

1 JAMES L. BUCHAL (SBN 258128)  
MURPHY & BUCHAL LLP  
2 3425 S.E Yamhill, Suite 100  
Portland, OR 97214  
3 Telephone: (503) 227-1011  
Facsimile: (503) 573-1939  
4 *Attorney for Plaintiffs*

5  
6  
7  
8 IN THE SUPERIOR COURT OF CALIFORNIA  
9 FOR THE COUNTY OF SAN BERNARDINO

10 THE NEW 49'ERS, INC., a California  
11 corporation, DEREK D. EIMER; STEPHEN  
12 JONES; DAVID GUIDERO; MARVIN GARRY  
LAMPSHIRE II; and DYTON W. GILLILAND,

13 Plaintiffs and Petitioners,

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 and Respondents.  
18

Case No.

**DECLARATION OF DYTON GILLILAND  
IN SUPPORT OF MOTION FOR A  
TEMPORARY RESTRAINING ORDER  
AND/OR PRELIMINARY INJUNCTION**

19  
20 Dyton Gilliland declares:

- 21 1. I am presently residing in Happy Camp, Siskiyou County California.  
22 2. During mid-April, while suction dredging for gold on the Klamath River  
23 approximately 20 miles downstream from Happy Camp, Steve Jones and I were confronted by four  
24 Department of Fish & Wildlife (DFW) wardens who asked if we knew that we were breaking the  
25 law. We explained that this court's ruling made it clear that California's dredge moratorium was  
26

27  
28  
DECLARATION OF DYTON GILLILAND IN SUPPORT OF MOTION FOR A  
TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY  
INJUNCTION  
Case No.

1  
James L. Buchal (SBN 258128)  
MURPHY & BUCHAL LLP  
3425 S.E. Yamhill, Suite 100  
Portland, OR 97214  
Tel: 503-227-1011  
Fax: 503-573-1939

1 unconstitutional and unenforceable, and that we believed we had every right to be operating our  
2 dredge. After a discussion, the wardens departed. No citations were issued.

3 3. The Confrontation with the wardens prompted Steve Jones and I to retain Attorney at  
4 Law, James Buchal, to file a civil action in Siskiyou County Superior Court requesting that a  
5 Temporary Restraining Order be issued to prevent the DFW wardens from harassing us any further.

6 4. For some reason that I do not understand, James Buchal was prevented from  
7 pursuing civil relief on our behalf in Siskiyou County.

8 5. On or about May 1, 2015, myself and Steve Jones were arrested by DFW wardens  
9 for suction dredging on the Klamath River.

10 6. When I was cited, the warden asked me to sign the citation promising to appear in  
11 Siskiyou County Superior Court on June 9. I was under the impression that if I did not sign, I  
12 would be entitled to a judicial hearing within 48 hours, where I could explain that my conduct was  
13 lawful because of this Court's ruling and other authority.

14 7. My livelihood depends upon the gold I recover in my mining program. So I opted for  
15 my right to appear before an impartial judge immediately. Steve Jones also opted for an immediate  
16 hearing.

17 8. When we refused to sign the citation, the warden arrested us, handcuffed us, and  
18 transported us to the Siskiyou County jail in Yreka, which was about 100 miles away. At the jail,  
19 the jail personnel told Steve and I that because it was a Friday, there was no way to get in front of a  
20 judge until Monday, and that even if I got in front of a judge, the case would just be continued to a  
21 later date. The jail personnel presented us with release forms which included a promise to appear on  
22 9 June. We signed them and were released. A true copy of my citation and jail form are attached  
23 hereto as Exhibit 1.

24 9. During the time I was being detained and taken to jail, California Fish & Wildlife  
25 (CFW) officials confiscated approximately \$25,000 worth of my mining equipment. This was  
26 highly specialized production mining equipment which I use to make my living.

27  
28  
DECLARATION OF DYTON GILLILAND IN SUPPORT OF MOTION FOR A  
TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY  
INJUNCTION  
Case No.

2  
James L. Buchal (SBN 258128)  
MURPHY & BUCHAL LLP  
3425 S.E. Yamhill, Suite 100  
Portland, OR 97214  
Tel: 503-227-1011  
Fax: 503-573-1939

1 10. Because of this court's ruling that the suction dredge moratorium in California is  
2 unconstitutional, I continued to believe I have a vested right under federal law to use a suction  
3 dredge to recover gold from the bottom of the Klamath River in Siskiyou County. Therefore,  
4 shortly after my first arrest, I placed my smaller four-inch sample dredge in the river and resumed  
5 mining.

6 11. On or about May 7, 2015, I learned that California DFW wardens were seizing my  
7 sampling dredge from The New 49'er Doolittle claim which is several miles downstream of Happy  
8 Camp. I returned to the site, and observed the wardens hauling the dredge out of the river. The  
9 Lieutenant at the top of the river bank told me to wait and speak with Warden Cervilli when he  
10 came back up.

11 12. I asked Warden Cervilli if I was going to be arrested. Warden Cervilli asked me if I  
12 would sign a citation promising to appear in court at a later time. I declined because I wanted to  
13 facilitate a more immediate hearing in front of a judge. He read me my rights, handcuffed me, and  
14 transported me to the jail.

15 13. I spent the night in jail. The jail personnel asked me to sign some sort of document.  
16 They promised to get me in front of a judge on Monday if I would sign a paper and leave the jail. I  
17 refused to sign because I was unsure of the legal ramifications, and had not yet spoken to my  
18 attorney.

19 14. Up until then, I had been in a holding cell; but at this point, they processed me and I  
20 was placed in the general population. After dinner, the cell block I was in was released to the yard.  
21 The jail personnel called me back in and told me that I had to leave the jail. By this time, it was  
22 well after business hours. The jail had confiscated my cash and would not return it. Rather, they  
23 provided a bank check which I was unable to negotiate that evening. In short, I was left with no  
24 money and no transportation 80 miles away from Happy Camp. Fortunately, Internal Affairs staff  
25 from The New 49'er Association had been in contact with the jail and arranged to have me returned  
26 to Happy Camp.



1 19. I want to make it clear that I have dredged for gold during the past 7 years to support  
2 my livelihood. My career began along the Klamath River where I discovered that I could recover  
3 enough gold to make a comfortable living.

4 20. Until this season, after the moratorium was imposed upon suction dredging in  
5 California, I have been dredging gold for a living in the State of Alaska where permits remain  
6 available.

7 21. Last season (2014) was the most productive dredging season I ever had.

8 22. Because of an earlier legal Ruling which is now being reviewed in the California  
9 Supreme Court, and especially because of the Ruling and Order of this court; I returned to the  
10 Klamath River this season.

11 23. Now I find myself in a very uncomfortable position because of two very important  
12 factors: (1) since there is a pending criminal proceeding against me, I feel compelled to remain in  
13 California so that I can defend myself in the event that charges are brought against me; in addition  
14 (2) since my production equipment has been taken away from me, I have lost my opportunity to go  
15 to Oregon or Alaska where permits are available to dredge for gold.

16 24. In the aftermath of this Court's June 23<sup>rd</sup> orders denying statewide relief, and barring  
17 my attorney from filing suit for narrower relief on my behalf in Siskiyou County, I attempted to find  
18 alternative counsel to proceed in Siskiyou County, but was unable to obtain competent counsel  
19 available on an expedited basis. For this reason, and because I am informed that the Department  
20 will seek to coordinate any action I might file before this Court, I am appealing directly to this  
21 Court for relief.

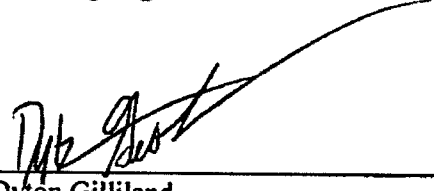
22 25. I believe, in reliance upon this Court's Order and other authority, that I have done  
23 nothing unlawful in attempting to make a living through suction dredging, and ask this Court to  
24 order the Department to stop harassing me while I am operating on mining claims in Siskiyou  
25 County owed or controlled by The New 49'ers and immediately return my belongings, and I in turn

26

1 will abide by the new, overly restrictive 2012 regulations until this matter is sorted out further in the  
2 courts.

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

4 Executed on June 29, 2015.

5  
6   
7 \_\_\_\_\_  
8 Dyton Gilliland

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

27  
28

6  
DECLARATION OF DYTON GILLILAND IN SUPPORT OF MOTION FOR A  
TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY  
INJUNCTION  
Case No.

James L. Buchal (SBN 258128)  
MURPHY & BUCHAL LLP  
3425 S.E. Yamhill, Suite 100  
Portland, OR 97214  
Tel: 503-227-1011  
Fax: 503-573-1939

DEPARTMENT OF FISH AND GAME  
NOTICE TO APPEAR FG-500

MISDEMEANOR  
 Traffic  Non-traffic

AD2079329

Date of Violation 5/11/15 Time 2:45  AM  PM Day of Week FRI Case No

Name (First, Middle, Last) DYLAN WILLIAM GILLILAND Owner's Responsibility (Veh. Code § 40001)

Address PO BOX 47

City HAPPY CAMP State CA ZIP Code 96039 Phone Number (530) 262-8639

Driver Lic. No. ALBA 587443 State CA Class R Yes  No  Age 54 Birth Date 10/31/1960

Sex M Hair BLW Eyes BW Height 6-01 Weight 185 Race W Other Description

Veh. Lic. No. or VIN State

Yr. of Ven Make Model Body Style Color  COMMERCIAL VEHICLE (Veh. Code § 15210(b))  HAZARDOUS MATERIAL (Veh. Code § 353)

Evidence of Financial Responsibility Registered (Owner or Lessee)  Same as Driver  Same as Driver

Address City State ZIP Code

Collectable Violation (Veh. Code § 40610) Yes No Code and Section Description  Booking Required Misdeemeanor or Infraction (Circle)

- 5653.1(b) PORT ENGINE CODE VIOLATE (M) I
- SUCTION DREDGE WORK PERMIT (M) I
- 228(V)(1) USE OF 5 INCH SUCTION DREDGE (M) I
- 228(V)(1) INSUFFICIENT NO CONTAINMENT SYSTEM (M) I

Speed Approx. P.P./Max Spd Veh. Ltr GPS Len; Location of Violation(s) at KONAHI RIVER SISKIYOU City/County of Occurrence CA TIP Yes / No

Evidence Seized SUCTION DREDGE SYSTEM IN BLUE TONGS SPUR AREA

Violations not committed in my practice, declared on information and belief

I declare under penalty of perjury that the facts of the foregoing are true and correct. Arresting or Citing Officer: [Signature] Badge No: 827

Date Name of Arresting Officer, if different from Citing Officer Badge No

WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED BELOW. X Signature: FAILURE TO SIGN

WHEN WHAT TO DO ON OR BEFORE THIS DATE 06/09/2015 Time 9:00 AM  PM FOLLOW THE INSTRUCTIONS ON THE REVERSE

WHERE Section or Division, Room No. Yuba Street Address 311 FORTY SEVENTH STREET, YUBA CA 95997

Phone Number 530 2012 8192 Ext Court 47690  Juvenile  To be notified  You may arrange with the clerk to appear at a night session of the court

AD2074329



Siskiyou County Jail  
Release of Arrested Person



Name: GILLILAND, DYTON WILLIAN	IID/BK No.: 22044/15-49265
Address: P.O. BOX 47 HAPPY CAMP	Arrest Date: 05-01-15
Arresting Agency: California Fish and Game	Agency Case # AD2079329
Charges: 5653.1(b)FG, 228(k)(1)CCR, 228(k)(4)CCR	Warrant #

**I PROMISE TO APPEAR, IN:**

Court: Siskiyou County Superior Court	Division: Div 4
Court Address: 311 4 <sup>th</sup> Street Yreka, CA. 96097	Date/Time: 06-09-15 @ 0900
Court Docket #(s):	


And at all other times and places as ordered by the court.

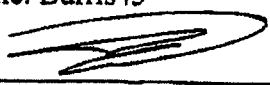
In signing this agreement and release on "Own Recognizance" I freely, voluntarily and knowingly make the following promises:

1. I will appear at all times and places as ordered by the Court, Judge, or magistrate, and as ordered by any Court in which, or any Judge or Magistrate before whom the above charge(s) is/are subsequently pending.
2. I will not leave or depart the State of California without first getting permission from the court
3. I hereby waive all extradition rights and if apprehended outside the State of California, agree to be extradited to Siskiyou County, California to answer to the above-referenced charges.
4. I will comply with the following conditions of my release that are marked with an "X".
  - I will not own, possess or consume any alcoholic beverage
  - I will not enter or remain in any business that has an on-sale liquor license.
  - I will not possess, consume or be under the influence of any controlled substance, narcotic or other drug, except upon a prescription issued to me by a licensed physician, providing a copy of the prescription to the court within 24 hours.
  - I will not own, possess, or have under my custody or control any firearm or ammunition.
  - I will not own, possess, or have under my custody or control any deadly or dangerous weapon.
  - I will submit my person, places, and things under my custody or control, or in which I have an interest, to search and seizure by any peace officer at any time of the day or night with or without probable cause, and with or without a warrant.
  - I will submit to the testing of my blood, breath or urine upon the request of any peace officer, and I will pay for all costs related to the collection and testing of the sample.
  - I will comply with the Criminal Emergency Protective Order.
  - I will not drive a motor vehicle unless properly licensed and insured.
  - I will not drive a motor vehicle after consuming any drug or alcoholic beverage.
  - Other:
  - Other:

I acknowledge that my failure to comply with any of these release conditions will constitute a violation of this agreement and I may be arrested by any peace officer. If I am arrested, the Court may deny me further release on my "own recognizance" and may require me to post bail in order to be released from custody.

Any failure to appear as ordered by the Court, or any Judge or Magistrate, is a crime. If I am released on a felony charge, or a combination of a felony charge and one or more misdemeanor or infraction charges, I can be charged with felony failure to appear that can be punished by up to three years in state prison. If I am released on a misdemeanor charge, or a combination of misdemeanor or infraction charges, I can be charged with misdemeanor failure to appear that can be punished by up to six months in the county jail.

  
\_\_\_\_\_  
Inmate Signature

Deputy Name: Burris45  
  
\_\_\_\_\_  
Deputy Signature