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**STATEMENT OF ISSUES RE CEQA CAUSE OF  
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FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO CIVIL DIVISION

MAY 29 2015

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SAN BERNARDINO

12 Coordination Proceeding  
13 Special Title (Rule 1550(b))  
14 **SUCTION DREDGE MINING CASES**  
15  
16  
17  
18 **Included Actions:**  
19 Karuk Tribe of California, *et al.* v. California  
Department of Fish & Game  
20  
21 Hillman, *et al.* v. California Department of Fish &  
Game  
22  
23 Karuk Tribe of California, *et al.* v. California  
Department of Fish & Game  
24  
25 Kimble, *et al.* v. Harris *et al.*  
26  
27 Public Lands for the People, Inc. *et al.* v. California  
Department of Fish & Game  
28  
The New 49'ers Inc. *et al.* v. California Department  
of Fish & Game, *et al.*

Case No. JCPDS4720

**STATEMENT OF ISSUES OF  
PETITIONERS/PLAINTIFFS RE:  
CEQA CAUSE OF ACTION**

Judge: Hon. Gilbert G. Ochoa  
Dept. S36  
Trial Date: None Set  
Incl. Action Filed: April 13, 2012

RG 05211597 – Alameda County  
RG 09434444 – Alameda County  
RG 12623796 – Alameda County  
CIVDS 1012922 – San Bernardino County  
CIVDS 1203849 – San Bernardino County  
SCCVCV 1200482 – Siskiyou County

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MAY 29 2015

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

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Walker v. Harris, *et al.*

34-2013-80001439 – Sacramento County

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

SCCVCV-13-00804 – Siskiyou County

1           Petitioners/Plaintiffs contend that the California Department of Fish & Wildlife (the  
2 “Department”) violated the California Environmental Quality Act, Pub. Res. Code § 21000 *et*  
3 *seq.*; the CEQA Guidelines, Cal Code Regs, Tit 14 § 15000 *et seq.*; the Administrative Procedures  
4 Act Cal Code § 11340 *et seq.* in the conduct of the Suction Dredge Subsequent Environmental  
5 Impact Report.

6           **A.**     Suction dredge mining, including without limitation the permitting and regulation  
7 of such mining, is exempt from CEQA as an ongoing project which existed prior to the enactment  
8 of CEQA, and is therefore exempt from CEQA pursuant to Pub. Res. Code § 21169 and 14 Cal.  
9 Code Regs. § 15261.

10          **B.**     The Department prejudicially abused its discretion by conducting a subsequent  
11 EIR. The Alameda Consent Decree did not require this, the existing EIR had already been  
12 certified, and the time for challenging this EIR had long passed.

13          **C.**     The Department violated CEQA by failing to adequately describe the project, by  
14 among other things, focusing on broad regulatory changes as opposed to less drastic means of  
15 limiting the effects on the environment.

16          **D.**     The Department failed to utilize the proper baseline as required by Pub. Res. Code  
17 § 21000 (CEQA) and other applicable law, ignoring over one hundred fifty (150) years of actual  
18 on-the-ground impacts from a history of California mining, and instead conducting an  
19 environmental review as if no mining had ever occurred in California rivers and associated areas.

20          **E.**     The preferred alternative of the Department, and the newly adopted suction dredge  
21 mining regulations, are infeasible. Among other things, the Department failed to give any weight  
22 to federally-protected mining rights and property rights in mining claims, and the feasibility of  
23 accomplishing mining objectives within the constraints proposed, including but not limited to  
24 constraints related to a report card, density restrictions, return to grade requirement, limited hours  
25 of operation, requiring notification and permits pursuant to California Fish and Game Code  
26 § 1602, reduced nozzle size, winching restrictions, bank distance restrictions, and season  
27 limitations or closures.

28

1           **F.**     The preferred alternative of the Department, as well as the newly adopted 2012  
2 suction dredge mining regulations, and the FSEIR, failed to adequately take into consideration the  
3 economic viability to suction dredge prospectors and miners pursuant to the regulations, as well  
4 as the economic viability of the business and service providers that support these prospectors and  
5 miners.

6           **G.**     The Department's definition of "deleterious to fish" requires an effect which  
7 "manifests at the community or population level and persists for longer than one reproductive or  
8 migration cycle." The Department failed to apply its own standard in the context of highly  
9 isolated and temporary operations with no persistent effects on fish.

10          **H.**     The Department failed to consider whether the project would cause "substantial  
11 adverse effects on human beings" as required by Public Resources Code § 21083(c), with respect  
12 to effects suction dredge prospectors and miners pursuant to the regulations, as well as the  
13 economic viability of the business and service providers that support these prospectors and  
14 miners.

15          **I.**     The Department failed to adequately respond to comments submitted by the public  
16 and government agencies during review of the FSEIR.

17          **J.**     The Department failed to recirculate the FSEIR, or any portion of the FSEIR, in  
18 violation of the Administrative Procedure Act, despite adding significant new information to the  
19 DSEIR within the meaning of Public Resources Code § 21092.1 and CEQA guidelines § 15088.5.  
20 Among other things, the Department throughout the draft review established a program level of  
21 4,000 permits, then when the document was issued as final the selected program became the  
22 "Reduced Intensity Alternative" with a level of 1,500 permits creating an entirely different  
23 alternative than what was evaluated in the SEIR.

24          **K.**     The Department violated CEQA standards, and their own standards, in making any  
25 determination that alleged impacts of suction dredging were "significant." The Department  
26 generally failed to establish that suction dredge mining reaches a threshold of significant impact  
27 or environmental harm, and instead speculated concerning hypothetical levels of significant  
28 impacts, which have no basis in suction dredging-specific-science or reality.

1           **L.**     The Department violated CEQA and the Administrative Procedures Act by  
2 improperly selecting and analyzing alternatives, and failing to provide an adequate analysis of  
3 reasonable alternatives in violation of Government Code § 11346.2(b)(5). Among other things,  
4 for an ongoing, pre-existing program, the “No Program” alternative should have been the existing  
5 program.

6           **M.**     On February 17, 2012, the Department posted for public comments its revised  
7 “proposed regulations governing suction dredge mining in California under the Fish & Game  
8 Code.” The revised regulations contained numerous radical changes from the initially proposed  
9 regulations. Despite the numerous and substantial radical changes made in the revised  
10 regulations, the comment period ended Monday, March 5, 2012. This seventeen (17) day  
11 truncated comment period violated the Administrative Procedures Act, Gov. Code §§ 11346.2,  
12 11346.4, and 11346.8. The radically revised regulations were in no way sufficiently related to the  
13 initially proposed regulations and therefore required a full forty-five (45) day comment period.

14           **N.**     There is no substantial evidence to support closures of California water bodies.  
15 The Department arbitrarily closed entire portions of counties above certain elevations to protect  
16 speculative Mountain Yellow Legged Frog habitat, without providing the specific population  
17 information to justify the existence of the frogs, or the necessity of any specific, or wide-ranging,  
18 habitat. Their primary habitat is ponds and lakes, not rivers and streams where suction dredge  
19 mining takes place. The Department also arbitrarily closed significant stream reaches on account  
20 of alleged adverse effects on listed Coho salmon without providing the specific population  
21 information sufficient to make such a determination.

22           **O.**     The Department proceeded in excess of jurisdiction and violated the  
23 Administrative Procedures Act by, among other things, implementing restrictions on work hours,  
24 times and locations of work, and specific equipment which may be used. The Department  
25 provided no adequate statement of reasons to support these restrictions in violation of  
26 § 11346.2(b) of the Government Code, including but not limited to, restrictions related to a report  
27 card, density restrictions, return to grade requirement, limited hours of operation, reduced nozzle  
28 size, winching restrictions, bank distance restrictions, season limitations or closures.

1           **P.**     The Department prejudicially abused its discretion by improperly selecting some  
2 data for inclusion in the SEIR, while excluding other data which would have provided a balanced  
3 approach.

4           **Q.**     The Department violated CEQA by producing an SEIR which failed its primary  
5 purpose as an informational document by allowing effects to be overstated based on the selective  
6 use of data which made program effects appear to be more severe than they were. In general, the  
7 Department ignored the positive environmental benefits of suction dredge mining and  
8 exaggerated alleged adverse impacts. This failure as an informational document led to the  
9 California legislature imposing a now six-year old ban, and six years of litigation.

10          **R.**     The CEQA findings are not supported by substantial evidence in light of the whole  
11 record with respect to alleged adverse effects of suction dredge mining.

12          **S.**     The Department's decision is not supported by its CEQA findings.

13          **T.**     The regulations are not reasonably necessary to effectuate the purposes of the Fish  
14 & Game Code and to address the alleged problems for which they were proposed.

15          **U.**     The Department's finding of necessity was not supported by substantial evidence  
16 in light of the whole record, and the Department failed to provide an adequate rationale and  
17 explanation of their determination of necessity in violation of Government Code § 11346.2(b)(1).

18          **V.**     The new regulations constituted a "major regulation," insofar as the adverse  
19 economic impact on California suction dredge prospectors and miners exceeds \$50,000,000; the  
20 Department failed to provide an adequate estimate of the economic impact of the regulations; and  
21 to provide a lawful standardized regulatory impact analysis in violation of Government Code  
22 §§ 11346.2(b)(2) and 11346.3.

23          **W.**     The Department failed to provide an adequate economic analysis of the regulations  
24 in violation of Government Code § 11346.3.

25          **X.**     The Department's determination pursuant to Government Code § 11346.5(8) is in  
26 conflict with substantial evidence in the record.

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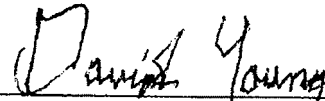
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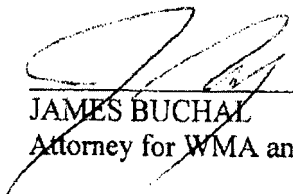
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Respectfully submitted,

Dated: May 29, 2015.

  
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DAVID YOUNG  
Attorney for Petitioners/Plaintiffs  
(Excluding WMA and Maksymyk)

Dated: May 29, 2015.

  
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JAMES BUCHAL  
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PROOF OF SERVICE

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

I am a citizen of the United States, over the age of 18 years, and not a party to or 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.

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

STATEMENT OF ISSUES OF PETITIONERS/PLAINTIFFS RE CEQA CAUSE OF ACTION

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

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Carole Caldwell  
Declarant

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**MAY 29 2015**

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT**