SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

KARUK TRIBE OF CALIFORNIA, and LEAF HILLMAN, Plaintiffs, vs. CALIFORNIA DEPARTMENT OF FISH AND GAME, et al. Defendants.	No. RG05 211597 ORDER DENYING MOTION TO ENTER JUDGMENT
THE NEW 49ERS, et al., and GERALD HOBBS, Intervenors.	

Four motions came on for hearing on March 23, 2006, in Department 512 of this Court, the Honorable Bonnie Sabraw presiding: (1) Motion of Plaintiffs Karuk Tribe of California and Leaf Hillman ("Plaintiffs") for Entry of Stipulated Judgment, (2) the Motion of Defendants California Department of Fish and Game and Ryan Broddrick, its Director (jointly "Department") For Entry of Stipulated Judgment, (3) Motion of Plaintiffs for a Protective Order (4) Motion of

Department of Fish and Game to Join in Plaintiffs' Motion for Protective Order. Plaintiffs appeared by Lynne R. Saxton and Roger Beers. Department appeared by Mark W. Poole, Robert W. Byrne, and John H. Mattox. Intervenors New 49ers, Inc. and Raymond W. Koons ("Intervenor Miners") appeared by James L. Buchal. Intervenor Gerald Hobbs ("Intervenor Hobbs") appeared on his own behalf at the hearing, and later, for the supplemental briefing, appeared by David Young.

In light of the opinion issued by the Court of Appeals on March 30, 2006, in *Trancas Property Owners Assoc. v. City of Malibu* ("*Trancas*"), the Court continued the matters to allow supplemental briefing to address the impact, if any, of the holdings in *Trancas* on the motions. Following completion of the further briefing, the matter was taken under submission on May 8, 2006. On May 18, 2006, another individual, Walter H. Eason filed papers seeking leave to intervene in the action and to file further objections to the motions to enter judgment. The motion of Mr. Eason for leave to intervene was heard on June 8, 2006 by this Court, and denied in an order issued on June 9, 2006.

The Court has considered all the papers filed on behalf of the parties, as well as the arguments presented at the hearing, and, good cause appearing, HEREBY DENIES the motions for entry of judgment and GRANTS the protective orders, as follows:

I. Motions for Entry of Stipulated Judgment

The motions for entry of stipulated judgment are essentially identical, and so are ruled on jointly. The motions are DENIED.

Plaintiffs and Department both brought their motions for entry of stipulated judgment pursuant to Code of Civil Procedure section 664.6. That statute provides for a summary proceeding for enforcing settlement agreements under certain circumstances. The statute has a strict requirement that the parties themselves stipulate in writing or orally before the court that they have settled the case, and directly acknowledge the terms of the settlement. Stipulation by attorneys for the parties is not sufficient. *Levy v. Superior Court* (1995) 10 Cal.4th 578, 583; *Gauss v. GAF Corporation* (2002) 103 Cal.App.4th 1110, 1117-1119.

In the instant case, the parties moved the Court to enter judgment based on a settlement agreement, the "Joint Stipulation For Entry of Judgment" ("Joint Stipulation"), signed by Plaintiff Karuk Tribe of California by Plaintiff Leaf Hillman, Vice Chairman of the Karuk Tribe, and by the Department of Fish & Game by its Director, Defendant Ryan Broderick. (Copies of the Joint Stipulation are in the record as Exhibit A to Plaintiffs' Notice of Motion and Motion, and as Attachment A to Department's Notice of Motion and Motion.) In the Joint Stipulation, Plaintiffs and Department agree to entry of a proposed stipulated judgment ("Initial Proposed Stipulated Judgment" or "Initial PSJ") that would

essentially stop all suction dredge mining in certain parts of the Klamath, Salmon, and Scott Rivers and their tributaries, year round in some areas and for months at a time in others.

Prior to the hearing on the motions, the Court issued a Tentative Ruling denying the motion, on the ground that the Initial PSJ was contrary to law and public policy. Plaintiffs and Department contested the tentative ruling, and a hearing was held on March 23, 2006. At that hearing, counsel for Plaintiffs and Department represented to the Court that those parties had agreed to modify their settlement agreement to address an issue raised by the Court in its Tentative Ruling. They stated that the two sides had agreed that judgment should require Department to initiate a rule-making proceeding within 120 days of entry of the judgment, and should provide that the injunction stopping the suction dredge mining would terminate no later than one year after the rule-making proceedings began, unless continued by the Court at the request of the parties for certain reasons. The Intervenors continued to oppose entry of judgment, arguing that the revised terms did not solve the underlying impropriety of entering the proposed judgment.

Department submitted a copy of a revised Proposed Stipulated Judgment ("Revised PSJ") to the Court at the hearing, to show the Court the judgment to which the Department and Plaintiffs were willing to stipulate. These parties, however, did not then, and have not since that time, filed any documents signed

by the parties agreeing to the revised terms. Nor did the parties, some of whom were not present at the hearing, recite their agreement with the revisions on the record. Rather, their counsel spoke for them, asserting that the parties had orally confirmed to counsel their consent to the proposed revisions to the Initial PSJ.

Based on the above, to the extent the motions seek entry of the Revised PSJ, the motion is denied on the ground that there is not a stipulation by the parties upon which to base entry of judgment pursuant to C.C.P. §664.6. See *Levy v. Superior Court, supra*, 10 Cal.4th at 583.

Further, with or without the revisions set forth in the Revised PSJ, the Court finds that the stipulated judgment proposed by the Plaintiff and Department is contrary to law and public policy, and denies the motions on that ground as well.

The Court recognizes a strong policy favoring settlement of litigation. However, the Court also notes that a stipulated judgment pursuant to a settlement agreement is not simply a contract between the parties, but a Court judgment, which the Court is not to enter unless the parties have shown that the stipulated judgment is a just one, is not contrary to public policy, and does not incorporate an erroneous rule of law. See *Plaza Hollister Limited Partnership v. County of San Benito* (1999) 72 Cal.App.4th, 1, 12; *Cal. State Auto Ass'n. v. Superior Court* (1990) 50 Cal.3d 658.

Here, the Initial PSJ would enjoin suction dredge mining altogether in certain areas and during certain periods in others. The closures of the rivers would be generally applicable to all suction dredging while in effect. The injunction would essentially operate as promulgation of new regulations on suction dredging, without such regulations having been subjected, as required by law, to the public notice and hearing requirements of the California Environmental Quality Act and the California Administrative Procedures Act. See Cal Fish & Game Code section 5653.9.

The Initial PSJ provides that the Department "may" seek termination of the injunction "in the event that" the Department adopts amendments to its regulations which address the same areas covered by the injunction. (Initial PSJ paragraph 3.) However, there is nothing in the Initial PSJ or the Joint Stipulation that commits the Department to any such action, or that provides for a termination of the injunction after a certain period of time if the Department does not do so. As a result, the Initial PSJ injunction against suction dredging could remain in effect permanently.

The changes to the proposed injunction that the parties have proposed in the Revised PSJ, even if they had been agreed to by the parties in such a way that they could be considered by the Court in this C.C.P. 664.6 motion, would not resolve all the problems with the Initial PSJ. Although the Revised PSJ would limit the period for which the new "regulations" would be in effect, it still would result in

the Department's closing substantial portions of rivers to suction dredge mining for the next 14 months or longer, without the rule-making process required prior to implementing suction dredging regulations.[1] In the settlement agreement, the Department has not merely agreed to institute rule-making proceedings to evaluate existing and develop new regulations, which is the type of settlement that has been approved by appellate courts, but the Department has also agreed that certain closures will be in effect while that rule-making take place—essentially putting the new rules into place before the required APA procedures are complied with. *Cf. 108 Holdings Ltd. v. City of Rohnert Park* (2006) 136 Cal.App.4th 186, 198-200 (party agreed in settlement only to <u>seek</u> amendment to general plan, and then followed all required procedures prior to adoption of amendment); and *Citizens for Better Environment v Gorsuch* (1983) 718 F.2d 1117 (agency agreed in settlement to <u>develop</u> regulations, following a full public hearing process); and see *Trancas Property Owners Ass'n v. City of Malibu* (March 30, 2006) 41 Cal.Reptr.3d 200, 207, 210 (settlement of lawsuit not valid reason for circumventing law requiring that public entity's decision be preceded by public hearings).

The environmental injunction cases cited by Plaintiff and the Department, e.g., *Northern Alaska Environmental Center v. Hodel* (9th Cir. 1986) 803 F.2d

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[1] Neither Plaintiffs nor Department have provided any cases supporting the argument that rules of general application that go into effect for a set period of time significantly longer than a year, but not in perpetuity, are not subject to the Administrative Procedures Act.

466; *Idaho Watersheds Project v. Hahn* (9th Cir. 2002) 307 F.3d 815, are not applicable to this motion. In those cases, the injunctions to stop harmful activities while the public agency was performing the required environmental reviews were issued only after evidentiary hearings, and after the Court had made factual findings as to the harm involved and balanced the equities, including the burdens on the individuals or entities whose activities were impacted by the injunctions. There is no provision for such factual determinations or balancing on a motion to enter a stipulated judgment pursuant to C.C.P. §664.6.

II. Motions For Protective Order

Intervenor Miners had sought discovery of the expert witnesses of Plaintiffs and of the facts on which the experts based their opinion. Plaintiffs and Department sought Protective Orders enjoining the discovery on the grounds that the factual discovery was not pertinent to the Court's determination of the motion for entry of stipulated judgment, which was the only basis asserted for the discovery. The Court agreed, and granted a stay of discovery at the hearing. The Court now GRANTS the two motions enjoining the document requests and deposition notices. This Order is without prejudice to the Intervenors seeking the documents requested should such discovery not be premature expert-witness discovery, and be appropriate to other issues in this CEQA action, and following a meet-and-confer with the parties concerning the propriety of such discovery in a CEQA action.

III. Case Management Conference

A further case management conference for this matter is hereby set for July 17, 2006, at 9:00 a.m. in Department 512. New CMC Statements are to be submitted five days in advance. Telephonic appearances are permissible.

6/16/06
Date

Bonnie Sabraw
Bonnie Sabraw
Judge of the Superior Court