [A13 05/01 Moore \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43728&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43728&inline=1)
  - [A14 05/01-05/02 \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43729&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43729&inline=1)
  - [A15 05/02-05/03 \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43730&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43730&inline=1)
  - [A16 05/04 \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43731&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43731&inline=1)
  - [A17 05/05 \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43732&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43732&inline=1)
  - [A18 05/05 Wess \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43733&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43733&inline=1)
  - [A19 05/05-05/07 \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43734&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43734&inline=1)
  - [A20 05/07 Hobbs \(https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43735&inline=1\)](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=43735&inline=1)
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## For More Information

Questions to CDFW regarding suction dredging or otherwise lawful mining activities not prohibited by current law should be directed to the appropriate [CDFW Regional Office \(https://www.wildlife.ca.gov/Regions\)](https://www.wildlife.ca.gov/Regions).

This web page will be updated as resources allow should any significant developments occur regarding the use of motorized vacuum or suction dredge equipment in California, or CDFW's related regulatory authority.

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State of California – The Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
License and Revenue Branch  
1740 N. Market Blvd  
Sacramento, CA 95834  
<http://www.wildlife.ca.gov>

*EDMUND G. BROWN JR. Governor*  
*CHARLTON H. BONHAM, Director*



Mr. Tom Chambers  
2126 Franklin Way  
Hanford, CA 93230

March 5, 2015

Mr. Chambers,

This letter is in response to your recent correspondence to the California Department of Fish and Wildlife (CDFW) License and Revenue Branch, requesting a 2015 Suction Dredge Permit.

The recent ruling in a San Bernardino County court regarding the moratorium against suction dredging in California does not actually direct or prohibit any specific action by California Department of Fish and Wildlife (CDFW). If and when such an order is issued, CDFW will assess its obligations at that time. In the interim, CDFW is prohibited by statute from issuing any suction dredge permits, and the use of motorized suction dredge equipment remains prohibited by law in California. Therefore, we are not issuing Suction Dredge Permits at this time.

I hope this information is helpful to you. If you have any further questions or need further assistance, please feel free to contact me at the California Department of Fish and Wildlife via e-mail, or via telephone at (916) 928 - 6882.

Sincerely,

Brent George  
Associate Governmental Program Analyst  
California Department of Fish and Wildlife  
License and Revenue Branch  
ALDS Project  
(916) 928 - 6882

*Conserving California's Wildlife Since 1870*

EXHIBIT 3  
PAGE 1 OF 1

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4 *Attorney for Plaintiffs The New 49'ers Inc. et al.*

5 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
6 COUNTY OF SAN BERNARDINO

7 Coordination Proceeding  
8 Special Title (Rule 1550(b))

Case No. JCPDS4720

9 **SUCTION DREDGE MINING CASES**

**[AMENDED PROPOSED] ORDER  
GRANTING THE MOTION FOR  
SUMMARY ADJUDICATION FILED  
BY THE NEW 49'ERS ET AL. IN  
INCLUDED CASE NO.  
SCCVCV1099482 (SISKIYOU  
COUNTY)**

14  
15 **Included Actions:**

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

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

RG 05211597 – Alameda County

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

RG 09434444 – Alameda County

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

RG 12623796 – Alameda County

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

CIVDS 1012922 – San Bernardino County

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

CIVDS 1203849 – San Bernardino County

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

SCCVCV 1200482 – Siskiyou County

26 Walker v. Harris, *et al.*

34-2013-80001439 – Sacramento County

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

SCCVCV-13-00804 – Siskiyou County

ORDER GRANTING THE MOTION FOR SUMMARY ADJUDICATION FILED BY THE NEW 49'ERS ET AL.  
IN INCLUDED CASE NO. SCCVCV1099482 (SISKIYOU COUNTY)

EXHIBIT

1 WHEREAS, plaintiffs The New 49'ers, Inc. *et al.* have moved for summary adjudication  
2 of their Second Cause of Action, and respondents have cross-moved; and

3 WHEREAS the parties have briefed the motion and hearing was held before the Court on  
4 May 1, 2014; and

5 THE COURT HEREBY FINDS that no triable issue of material fact bars summary  
6 adjudication of the Second Cause of Action for the reasons and based upon the evidence set forth  
7 in the "Ruling on Motions for Summary Adjudication on Issue of Federal Preemption" attached  
8 hereto; and

9 THE COURT THEREFORE ORDERS THAT summary adjudication is granted in favor  
10 of plaintiffs and against respondents on plaintiffs' Second Cause of Action, and respondents'  
11 cross-motion for summary adjudication is denied.

12 THE COURT FURTHER ORDERS THAT pursuant to the foregoing rulings, and the  
13 related rulings in coordinated Case Nos. CIVDS1012922 and CIVDS1203849 finding the 2012  
14 suction dredging regulations preempted as a matter of federal law,

15 (a) Respondents California Department of Fish and Wildlife and its Director, Charlton  
16 H. Bonham, are hereby commanded to issue permits under the set of regulations in effect prior to  
17 the 2012 regulations invalidated by this Court until such time as it can promulgate replacement  
18 rules. Respondent shall file a return to the Writ within 60 days of its issuance.

19 (b) Respondents California Department of Fish and Wildlife and its Director, Charlton  
20 H. Bonham, are hereby enjoined from enforcing § 5653 of the Fish and Game Code in any case in  
21 which the dredge operator is in compliance with the set of regulations in effect prior to the 2012  
22 regulations invalidated by this Court.

23 SO ORDERED:

24  
25 DATED: \_\_\_\_\_, 2015.

26 \_\_\_\_\_  
27 Hon. Gilbert G. Ochoa,  
28 Judge of the Superior Court

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  
6 business address is 3425 SE Yamhill Street, Suite 100, Portland, Oregon 97214.

7 On April 2, 2015, I caused the following document to be served:

8 STATEMENT IN SUPPORT OF AMENDED PROPOSED ORDER

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

10 Honorable Gilbert Ochoa  
11 Superior Court of California  
12 County of San Bernardino  
13 San Bernardino Justice Center  
14 247 West 3<sup>rd</sup> Street  
15 San Bernardino, CA 92415-0210  
16 *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*

17 Bradley Solomon  
18 Deputy Attorney General  
19 455 Golden Gate Avenue, Suite 11000  
20 San Francisco, CA 94102-7004  
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23 John Mattox  
24 Department of Fish & Game  
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26 Sacramento, CA 95814  
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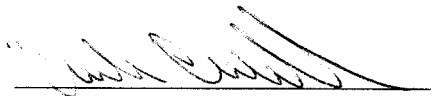
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Carole Caldwell  
Declarant