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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SAN BERNARDINO
14

15 Coordination Proceeding
Special Title (Rule 1550(b))

Judicial Council Proceeding No. JCPDS 4720

16 **SUCTION DREDGE MINING CASES**

**[PROPOSED] ORDER GRANTING
INJUNCTION**

17
18 Judge: Hon. Gilbert G. Ochoa
19 Dept.: S36
20 Date: June 23, 2015
21 Time: 8:30 a.m.
22

23 **Related Actions:**

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

RG 05211597 – Alameda County

26 *Hillman, et al. v. California Department of*
27 *Fish and Game*

RG 09434444 – Alameda County

28 *Karuk Tribe of California, et al. v. California*

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<i>Department of Fish and Game</i>	RG 1263796 – Alameda County
<i>Kimble, et al. v. Kamala Harris, Attorney General of California, et al.</i>	CIVDS 1012922 – San Bernardino County
<i>Public Lands for the People, et al. v. California Department of Fish & Game, et al.</i>	CIVDS 1203849 – San Bernardino County
<i>The New 49'ers, et al. v. State of California; California Department of Fish and Game, et al.</i>	SCCVCV 120048 – Siskiyou County
<i>Foley, et al. v. State of California; California Department of Fish and Wildlife, et al.</i>	SCSCCV 13-00804 – Siskiyou County
<i>Walker v. Harris, et al.</i>	34-2013-80001439 – Sacramento County

1 The motion of Plaintiffs/Petitioners in *Kimble et al. v. Harris et al.* (San Bernardino
2 County Case No. CIVDS1012922) (Lead); *Public Lands for the People, et al. v. California*
3 *Department of Fish & Game, et al.* (San Bernardino County Case No. 1203849); and *The New*
4 *49er's, et al. v. State of California; California Department of Fish and Game, et al.* (Siskiyou
5 County Case No. 120048) for an injunction concerning suction dredge mining came before this
6 Court on June 23, 2015.

7 The Court having reviewed the extensive pleadings filed by the parties, and having
8 heard argument from counsel for all parties at the hearing on June 23, 2015,

9 THE COURT HEREBY FINDS:

10 1. The Department of Fish and Wildlife continues to refuse to issue permits to
11 suction dredge miners notwithstanding this Court's January 12, 2015 ruling that such a refusal
12 is not constitutional for reasons explained in that ruling. The Department has not developed
13 regulations to replace those that this Court declared unconstitutional in the January 12, 2015
14 ruling.

15 2. The Department of Fish and Wildlife continues to enforce §§ 5653 & 5653.1 of
16 the Fish and Game Code to prohibit suction dredge mining in California, including on federal
17 lands where such action is not constitutional.

18 3. Such continued enforcement renders this Court's summary adjudication without
19 force and effect, is causing continuing irreparable injury to Plaintiff/Petitioners, and is causing
20 further judicial proceedings in the State through criminal proceedings initiated based on
21 citations issued by the Department in which the Department in substance seeks to relitigate the
22 question of federal preemption.

23 4. The issues of environmental impact raised by the Department and other parties
24 from resumed suction dredge mining do not make out a case of concrete or specific public harm
25 sufficient to withhold a grant of equitable relief, particularly when the relief is conditioned so as
26 to maintain a longstanding regulatory scheme.

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1 THE COURT THEREFORE ORDERS:

2 1. The Department, its agents, servants, employees and attorneys, and all those in
3 active concert or participation with it, are hereby enjoined and restrained from enforcing the
4 provisions of the Fish and Wildlife Code prohibiting suction dredge mining in the rivers,
5 streams, and waterways of California without a permit, and possessing a suction dredge near
6 closed waterways in the limited circumstances where the suction dredge miner is:

7 (a) Operating on federal land; and

8 (b) Is operating in compliance with the equipment requirements, restrictions in
9 methods of operation, and use classifications and special regulations prevailing in 2009 when
10 the Department ceased issuing permits (former 14 Cal. Code Regs. §§ 228(e) & (f) and
11 § 228.5).

12 2. The Department, and its agents, servants, employees and attorneys, and all those
13 in active concert or participation with it, are hereby commanded to develop and implement a
14 program to issue suction dredging permits under regulations that do not stand as an obstacle to
15 the accomplishment of the full purposes and objectives of federal mining law.

16 3. This injunction shall continue until this Court is presented with a noticed motion,
17 in which the Department seeks relief from the injunction because it has developed a
18 constitutionally-permissible permitting scheme and regulations.

19 IT IS SO ORDERED:

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21
22 DATED: June _____, 2015

23 Hon. Gilbert G. Ochoa
24 Superior Court Judge
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1 PROOF OF SERVICE

2 I, Carole Caldwell, hereby declare under penalty of perjury under the laws of the State of
3 California that the following facts are true and correct:

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

7 On June 17, 2015, I caused the following document to be served:

8 [PROPOSED] ORDER GRANTING INJUNCTION

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

10 Honorable Gilbert Ochoa
11 Superior Court of California
12 County of San Bernardino
13 San Bernardino Justice Center
247 West 3rd Street
San Bernardino, CA 92415-0210
Via U.S. Mail

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Court Programs and Services Division
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Carole Caldwell
Declarant