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10	Attorney for Plaintiffs The New 49'ers Inc. et al.		
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12	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
13	FOR THE COUNTY OF SAN BERNARDINO		
14	Coordination Proposition	Indicial Council Proceeding No. ICPDS 4720	
15	Coordination Proceeding Special Title (Rule 1550(b)	Judicial Council Proceeding No. JCPDS 4720	
16	SUCTION DREDGE MINING CASES	DECLARATION OF JAMES L. BUCHAL	
17		IN SUPPORT OF MINERS' JOINT MOTION FOR INJUNCTION AGAINST	
19		DEFENDANTS	
20		Judge: Hon. Gilbert G. Ochoa  Dept.: S36	
21		Date: June 23, 2015	
22		Time: 8:30 a.m.	
23			
24	Related Actions:		
25			
26	Karuk Tribe of California, et al. v. California Department of Fish and Game	RG 05211597 – Alameda County	
27	Hillman, et al. v. California Department of Fish and Game	RG 09434444 – Alameda County	
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	DECLARATION OF JAMES L. BUCHAL IN SUPPORT OF MINERS' JOINT MOTION FOR INJUNCTION		
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Karuk Tribe of California, et al. v. California Department of Fish and Game	RG 1263796 – Alameda County
Kimble, et al. v. Kamala Harris, Attorney General of California, et al.	CIVDS 1012922 – San Bernardino County
Public Lands for the People, et al. v. California Department of Fish & Game, et al.	CIVDS 1203849 – San Bernardino County
The New 49er's, et al. v. State of California; California Department of Fish and Game, et	SCCVCV 120048 – Siskiyou County
Foley, et al. v. State of California; California Department of Fish and Wildlife, et al.	SCSCCV 13-00804 – Siskiyou County
Walker v. Harris, et al.	34-2013-80001439 – Sacramento County
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	Department of Fish and Game  Kimble, et al. v. Kamala Harris, Attorney General of California, et al.  Public Lands for the People, et al. v. California Department of Fish & Game, et al.  The New 49er's, et al. v. State of California; California Department of Fish and Game, et al.  Foley, et al. v. State of California; California Department of Fish and Wildlife, et al.

## James L Buchal states:

1. I am the attorney for plaintiffs *The New 49er's et al.* v. *California Department of Fish and Wildlife*, et al. (SCCVCV1200482, Siskiyou County) and the Western Mining Association and Eric Maksymyk in. *Public Lands for the People*, et al. v. *California Department of Fish & Game*, et al. (CIVDS 1203849, San Bernardino County). I make this Declaration in support of the Miner's Joint Motion for Injunctive Relief.

## Facts Concerning Irreparable Injury.

- 2. I am also counsel to several miners in Siskiyou County: Derek Eimer, Dan Parkin, Barton Riedel, and Dyton Gilliland. Attached as Exhibits 1 through 4 are sworn statements from these miners that I had intended to utilize in an action to be brought in Siskiyou County; this Court provided *ex parte* relief barring that suit on April 30, 2015, so it is appropriate to present these Declarations here. After these Declarations were prepared, Mr. Gilliland was arrested again on Thursday, May 7, 2015, and jailed. I prepared and served on the local District Attorney motion to have him released for want of probable cause at the 48 hour hearing. For reasons that are not entirely clear to me, Mr. Gilliland was released, but he has received no document extinguishing the threat of criminal liability with regard to this or any other citation, and I have been in contact with the District Attorney who confirms that Mr. Gilliland remains subject to potential criminal liability.
- 3. I have received information that other miners besides my clients have been cited for suction dredging and are subject to criminal prosecution in at least two other counties in California. Attached as Exhibits 5 through 7 are Declarations from two additional miners and their expert witness in ongoing criminal proceedings in Fresno County, California. Attached as Exhibit 8 is a copy of a citation another miner has received in Butte County, California. I have made no attempt to solicit these documents; they were sent to me unsolicited, and for this reason I would imagine that the universe of citations for dredging without a permit is substantially larger.

4. Notwithstanding this Court's ruling on the motions for summary adjudication back on January 12, 2015, the Department continues to insist publicly that use of suction dredges for mining purposes is unlawful throughout the State, and even that the law forbids the Department from issuing permits. Attached as Exhibit 9 is a true copy of a printout from the Department's website making these claims.

## Evaluation of Environmental Risks.

- 5. As noted in our memo, suction dredging on federal land is subject to federal regulation. Attached as Exhibit 10 is a true copy of a biological opinion concerning suction dredging and its impact upon endangered fish issued by the National Marine Fisheries Service concerning dredging in the Clearwater National Forest in Idaho. The opinion attempts to estimate losses of endangered fish imagined to arise from suction dredging. We do not provide this material because we agree with the estimate presented, which finds risk to 0.8 percent of the alevins, with a possible loss of 258 alevins. We offer this material to demonstrate that it is possible to quantify such risks rather than merely make theoretical assertions of risk, and that when quantified, the risks are tiny compared to other activities authorized by the Department.
- 6. In particular, the State of California permits ongoing killing of adult endangered fish for human consumption. Exhibit 11 is a true copy of a petition to the California Fish and Game Commission noting that the Karuk Tribe is involved in ongoing harvest of endangered salmon for consumption by members of the Tribe in what is essentially an entirely unregulated fishery. The Commission denied the petition at its April 9, 2009 regular meeting; a copy of the Staff summary taking that action is attached as Exhibit 12. This Court may take judicial notice of the Commission's decision, reflecting indifference to killing unknown numbers of endangered fish in a tribal fishery. At the least, the decision shows that even direct impact on adult endangered fish is not as a matter of public policy, per se grounds for banning the activity.

## Miscellany

7. Mr. Keith Walker has provided me with a Declaration which he has asked be considered in connection with this Court's evaluation of the request for injunctive relief. A true copy of Mr. Walker's Declaration is attached hereto as Exhibit 13.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 18, 2015.

James L. Buchal

MURPHY & BUCHAL LLP

Attorney for Plaintiffs The New 49'ers, Inc. et al.

I, Carole Caldwell, hereby declare under penalty of perjury under the laws of the State of

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Honorable Gilbert Ochoa

County of San Bernardino

Deputy Attorney General

455 Golden Gate Avenue, Suite 11000

San Francisco, CA 94102-7004

Department of Fish & Game

1416 Ninth Street, 12th Floor

E-mail: jmattox@dfg.ca.gov

Southwest Regional Office

Sacramento, CA 95814

Via U.S. Mail

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E-mail: Bradley.Solomon@doj.ca.gov Via E-mail

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E-mail: fishlifr@aol.com

P.O Box 11170 Eugene, OR 97440

Pacific Coast Federation of Fisherman's

Via E-mail

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within entitled cause. I am an employee of Murphy & Buchal, LLP and my business address is 3425 SE Yamhill Street, Suite 100, Portland, Oregon 97214.

On May 18, 2015, I caused the following document to be served:

California that the following facts are true and correct:

DECLARATION OF JAMES L. BUCHAL IN SUPPORT OF MINERS' JOINT MOTION FOR INJUNCTION AGAINST DEFENDANTS

by transmitting a true copy in the following manner on the parties listed below:

Chair, Judicial Council of California Administrative Office of the Courts

Attn: Court Programs and Services Division (Civil Case Coordination)

455 Golden Gate Avenue San Francisco, CA 94102 Via U.S. Mail

Marc Melnick

Office of the Attorney General 1515 Clay Street, Suite 2000 Oakland, CA 94612

E-mail: Marc.Melnick@doj.ca.gov

Via E-mail

James R. Wheaton

Environmental Law Foundation 1736 Franklin Street, 9th Floor

Oakland, CA 94612

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6		Keith Robert Walker 9646 Mormon Creek Road
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9		Mul shall
10		Carole Caldwell Declarant
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