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MEMORANDUM

To: Dave McCracken, New 49'er Association
From: James L. Buchal
Date: September 28, 2011
Re: *Kimble v. Schwarzenegger* (PLP case)

On September 14th, I attended (by telephone) a status conference in PLP's challenge to SB 670, which is pending before Judge David Alvarez in San Bernardino County. This case had presented the claim, among others, that SB 670 impermissibly interfered with federal mining rights.

PLP successfully fought off an attempt by the State to move the case to Judge Roesch in Alameda County, and was now facing a motion to dismiss the complaint on the ground, among others, that the completion of the SEIR and new regulations would moot their claims. In the meantime, the Legislative Assembly passed AB 120, which may have made it impossible for the Department to issue permits at any time sooner than January 1, 2017. The State advised Judge Alvarez that the Department of Fish and Game would be finishing the SEIR and regulations, notwithstanding AB 120, and told the Judge that in its view, PLP's claims were still moot.

PLP's position at the hearing was that they would like to amend their complaint into a challenge to AB 120, and PLP would also like to present a preliminary injunction against enforcement of AB 120 and SB 670. The State made a significant effort to persuade Judge Alvarez that because Judge Roesch had enjoined the Department from issuing suction dredging permits, there was really nothing he could do to provide significant relief. PLP argued that it was presenting distinct arguments and is entitled to a distinct ruling addressed solely at the legality of AB 120 and SB 670.

After some argument, the Judge decided to allow PLP to go forward with its new claims, and the State will file a new motion to dismiss the new claims. The amended complaint and motion for a preliminary injunction are to be filed within forty days, and the State and PLP were directed to set a single hearing on the motion for an injunction and the motion to dismiss the case.

At this point, it appears prudent to stand by and await Judge Alvarez's reaction to PLP's new claims. If he does dismiss them, we might then implement the recommendation of my August 23rd memo, and go back to Judge Roesch.