

1 James R. Wheaton (State Bar No. 115230)
Lynne R. Saxton (State Bar No. 226210)
2 ENVIRONMENTAL LAW FOUNDATION
1736 Franklin Street, 9th Floor
3 Oakland, CA 94612
4 Tel: (510) 208-4555
Fax: (510) 208-4562

5 Attorneys for Plaintiffs Leon Hillman, Craig Tucker, David Bitts,
6 Karuk Tribe, Center for Biological Diversity, Friends of the River,
Klamath Riverkeeper, Pacific Coast Federation of Fishermen's Associations,
7 Institute for Fisheries Resources, and California Sportfishing Protection Alliance

8 William ("Zeke") Grader, Jr. (State Bar No. 64142)
9 Glen H. Spain (State Bar No. 88097)
PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS
10 Southwest Regional Office (Spain) Northwest Regional Office (Grader)
PO Box 11170 PO Box 29370
11 Eugene, OR 97440-3370 San Francisco, CA 94129-0370
Tel: (541) 689-2000 Tel: (415) 561-5080
12 Fax: (541) 689-2500 Fax: (415) 561-5464

13 Attorneys for Plaintiffs Pacific Coast Federation of Fishermen's Associations
14 and Institute for Fisheries Resources

15 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 IN AND FOR THE COUNTY OF ALAMEDA

17 LEEON HILLMAN; CRAIG TUCKER;) Case No.: RG 09434444
18 DAVID BITTS, KARUK TRIBE; CENTER)
FOR BIOLOGICAL DIVERSITY; FRIENDS) **DECLARATION OF LYNNE R. SAXTON**
19 OF THE RIVER; KLAMATH) **IN SUPPORT OF MOTION FOR**
RIVERKEEPER, PACIFIC COAST) **PRELIMINARY INJUNCTION**
20 FEDERATION OF FISHERMEN'S) **AGAINST DEFENDANTS CALIFORNIA**
ASSOCIATIONS; INSTITUTE FOR) **DEPARTMENT OF FISH AND GAME**
21 FISHERIES RESOURCES; CALIFORNIA) **AND DONALD KOCH, DIRECTOR**
SPORTFISHING PROTECTION ALLIANCE;)

22 and DOES 1-100,) Date: June 9, 2009
Plaintiffs,) Time: 9:00 a.m.
23 vs.) Dept.: 31
Judge: Hon. Frank Roesch
24 CALIFORNIA DEPARTMENT OF FISH) Complaint filed February 5, 2009
AND GAME; DONALD KOCH and DOES 1-)
25 100, inclusive,)
26 Defendants.)

1 I, Lynne R. Saxton, hereby declare:

2 1. I am the Senior Staff Attorney with the Environmental Law Foundation, the
3 named attorney for Plaintiffs Leon Hillman, Craig Tucker, David Bitts, Karuk Tribe, Center for
4 Biological Diversity, Friends of the River, Klamath Riverkeeper, Pacific Coast Federation of
5 Fishermen's Associations, Institute for Fisheries Resources, and California Sportfishing
6 Protection Alliance (collectively, "Plaintiffs") in this action. I am admitted to practice before the
7 Courts of this State. I make this declaration in support of Plaintiffs' Motion for Preliminary
8 Injunction. I have personal knowledge of the matter herein and would be competent to testify
9 thereto if called as a witness.
10

11 2. True and correct copies of the following documents are attached hereto as follows:

<u>Exhibit</u>	<u>Document</u>
A	<p>Transcript of Case Management Conference, <i>Karuk Tribe of California v. Department of Fish and Game</i> ("CEQA Action") Alameda Superior Court, Case No. RG 05211597, August 4, 2008, p. 8:14-17.</p> <p>(Notice: the transcript provided by the Court Reporter for Department 612 (the Court which heard the CEQA Action prior to Hon. Sabraw's retirement when it was transferred to Department 31, Honorable Frank Roesch), Terri F. Rosette, provided hearing transcripts that have the official transcript page positioned in the middle, right side of each page in the document. The pagination at the bottom is the page number for the report. The page references used in Plaintiffs' motion will be to the Transcript page, positioned in the middle, right side of the document and the line numbers that follow.)</p>
B	<p>Photograph, North Fork of the American River, Suction Dredge Mine and Its Sediment Plume (the brown stream moving downstream of the location of the suction dredging), taken by Alison Harvey, property owner on American River, July 7, 2007.</p>
C	<p>Letter, from State Water Resources Control Board to California Department of Fish and Game, Response to Department's Request for Public Comments on Impacts of Suction Dredge Mining, dated December 18, 2007.</p>
D	<p>Defendant's Case Status Report with Supporting Declarations of Neil Manji, Department of Fish and Game Fisheries Branch Chief, and Banky Curtis, Deputy</p>

1 Director of Regional Operations. Department's Admission of Liability. Exhibit
2 1: Declaration of Neil Manji; Exhibit 2: Declaration of Banky Curtis. October 17,
3 2006. *Karuk Tribe of California v. Department of Fish and Game*, Alameda
4 Superior Court, Case No. RG 05211597.

5 E Defendant's Case Status Conference Report, Discussing Response to
6 Department's Request for Public Comments on Impacts of Suction Dredge
7 Mining, Includes Exhibit 1: Summary of Comments and Identifying those
8 Concluding That Suction Dredge Mining Causes Negative Environmental
9 Impacts. January 14, 2008, *Karuk Tribe of California v. Department of Fish and
10 Game*, Alameda Superior Court, Case No. RG 05211597.

11 Exhibits F-J below, along with Exhibit C above, are the comments that were submitted by
12 State and Federal Agencies, as referenced on page 3-4 of Exhibit E.

13 F December 18, 2007 letter from United States Fish and Wildlife Service to
14 California Department of Fish and Game. Response to Department's Request for
15 Public Comments on Impacts of Suction Dredge Mining.

16 G Electronic mail message from Douglas Craig, California Department of
17 Conservation to Forrest Gardens, California Department of Fish and Game,
18 Response to Department's Request for Public Comments on Impacts of Suction
19 Dredge Mining, dated October 19, 2007, with attached list of 25 operations that
20 involve dredging activity and are subject to the Surface Mining and Reclamation
21 Act.

22 H Electronic message from Charles Alpers, United States Geological Survey
23 ("USGS") to Department of Fish and Game, Response to Department's Request
24 for Public Comments on Impacts of Suction Dredge Mining, discussing the
25 harmful impacts of mercury caused by suction dredge mining, with attachment of
26 June 22, 2007 letter from USGS to State Water Resources Control Board
27 regarding suction dredge mining. Additional attachments of over 100 pages not
28 included.

I Letter from U.S. Forest Service to California Department of Fish and Game,
Response to Department's Request for Public Comments on Impacts of Suction
Dredge Mining. Attachments of over 70 pages not included.

J Electronic mail message from Jann Williams, Fisheries Biologist, Eldorado
National Forest, Response to Department's Request for Public Comments on
Impacts of Suction Dredge Mining, dated October 24, 2007.

K Transcript, Case Management Conference, August 22, 2007, *Karuk Tribe of
California v. Department of Fish and Game*, Alameda Superior Court, Case No.
RG 05211597. (See "Notice" in Exhibit A regarding pagination of document.)

1 L *Gold Mining, Mercury and Suction Dredging*, excerpt from and Executive
2 Summary of *Mining's Toxic Legacy, An Initiative to Address Mining Toxins in*
3 *the Sierra Nevada*, published March 2008 by The Sierra Fund.

4 M "Special Permits: Items Reported by License Year, As of March 31, 2009",
5 Department of Fish and Game, from Department's website, listing the total
6 number of permits issued annually for the last 10 years. Relevant entries on Page
7 2, "Suction Dredge – Standard (NR)" (Non-Resident) and "Suction Dredge –
8 Standard (R)" (Resident).

9 N See www.msnbc.msn.com, Nightly News with Brian Williams; news pieces on
10 California's Gold Rush, aired:
11 April 13, 2009 (<http://www.msnbc.msn.com/id/3032619/#30198188>);
12 April 8, 2009 (<http://www.msnbc.msn.com/id/3032619/#24010584>);
13 March 25, 2009 (<http://www.msnbc.msn.com/id/3032619/#29876140>).

14 O *Prospectors Hope New California Gold Rush Will Pan Out*, Sacramento Bee,
15 with photographic slideshow, published on April 21, 2009; found at
16 <http://www.sacbee.com/827/story/1798381.html>.

17 P California Department of Fish and Game guidance document for regulations
18 involving suction dredging, with current regulations applicable to suction
19 dredging in rivers, streams and lakes attached. This guidance document states at
20 page 2 that "the suction dredge permitting program administered by the
21 Department is the subject of ongoing litigation. The litigation may affect suction
22 dredge permits issued by the Department and the suction dredge permitting
23 program generally."

24 Q Order and Consent Judgment in *Karuk Tribe of California v. Department of Fish*
25 *and Game*, Alameda Superior Court, Case No. RG 05211597 entered on
26 December 20, 2006.

27 R State and Federally Listed Endangered And Threatened Animals of California,
28 State of California, The Resources Agency, Department of Fish and Game,
Biogeographic Data Branch, California Natural Diversity Database, February
2009.

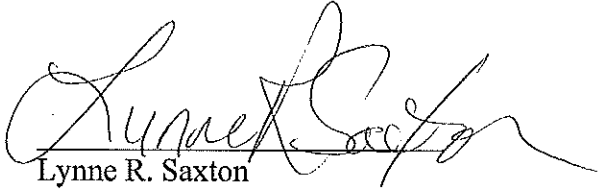
S Department of Fish and Game's Proposed Amendment to AB1032 (Wolk),
proposing raise to statutorily set suction dredge permit fees, with email.
Document received from Office of the Assembly's Water, Parks and Wildlife
Committee, from the Public Bill File. Email dated August 14, 2007.

T "Special Permits: Fees by License Year", Department of Fish and Game, April
21, 2009. Relevant entries: "Suction Dredge – Standard (NR)" (Non-Resident)
and "Suction Dredge – Standard (R)" (Resident), page 2.

1 U

State Water Resources Control Board Resolution No. 2009-0006, "Allocate
\$500,000 From The Cleanup And Abatement Account (CAA) To The
Department Of Fish And Game (DFG) To Augment DFG's Environmental
Impact Report (EIR) For Suction Dredge Regulations. January 6, 2009.

2
3
4 I declare under penalty of perjury that the foregoing is true and correct. Executed the
5 30th day of April, 2009, at Oakland, California.

6
7
8 
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Lynne R. Saxton