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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

Coordination Proceeding Special Title (Rule 1550(b)) **SUCTION DREDGE MINING CASES**	Coordinated Case No. JCCP4720 **DEFENDANTS' OPPOSITION TO MINER PLAINTIFFS' MOTION FOR INJUNCTION** Date: June 23, 2015 Time: 8:30 a.m. Dept: S36J Judge: Honorable Gilbert Ochoa Trial Date: None Set Action Filed: Various
Included Actions:	
Karuk Tribe of California, et al. v. California Department of Fish and Game	RG 12623796 - Alameda County
Kimble, et al. v. Kamala Harris, Attorney General of California, et al.	CIVDS 1012922 - San Bernardino County
Public Lands for the People, et al. v. California Department of Fish and Game	CIVDS 1203849 - San Bernardino County
The New 49er's, et al. v. State of California, California Department of Fish and Game, et al.	SCCVCV120048 - Siskiyou County
Walker v. Harris, et al.	34-2013-80001439 - Sacramento County
Foley et al. v. California Department of Fish and Wildlife, et al.	SCCVCV1300804 - Siskiyou County

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Defendants hereby oppose the Miners' motion for an injunction. The Court should deny the motion because an injunction will encourage conduct illegal under federal law and because the Court should preserve the status quo because the balance of harms points against providing any injunctive relief, particularly during California's exceptional drought.

ARGUMENT

"The granting, denying, dissolving, or refusal to dissolve a permanent injunction rests within the sound discretion of the trial court." (*San Diego Union v. City Council* (1983) 146 Cal.App.3d 947, 952; see also *Dawson v. East Side Union High School Dist.* (1994) 28 Cal.App.4the 998, 1041 [calling this decision "essentially discretionary"].)[1] The issuance of a permanent injunction depends on whether "equitable relief is appropriate." (*Art Movers, Inc. v. Ni West, Inc.* (1992) 3 Cal.App.4th 640, 646.) As an equitable remedy, a court "can, and undoubtedly would, deny injunctive relief where such relief would be inequitable." (*Feminist Women's Health Center v. Blythe* (1993) 17 Cal.App.4th 1543, 1554, internal quotation marks and citations omitted.) Injunctive relief may be denied even if the plaintiff prevails on his claim. (E.g., *Grail Semiconductor, Inc. v. Mitsubishi Electric & Electronics USA, Inc.* (2014) 225 Cal.App.4th 786, 801.)

In considering an injunction against public officials, such as here, the Court must take the public interest into account. (*Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1473.) Importantly, such an injunction raises separation of powers concerns. (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1464, citing *Butt v. State of Calif.* (1992) 4 Cal.4th 668, 695.) "Moreover, a judicial remedy must be tailored to the harm at issue. A court should always strive for the least disruptive remedy adequate to its legitimate task." (*Butt, supra*, 4 Cal.4th at pp. 695-96, citations to U.S. Supreme Court cases omitted.)

[1] "An order refusing to grant a *permanent* injunction is not appealable unless and until it is embodied in a final judgment." (*Bishop Creek Lodge v. Scira* (2000) 82 Cal.App.4th 631, 633, emphasis in original and citing various authorities.)

I. THE MOTION SHOULD BE DENIED

There are at least four reasons, individually or collectively, why the motion should be denied in its entirety.

A. The Injunction Would Encourage Illegal Activity

For at least twenty-five years, the law has been clear that suction dredge mining requires a permit under the federal Clean Water Act. (*Rybachek v. U.S. Envtl. Prot. Agency* (9th Cir. 1990) 904 F.2d 1276, 1285-86; see also Declaration of Elizabeth Haven in Support of Defendants' Opposition to Motion for Preliminary Injunction in *Kimble v. Harris*, filed May 1, 2013.)[2] *Rybachek* is on point, and establishes this requirement. In *Rybachek*, the Ninth Circuit was addressing challenges to federal Clean Water Act regulations on placer mining. (904 F.2d at pp. 1283-84.) The Ninth Circuit described placer mining as activities that would clearly include suction dredge mining:

> Placer mining typically is conducted directly in streambeds or on adjacent property. The water usually enters the sluice box through gravity, but may sometimes also enter through the use of pumping equipment. At some point after the process described above, the water in the sluice box is discharged. The discharges from placer mining can have aesthetic and water-quality impacts on waters both in the immediate vicinity and downstream. Toxic metals, including arsenic, cadmium, lead, zinc, and copper, have been found at a higher concentration in streams where mining occurs than in non-mining streams.

(*Id.* at p. 1282.) But the miners in *Rybachek* "dispute[d] whether placer mining is even subject to regulation under the Clean Water Act." (*Id.* at p. 1285.) The Ninth Circuit rejected this argument. (*Id.* at pp. 1285-86.) It explained that "Congress made unlawful 'the discharge of any pollutant by any person' except as in compliance with the Clean Water Act" and that Congress "defined 'discharge of a pollutant,' in part, as 'any addition of any pollutant to navigable waters from any point source.'" (*Id.* at p. 1285, quoting 33 U.S.C. §§ 1311(a), 1362(12).) The Ninth Circuit held that the Clean Water Act covers discharges into streams and rivers, and that "even if the material discharged originally comes from the streambed itself, such resuspension may be interpreted to be an addition of a pollutant under the Act." (*Rybachek, supra*, 904 F.2d at pp. 1285-86, citing

[2] Rather than burdening the Court's file with duplicate copies of the evidence provided earlier in these coordinated proceedings, Defendants will provide to the Court courtesy copies of this previously filed evidence.

various cases.) This holding has been followed by more recent Ninth Circuit cases. (See *United States v. Moses* (9th Cir. 2007) 496 F.3d 984, 991 ["simply dredging up and redepositing what was already there is sufficient to run afoul" of the Clean Water Act], citing *Borden Ranch P'ship v. U.S. Army Corps of Eng'rs* (9th Cir. 2001) 261 F.3d 810, 814, *affirmed by an equally divided court in* 537 U.S. 99 (2002) and *Rybachek, supra*, 904 F.2d at p. 1285.)

That the Miners in this case need a permit under the Clean Water Act is consistent with the fact that the State of Oregon, the State of Montana, and the U.S. Environmental Protection Agency ("EPA") (acting for the State of Idaho) have each recently issued general state-wide permits under the Clean Water Act's National Pollution Discharge Elimination System ("NPDES") for suction dredge mining activity. (See Request for Judicial Notice, filed concurrently, ("RJN") Exhs. A, B, C.) In California, the U.S. Army Corps of Engineers had, well before then, issued a general state-wide permit under a different part of the Clean Water Act for miners that had state suction dredge mining permits under Fish and Game Code section 5653, but that permit expired long ago. (RJN, Exh. D.) Either of these Clean Water Act permits – under section 402's NPDES program operated by EPA and the States (33 U.S.C. § 1342) or under section 404's "dredged or fill material" program operated by the Army Corps (*id.* § 1344) – would allow a miner to avoid the Clean Water Act's default prohibition on *any* discharges to water. (See *id.* § 1311(a) ["Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful."]; see also *Northwest Envtl. Defense Center v. Envtl. Quality Com.* (2009) 232 Or.App. 619, 223 P.3d 1071 [discussing application of sections 402 and 404 to small suction dredge mining operations].)

We are unaware of any suction dredge miners that have recently even applied for a Clean Water Act permit in California, either from the State Water Resources Control Board, one of the Regional Water Quality Control Boards, EPA, or the Army Corps. Certainly, the Miners can make a showing on reply if that is the case, including a showing that any such permit has been issued.

In their motion for an injunction, the Miners attempt to show that suction dredge mining's

releases of mercury and other water quality impacts are not significant. Defendants have already explained to the Court that because suction dredge mining generally is done where gold mining occurred historically, there are serious issues with mercury. (Haven Decl., ¶¶ 12-15.) Mercury is a potent neurotoxin, accumulating in fish and humans, and found to be toxic. (Haven Decl., ¶¶ 13-15.) To minimize these issues, the Miners rely on declarations from Ms. Wise and Mr. Greene (two retired research scientists) and Mr. Maksymyk (a former military officer), all of whom are speaking outside any area of expertise they have. In any event, those three have made these comments before, in connection with the California Department of Fish and Wildlife's environmental impact report on its suction dredge permitting program, challenged in these proceedings. (RJN, Exh. E, pp. 12-22, 26, 29-30, 33-77, 83-94.) The Department considered this input in that context, but still found that there were significant water quality environmental effects. (RJN, Exh. E, pp. 2-10, 24-25, 28, 31, 79-82, 95-96, Exh. F, pp. 18-22, 54-56.) The Department did so after four independent peer reviewers – all of which held doctorate degrees in related fields[3] – examined the Department's water quality analysis, and found the Department's analysis to be scientifically sound. (RJN, Exh. E, pp. 97-133.) But, regardless, this scientific dispute is not relevant here, and the Court need not resolve it.[4] The Miners can advocate for their view with the State Water Resources Control Board if and when it is considering the terms of a Clean Water Act permit. The Miners' arguments may or may not persuade that agency to impose minimal restrictions on their activity.

But the Miners cannot dispute that without a Clean Water Act permit, issued by some state

[3] The peer reviewers were professors at Dartmouth College, the University of California, Santa Cruz, and the University of Virginia and the Executive Director of the BioDiversity Research Institute. The peer reviewers' curriculum vitae and more information on this peer review process are available at http://www.waterboards.ca.gov/water_issues/programs/peer_review/peer_review_dfg.shtml.

[4] We expect the water quality issues to be relevant in resolving the California Environmental Quality Act claims that are to be set for hearing. The question will be whether the Department committed a prejudicial abuse of discretion because it failed to proceed in the manner required by law or because its findings are not supported by substantial evidence. (Pub. Resources Code, § 21168.5.) On this issue, the Department's actions are presumed adequate in the first instance and additional deference is due to agency scientific judgments because the courts "have neither the resources not scientific expertise to engage in such analysis." (*Lauren Heights Improvement Assn. v. Regents of the Univ. of Calif.* (1988) 47 Cal.3d 376, 393; Evid. Code, § 664.)

or federal agency, it is illegal to suction dredge or otherwise mine in any river, stream, or lake in California. Nor can the Miners dispute that they have not received any such permit. The practical impact of the Court granting this injunction would be to encourage miners to suction dredge mine. That is the very object of this motion. But without a Clean Water Act permit, suction dredge mining would be a violation of federal law. The Court should not encourage the miners to act in this fashion, ignoring their legal obligations.

B. Any Injunction Issued Now Would Be Interlocutory And the Court Should Wait

The basis for this injunction motion is the Court's ruling on motions for summary adjudication. There are remaining causes of action to be adjudicated, including the Miners' challenges to the regulations adopted in 2012 (as well as the related environmental impact report). (Stipulation and [Proposed] Order Setting Briefing and Hearing Dates for (1) Miners' Motion(s) for an Injunction (2) CEQA/APA Hearing, dated May 14, 2015.) While at one point the Miners contended (in chambers) that the motions for summary adjudication made moot those remaining causes of action, that is now a view they appear to have abandoned and they have stipulated to a briefing schedule on their record-based claims. (*Ibid.*) Thus, a judgment will not be entered until the remaining claims are resolved.

However, a permanent injunction should not issue until a judgment in favor of the Miners is entered. (See 9 Hon. William F. Rylaarsdam et al., California Practice Guide: Civil Procedure Before Trial (2014) § 9:560 ["Permanent injunctions are issued only after trial and as part of the judgment or decree."]; 2 Calif. Judges Benchbook: Civil Proceedings – Before Trial (2nd ed. 2008) p. 215, § 1432 ["A permanent injunctive is obtained by procuring a judgment after trial that grants the desired relief."]; see also Code Civ. Proc., § 527, subd. (a) [referring to preliminary injunctions being "granted at any time before judgment"].) Thus, this motion is in the nature of an interlocutory (preliminary) injunction, not a permanent injunction.

This means that the practical question for the Court is whether it should alter the status quo before it has adjudicated all the claims. (*O'Connell, supra,* 141 Cal.App.4th at p. 1472.) The Court can always issue an injunction later, at the point of a judgment, before the case goes up on

appeal. (*Bishop Creek Lodge, supra*, 82 Cal.App.4th at p. 634.) The Court should not alter the status quo for at least two reasons, because: (1) doing so would encourage suction dredge mining without the required Clean Water Act permit, as discussed above; and (2) the California Supreme Court is still considering *People v. Rinehart* (Cal. Supreme Court No. S222620) – the Court of Appeal case this Court relied on in its ruling on the motions for summary adjudication. The Third Appellate District's decision *Rinehart* should not be the basis for any further order of the Court. (Cal. Rules of Court, rule 8.1115(a); *People v. Kennedy* (2012) 209 Cal.App.4th 385, 400; *People v. Superior Court (Clark)* (1994) 22 Cal.App.4th 1541, 1547-48.) It bears remembering that the Court has already ruled, in denying the Kimble Plaintiffs' motion for preliminary injunction, that there is no irreparable injury from the continued status quo – a ruling which the Kimble Plaintiffs appealed but since have voluntarily dismissed. (RJN, Exh. G.) That earlier preliminary injunction ruling was on solid ground, since the vast majority of suction dredge miners actually spend more money than they gain from mining – that is, they are recreational miners. (See Declaration of Thomas C. Wegge in Support of Defendants' Opposition to Motion for Preliminary Injunction in *Kimble v. Harris*, filed May 1, 2013, ¶¶ 15-22.) There may be a handful of miners and businesses that profit from suction dredge mining, such as have submitted declarations on this motion, but that is a very limited number. (*Id.*, ¶¶ 21-22 & Table 3.) The Court should not disturb the status quo in these circumstances.

C. Suction Dredging During This Year's Drought Will Cause Harm

The issuance of the requested injunction also has the potential to create great harm. With the Kimble preliminary injunction motion, Defendants showed the well-established, harmful effects on fish and water quality due to suction dredge mining. (See Declaration of Mark Stopher in Support of Defendants' Opposition to Motion for Preliminary Injunction in *Kimble v. Harris*, filed May 1, 2013; Declaration of Stafford Lehr in Support of Defendants' Opposition to Motion for Preliminary Injunction in *Kimble v. Harris*, filed May 1, 2013; Haven Decl.) With the drought continuing this year, that harm is even more evident. As the Court knows, California is under extreme drought conditions. This means that fish, especially the threatened fish species of coho salmon, Chinook salmon, and steelhead that the 2012 regulations sought to protect, are

under extreme stress. (Declaration of Stafford Lehr, filed concurrently, ¶¶ 9-14.) They do not have enough water, the water is warmer that usual, and there are high levels of disease present. (*Id.*, ¶¶ 9, 13.) The Department is taking extreme and unprecedented measures to prevent high levels of death amongst those fish, including moving over 100,000 of them to better waters and releasing more water from dams. (*Id.*, ¶ 10.) Still, there is high risk for these species. (*Id.*, ¶¶ 9-14.) Adding suction dredge mining to the mix will make an already bad situation even worse. (*Id.*, ¶ 14.)

This harm is not lessened by requiring suction dredge mining under the outdated 1994 regulations. Those were regulations that led to the deleterious effects to fish that necessitated the Order and Consent Judgment entered in the *Karuk I* matter in December 2006, requiring the Department to do an environmental review of its suction dredge mining permit program. (RJN, Exh. H.) That Order and Consent Judgment was agreed to by all the parties, including the miners – who had intervened as parties in that matter. (*Ibid.*) At that time, the Department explained the obvious reasons why those 1994 regulations were not sufficient: they did not take into account new information about coho salmon and the effects caused by suction dredge mining. (RJN, Exh. I; see also Lehr May 2013 Decl., ¶¶ 11-15.) That the 1994 regulations are out of date is perhaps not surprising, since coho salmon in northern California were not listed under the California Endangered Species Act until 2004 (*Calif. Forestry Assn. v. Calif. Fish & Game Com.* (2007) 156 Cal.App.4th1535, 1544) and under the federal Endangered Species Act until 2005 (Endangered and Threatened Species: Final Listing Determinations for 16 ESUs of West Coast Salmon, and Final 4(d) Protective Regulations for Threatened Salmonid ESUs, 70 Fed.Reg. 37160 (June 28, 2005)). After completing its review required by the Order and Consent Judgment, the Department's findings on its environmental impact report – of which the administrative record has been lodged with the Court – detail the many significant environmental effects that occurred under those regulations, including effects on threatened salmon and amphibians. (RJN, Exh. F; see also Lehr May 2013 Decl., Stopher May 2013 Decl.) With its 2012 regulations, the Department was able to mitigate the lion's share of these significant environmental effects. (RJN, Exh. F; compare Cal. Code Regs., tit. 14, §§ 228, 228.5 with RJN, Exh. J [1994 regulations].)

The Court should not issue an order that allows those significant environmental effects to occur, essentially overruling the Order and Consent Judgment agreed to by all parties and ordered by the Alameda County Superior Court.

D. The Miners Have a Remedy

A permanent injunction, like a preliminary injunction, requires a showing of irreparable injury that cannot be adequately compensated by damages. (Civ. Code, § 3422, subd. (1), (2); Code Civ. Proc., § 526, subd. (a); *Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1352.) The Miners acknowledge this in their papers.[5]

The Miners claim (at page 5) that "[t]he loss of opportunity to recover gold is irreparable injury." For this, they rely on their declarations filed earlier in these coordinated proceedings.[6] In their brief on this motion, however, they provide no citations to specific statements, making it impossible for either Defendants or the Court to consider or address those declarations. It is well-settled that such a failure to identify specific evidence forfeits the argument. (*Miller v. Super. Ct.* (2002) 101 Cal.App.4th 728, 743.) A court is not obligated to "comb the record and the law for factual and legal support that a party has failed to identify." (*Quantum Cooking Concepts, Inc. v. LV Associates, Inc.* (2011) 197 Cal.App.4th 927, 934.) Moreover, the moving papers nowhere discuss how these alleged harms are irreparable. But a plaintiff seeking an injunction against a government agency must make "significant" showing of irreparable harm. (*Tahoe Keys, supra,* 23 Cal.App.4th at p. 1471.) Since the Miners' claims are economic, as the moving party, they must prove that the harms are not compensable. (*Ibid.*) Since the gold they seek to mine will remain where it is, it would seem hard to prove that any injury is irreparable. And it also bears remembering that the Miners have takings claims, seeking damages. The Court has already ruled, on the motion for preliminary injunction, that the Miners' supposed economic losses do not constitute an irreparable injury. There is no showing of irreparable harm.

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[5] At pages 2 to 4, the miners also claim Defendants are "render[ing] the judgment ineffectual," citing to Code of Civil Procedure section 526, subdivision (a)(3). But there is no judgment in this case yet.

[6] When those declarations were filed earlier in these proceedings, large portions were inadmissible, and Defendants objected. Defendants reassert those objections here.

The Miners also claim that the threat of arrest is an irreparable injury. Here, Defendants submit that this does not justify the broad injunction that these plaintiffs seek, which would allow *thousands* of suction dredge mining events. A violation of Fish and Game Code section 5653 is a misdemeanor. (Fish & G. Code, § 12000, subd (a).) As the evidence submitted by the Miners shows, this misdemeanor process is usually started with the issuance of a citation – a "ticket." These cases will be processed by each county's District Attorney, as they see fit, and consistent with the due process protections afforded all criminal defendants.[7] It would be reasonable for the District Attorneys to agree to put these cases on hold – either before filing, at the trial court, or on appeal – while the California Supreme Court considers *Rinehart* and provides a definitive answer to the question of whether the moratorium is preempted by federal law. Any injury due to a few outstanding citations, put on hold pending resolution of *Rinehart*, should not be considered significant enough to allow the large scale suction dredge mining the Miners seek by this motion.

The Miners' claim about a multiplicity of actions is particularly ironic. They point to a grand total of seven misdemeanor citations issued in the entire state. If the Miners ever make a motion (successfully) to certify the class that is alleged in *The New 49ers* case, they would cover all potential plaintiffs and there would be no opportunity for a multiplicity of actions. Moreover, most of those individuals that have been cited are connected with these cases (through the organizational plaintiffs), and represented by the same counsel in this case. Those individuals were not cited for suction dredge mining because of their inadvertence or ignorance; they were presumably fully informed of the Court's decisions. The fact that these individuals were suction dredge mining, and were cited, is just a consequence of them (or counsel) not sufficiently acknowledging this Court's determination that the status quo should not yet change. If they had acted with due respect for the law, they would have waited until this Court heard this motion.

[7] The only purported evidence of an arrest is of Mr. Gilliland – a *repeat* offender, that is, someone who was found suction dredge mining after already receiving a citation for doing that activity. But as the papers acknowledge, Mr. Gilliland was only held for a short period of time, presumably at the District Attorney's discretion. As the other purported evidence shows, the Fish and Game Wardens issuing citations have had no desire to arrest anyone.

Hopefully, if this Court explicitly rules in a formal order that no injunction should issue, at this time, these individuals will comply with that decision.

** ** **

In considering the public interest (*Tahoe Keys*, *supra*, 23 Cal.App.4th at p. 1473), the Court must consider the practical benefits and harms to issuing the requested injunction. Here, the economic harms to a handful of professional miners do not outweigh the risk that the injunction will encourage thousands of suction dredge miners to conduct an activity that is illegal under federal law and that will harm fish, other aquatic species, and water quality.

II. SCOPE OF INJUNCTIVE RELIEF IS TOO BROAD

Even if the Court were inclined to grant injunctive relief, the breadth of the miners' request is inappropriate. Defendants appreciate that the miners' proposed order limits its effect to federal land and that it would require "compliance with the regulations prevailing in 2009" – that is, the regulations adopted in 1994[8] – as opposed to no regulations at all. But the proposed order is still too broad in scope.

First, this is an as applied challenge, not a facial challenge. As an as applied challenge, this case involves "analysis of the facts of a particular case or cases to determine the circumstances in which the statute or ordinance has been applied and to consider whether in those particular circumstances the application deprived the individual to whom it was applied of a protected right." (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.) Thus, under the *Rinehart* standard this Court adopted, it matters whether suction dredge mining is the only "commercially practicable" method for mining their claims, a factual issue that is of course dependent on the specific circumstances of those claims. Thus, the plaintiffs' motions for summary adjudication only made a showing as their own mining claims, and the Court's ruling only applies to their claims. Any injunctive relief should similarly be limited to providing relief to the individuals that are plaintiffs in these cases.

[8] Attached to the accompanying request for judicial notice, as exhibit J, are the regulations as adopted in 1994. However, there is one subsequent change that is not reflected in that document, which is the deletion of subdivision (b)(1) of California Code of Regulations, title 14, section 228 (the special permit provision). (RJN, Exh. K.)

Second, the Court's ruling on the motions for summary adjudication only discussed the statutory moratorium of Fish and Game Code section 5653.1. The Court's ruling did not discuss Fish and Game Code section 5653, which establishes that a permit is required to suction dredge mine in California, the Department shall establish regulations to govern that permit program, and permit fees are required. Nor did the Court's ruling discuss the 2012 regulations adopted by the Department. It did not analyze each of the provisions of the regulations, to decide whether each one of them was prohibitory and therefore preempted. Rather, the Court was focused on the moratorium. Thus, any injunction should be limited to the moratorium, requiring the miners to comply with the 2012 regulations currently in effect, not the far less protective 1994 regulations. (Cal. Code Regs., tit. 14, §§ 228, 228.5.)

Third, none of the miners' preemption causes of action or motions for summary adjudication sought a decision from this Court that Fish and Game Code section 5653 is preempted by federal law. And the Court did not rule so. This was for good reason, for the specific holding of *California Coastal Commission v. Granite Rock, Co.* (1987) 480 U.S. 572, is that California can impose a permit requirement on miners on federal land. This Court, in fact, in its ruling (on January 12, 2015, at page 9) acknowledged, with emphasis, "that [Fish and Game Code] § 5653, ***requiring a permit from the state before persons may conduct suction dredge mining operations does not, standing alone, contravene federal law.***" Yet, it appears (and this was confirmed by email between counsel) that the miners in this motion seek to have this Court enjoin enforcement of the requirement that they obtain a permit – a requirement in the 1994 regulations that say they will comply with. Thus, any injunction should include a requirement that miners obtain a permit under Fish and Game Code section 5653.

Fourth, The New 49ers Plaintiffs' motion for summary adjudication only claimed preemption as to certain limited provision of the 2012 regulations, namely subdivision (g) of section 228 of title 14 of the California Code of Regulations and the Class A and thermal refugia provisions in section 228.5 of that title. Yet, this proposed order seeks to set aside the 2012 regulations in their entirety. This is not a limited, tailored injunction, and should not issue.

** ** **

For these reasons, Defendants respectfully request that the Court deny the motion.[9]

Dated: June 9, 2015

Respectfully Submitted,

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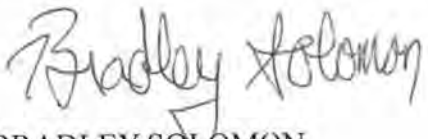

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[9] The proposed order submitted by the Miners does not provide for any logistical lead time so that the Department can put in place the permit application and granting process required under either the 1994 or 2012 regulations (including the training of its staff). The Department would estimate that these logistical details would require at least sixty days from the date of notice of any order.