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MEMORANDUM

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

To: The New 49'ers Legal Fund
From: James L. Buchal
Date: April 30, 2015
Re: Suction Dredging Status

As the Fund is aware, miners in Siskiyou County have attempted to accelerate the question of the right to dredge by getting arrested and putting the matter before a judge immediately. The Department has instead elected to seize equipment and issue citations for hearings months away. Some of the miners have refused to sign citations promising to appear, resulting in only warnings, or equipment seizures. We remain under the impression that the Department is reluctant to arrest anyone in fashion that would give them an immediate hearing in front of a judge, though that could change. We also remain under the impression that the Siskiyou County District Attorney is not willing to prosecute the citations, though that could change too.

In light of the inability to get a local judicial ruling through arrest, The New 49'ers, Inc. organized (and funded) a proposed civil action in Siskiyou County to try and get injunctive relief for their members against Department enforcement. When the Department learned of the action (I was required by rule to give them notice), the Department demanded an immediate hearing before Judge Ochoa to stop the action, which occurred this morning. The papers I filed before Judge on behalf of The New 49'ers Ochoa (which include drafts of the Siskiyou County pleadings) are available online at: <http://www.goldgold.com/wp-content/uploads/2015/04/Initial-Response-to-States-Ex-Parte-App-4-29-15.pdf>.

Unfortunately, Judge Ochoa immediately declared that he was inclined to grant relief, because the Siskiyou County lawsuit presented, in his view, precisely the same issue before him, and he saw no point in permitting another case to be filed. He apologized for his continuing delay, and suggested that we needed to get dates set to get the rest of the case over with. He asked the Department to confer with us concerning the form of order to be entered stopping the Siskiyou lawsuit, and stated that we would resume the discussion in chambers.

In chambers, I reiterated that the Department was proposing to prevent “plaintiffs” from filing any action, but that the plaintiffs in the proposed Siskiyou County action were not even before him. The Judge began to appreciate the difficulties with enjoining parties not before him at all. He asked the Department for language, and the Department proposed to enjoin any of the members of any of the plaintiffs, which would pick up members of all the entities in the San Bernardino cases.

I told the Judge that unless and until relief were entered, other miners would continue to file for relief. Judge Ochoa stated that although he had been tempted to sign our form of proposed order on the motions for summary judgment that had been granted back in January, granting relief against Department enforcement, he ultimately concluded that there might be “due process” problems because there hadn’t been enough of a hearing on the form of relief.

He said that he had signed the State’s form of order on the motions for summary judgment, and indeed had already signed it, though it has not yet been released. (This form of order is “plain vanilla” and just states that the mining interests prevailed on all the motions for summary adjudication).

At this point, I told him that in light of his comments about providing due process, I was inclined to re-tool the Siskiyou County papers (see Exhibits 1-4 to the above hyperlink) and bring the question of injunctive relief against the Department directly before him. The Judge demanded that we work out a schedule with Mr. Solomon to accommodate a hearing for relief from Department enforcement, allowing the Tribal and environmental parties a full opportunity to participate.

In sum, I believe that, thanks to the pressure of The New 49’ers and their members, we have finally convinced the Judge that he needs to address the question of relief, and that we have a reasonable chance of getting him to act on his “temptation” and grant us the relief. I will confer with the Department tomorrow morning concerning scheduling of such a hearing and report further.

Thank you for your continuing support of those clients in the San Bernardino litigation who have been unable to pay their bills. I think we are now closer to getting some relief for a 2015 season.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Buchal', written in a cursive style.

James L. Buchal