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**Order ON CROSS-MOTIONS FOR SUMMARY
ADJUDICATION RE: PREEMPTION FILED IN KIMBLE
ET AL. filed**



NEW FILE

SCAN

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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAY 01 2015

By Juan M. DeBono
BARRY

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN BERNARDINO

13 Coordination Proceeding Special Title (Rule
14 1550(b))

Coordinated Case No. JCCP4720

15 **SUCTION DREDGE MINING CASES**

16 [PROPOSED] ORDER ON CROSS-
17 MOTIONS FOR SUMMARY
ADJUDICATION REGARDING
18 PREEMPTION FILED IN *KIMBLE, et al.*
v HARRIS, et al., (San Bernardino County
Case No. CIVDS1012922); *PUBLIC*
LANDS FOR THE PEOPLE, INC., et al. v
19 *CALIFORNIA DEPARTMENT OF FISH*
AND WILDLIFE, et al., (San Bernardino
County Case No. CIVDS1203849); AND
20 *THE NEW 49'ER'S INC., et al. v.*
CALIFORNIA DEPARTMENT OF FISH
AND GAME, et al., (Siskiyou County Case
21 No. SCCVCV1099482

22
23 **Included Actions:**

24 Karuk Tribe of California, et al. v. California
25 Department of Fish and Game

RG 12623796 - Alameda County

26 Kimble, et al. v. Kamala Harris, Attorney
27 General of California, et al.

CIVDS 1012922 - San Bernardino County

1 Public Lands for the People, et al. v. California
2 Department of Fish and Game

CIVDS 1203849 - San Bernardino County

3 The New 49er's, et al. v. State of California,
4 California Department of Fish and Game, et al.

SCCVCV120048 - Siskiyou County

5 Walker v. Harris, et al.

34-2013-80001439 - Sacramento County

6 Foley et al. v. California Department of Fish
and Wildlife, et al.

SCCVCV1300804 - Siskiyou County

7
8 The Motions of *Plaintiffs* in *Kimble, et al. v. Kamala Harris, Attorney General of*
9 *California, et al., Petitioners/Plaintiffs* in *Public Lands for the People, et al. v. California*
10 *Department of Fish and Game* and *Plaintiffs* in *The New 49er's, et al. v. State of California,*
11 *California Department of Fish and Game, et al.,* for Summary Adjudication regarding preemption
12 and the Motions of *Defendants* for Summary Adjudication regarding preemption in those three
13 cases came on for hearing on May 1, 2014. All parties appeared through their attorneys.

14 After considering (1) the papers filed in support of and in opposition to the motions, and (2)
15 the oral argument of counsel, the Court rules as follows on the motions for summary adjudication:

16 1) The Court finds there is no triable issue of material fact on the issue of Federal Preemption
17 and that as a matter of law and in actual fact, that the State's extraordinary scheme of requiring
18 permits and then pursuant to Fish and Game Code section 5653.1 refusing and/or being unable to
19 issue permits for years stands "as an obstacle to the accomplishment of the full purposes and
20 objectives of Congress" under *California Coastal Commission v. Granite Rock Co.* (1987) 480
21 U.S. 572 and a *de facto* ban. This *de facto* ban created by Fish and Game Code section 5653.1 on
22 suction dredge mining permits has rendered commercially impracticable the exercise of
23 plaintiffs'/petitioners' mining rights as granted by the federal government;

24 2) The Court grants summary adjudication as a matter of law of the first cause of action for
25 federal preemption in *Kimble, et al. v. Kamala Harris, Attorney General of California, et al.,* (San
26 Bernardino County Case No. CIVDS1012922). The evidence in support of this finding includes
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28

1 Material Facts 1-5 and the Declarations of Gary Goldberg, Gerald Hobbs, Patrick Keene, Steve
2 Tyler and Eric Maksymk. (California Code of Civil Procedure, Section 437c(g));

3 3) The Court grants summary adjudication as a matter of law of the fourth cause of action for
4 federal preemption in *Public Lands for the People, Inc., et al. v. California Department of Fish*
5 *and Game*, (San Bernardino County Case No. CIVDS1203849). The evidence in support of this
6 finding includes Material Facts 1-6 and the Declarations of Gary Goldberg, Gerald Hobbs, Patrick
7 Keene, Steve Tyler and Eric Maksymk. (California Code of Civil Procedure, Section 437c(g));

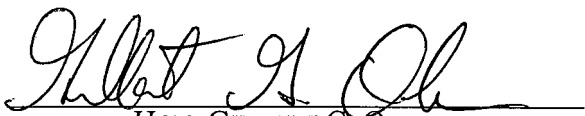
8 4) The Court grants summary adjudication as a matter of law of the second cause of action for
9 federal preemption in *The New 49'ers Inc., et al. v. California Department of Fish and Game, et*
10 *al.*, (Siskiyou County Case No. SCCVCV1099482). The evidence in support of this finding
11 includes Material Facts 1-6 and the Declaration of James L. Buchal. (California Code of Civil
12 Procedure, Section 437c(g));

13 5) The California Department of Fish and Wildlife's motions for summary adjudication as to
14 *Kimble, PLP*, and *The New 49'ers* are denied for these same reasons.

15 IT IS SO ORDERED.

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Dated: 5-1-14
NUNC PRO TUNC



HON. GILBERT G. OCHOA
Judge of the Superior Court

GILBERT G. OCHOA

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