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Exempt from Filing Fees  
Pursuant to Gov. Code, § 6103

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN BERNARDINO

12 **THE NEW 49'ERS, INC. A CALIFORNIA**  
13 **CORPORATION, DEREK D. EIMER;**  
14 **STEPHEN JONES; DAVID GUIDERO;**  
15 **MARVIN GARRY LAMPSHIRE II; AND**  
**DYTON W. GILLILAND,**

16 Plaintiffs and Petitioners,

17 v.

18 **CALIFORNIA DEPARTMENT OF FISH**  
19 **AND WILDLIFE, AND CHARLTON H.**  
**BONHAM,**

20 Defendants and Respondents.

Case No. CIVDS 1509427<sup>1</sup>

**OPPOSITION TO APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER/PRELIMINARY INJUNCTION**

Date: July 9, 2015  
Time: 8:30 a.m.  
Dept: S36  
Judge: Hon. Gilbert G. Ochoa

22 Defendants California Department of Fish and Wildlife ("Department) and Charlton H.  
23 Bonham, Director of the Department (collectively, "Defendants") oppose Plaintiffs' ex parte  
24 application for a Temporary Restraining Order/Preliminary Injunction. There is nothing  
25 justifying emergency relief here on an ex parte basis, and there is still no reason to issue an  
26 injunction.

27 <sup>1</sup> The parties are stipulating to coordination of this case with Coordinated Case No.  
28 JCCP4720.

1       **THIS COURT DENIED A REQUEST FOR AN INJUNCTION IN THE SUCTION**  
2       **DREDGE MINING COORDINATED MATTERS FOR THE SECOND TIME, ON**  
3       **JUNE 23, 2015, BASED, IN PART, ON A LACK OF IRREPARABLE HARM;**  
4       **NOTHING HAS CHANGED SINCE THEN TO WARRANT A DIFFERENT**  
5       **OUTCOME**

6       Just over two weeks ago, Plaintiffs in the *Kimble*, *Public Lands for the People* and *The New*  
7       *49'ers* cases, represented by David Young and James Buchal (Plaintiffs' counsel in this "new"  
8       case), filed a joint motion for an injunction seeking the resumption of suction dredge mining. The  
9       parties stipulated to a briefing schedule approved by the Court and all parties had an opportunity  
10      to fully and fairly brief the issues. (Stipulation and Order, Ex. A.) After consideration of the  
11      extensive briefing, including dozens of declarations and exhibits, this Court denied the injunction  
12      based on the fact the *People v. Rinehart* is on appeal before the California Supreme Court as to  
13      the issue of preemption, and based on a lack of showing that the miners will suffer irreparable  
14      harm if an injunction is not issued. (See Court's Tentative Ruling, cover letter and Order  
15      awaiting signature, Ex. B.) *Six days later*, on June 29th, Mr. Buchal requested to appear *ex parte*  
16      before this Court on July 2nd, a mere *nine days* after the denial of last injunction request, this  
17      time seeking a Temporary Restraining Order (TRO)/Preliminary Injunction (PI) to allow the  
18      miners to resume suction dredge mining. Due to the Court's vacation, and without regard for the  
19      vacations of primary counsel for the Department,<sup>2</sup> counsel for the miners has managed to drag all  
20      parties back before this Court just *sixteen* days after the last request for an injunction was denied.  
21      The miners could not show irreparable harm on June 23rd nor can they show it on July 9th. For  
22      these reasons alone the requested injunction should be denied.

23       **A.   There is Nothing New in The New 49'ers New LawsUIT.**

24       With The New 49'ers and five individuals as Plaintiffs, on July 6, 2015 Mr. Buchal filed a  
25       new lawsuit challenging the last two amendments to the suction dredge mining moratorium,  
26       found in Fish and Game Code section 5653.1. Those amendments were enacted and took effect

27       <sup>2</sup> Primary counsel for DFW, Deputy Attorney General Bradley Solomon is still on  
28       vacation as of the date of this hearing and co-counsel Deputy Attorney General Marc Melnick  
will just be returning from vacation but not in time to appear at this hearing. Mr. Solomon had  
asked Mr. Buchal to delay any *ex parte* matters until his return, to no avail.

1 over three years ago – on July 26, 2011 (Assembly Bill No. 120 or “AB 120”), and June 27,  
2 2012, (Senate Bill No. 1018 or “SB 1018”). The challenge is brought on an allegedly new theory  
3 – that the last two amendments to Fish and Game Code section 5653.1 violate Article IV section  
4 9 of the California Constitution regarding the “single subject rule.” While this theory may be a  
5 “new” mantel for Mr. Buchal to carry, the very same claim has been before this Court since the  
6 case of *Walker v. Harris* was coordinated with the Suction Dredge Mining Coordinated Action in  
7 or around May, 2013. (See Court file in *Walker v. Harris*, Case No. 34-2013-80001438  
8 Sacramento County, in Coordinated Case No. JCCP4720, Fourth and Fifth Causes of Action.) In  
9 fact, the papers filed by Mr. Buchal on the previous injunction motion included a declaration by  
10 Mr. Walker, discussing this theory in detail, but the miners did not discuss this theory in their  
11 brief or at the hearing.

12 After the hearing on the miners’ motion for an injunction on June 23<sup>rd</sup>, and discussion with  
13 the Court and attorneys of record in chambers, it became clear to Mr. Walker that the proper  
14 means by which to obtain court adjudication of this same issue was by filing a properly noticed  
15 motion for summary adjudication and not as an *ex parte* application. Mr. Buchal appears to be  
16 seeking a short cut to adjudication of this issue by filing a duplicative claim and attempting to  
17 rush to the front of the line by asking for a TRO or a preliminary injunction. However, there is no  
18 legitimate basis to rush the Court or the parties into briefing or deciding the constitutionality of a  
19 statute or its amendments, on an *ex parte* basis. Nor is there a legitimate basis for attempting to  
20 seek a third injunction on behalf of the miners in the suction dredge mining cases on an *ex parte*  
21 basis, when the first two injunctions were considered, and denied, after significant briefing, in due  
22 course. There is nothing new or urgent that would justify the seeking *ex parte*, or issuance of a  
23 TRO or a Preliminary Injunction *sixteen* days after the denial of the miners’ last request for  
24 injunctive relief.

25 Against the backdrop of the lack of new or compelling claims of irreparable harm are the  
26 complexities of the coordinated suction dredge mining cases and the orderly manner in which  
27 issues have been scheduled to proceed. Within the coordinated cases there are many challenges  
28 to the suction dredge mining statutes and regulations, including challenges to the moratorium.

1 The issues have been and will continue to be addressed in phases. The Court addressed the  
2 preemption issue first and the decision is in a holding pattern pending the *Rinehart* appeal on the  
3 preemption issue. The parties have stipulated to a scheduling order for trying the CEQA and  
4 record based claims which are scheduled for trial on January 20, 2016, and have stipulated that  
5 adjudication of the miners' "takings" claims will follow. Mr. Walker is able to file his motion  
6 seeking adjudication of the Article IV section 9 "single subject rule" claim upon a properly  
7 noticed motion. And while Mr. Buchal's new claim is duplicative and unnecessary, should the  
8 case be allowed to proceed, he too will be able to adjudicate the constitutional claim on a duly  
9 noticed motion. Other constitutional claims in these related proceedings have been accorded as  
10 much.

11 **B. The Ex Parte Application Should Be Denied Because Plaintiffs Have Not**  
12 **Provided the Necessary Showing of Irreparable Harm.**

13 At an ex parte hearing on a TRO, all that is determined is "whether the TRO is necessary to  
14 maintain the status quo pending the noticed hearing on the application for preliminary  
15 injunction." (*Landmark Holding Group, Inc. v. Superior Court*, (1987) 193 Cal.App.3d. 525,  
16 528, citations omitted.) The status quo in the coordinated matters is that suction dredge mining is  
17 currently not permitted. No TRO is necessary to maintain the status quo. Temporary restraining  
18 orders are usually prompted by an emergency situation. An ex parte application for a TRO may  
19 be issued to prevent irreparable harm or imminent danger, upon a proper showing. (Cal Rules of  
20 Court, 3.1150 subd. (c); 31202 subd. (c).) Neither situation is present here. Furthermore, these  
21 statutory amendments were enacted in 2011 and 2012, over three years ago. The claims in this  
22 new case have been pled by Mr. Walker in these coordinated proceeds for over two years. The  
23 New 49'ers knew of this theory long ago and could have brought this claim years ago but chose  
24 not to. That choice does not create an emergency for the Court or the Defendants now.

25 Generally, statutes and ordinances will not be enjoined, and where plaintiffs seek such an  
26 injunction, public policy considerations come into play. "Where, as here, the Plaintiffs seek to  
27 enjoin public officers and agencies in the performance of their duties the public interest must be  
28 considered." (*Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.* (1994)

23 Cal.App.4th 1459, 1472-1473.) “There is a general rule against enjoining public officers or agencies from performing their duties.” (*Ibid.*) Although this rule would not preclude a court from enjoining unconstitutional or void acts, to support a request for such relief, the Plaintiff must make “a significant showing of irreparable injury.” (*Id.* at p. 1471.) Irreparable injuries are ones that cannot be adequately compensated in damages. (*Intel Corp. v. Hamidi* (2003) 30 Cal.4<sup>th</sup> 1342,1352.) Additionally, as a practical matter, trial courts are “extremely cautious” about granting preliminary injunctions on this ground. Injunctive relief is usually deferred until a trial on the merits. (*See, Cohen v. Board of Supervisors* (1986) 178 Cal. App. 3d. 447, 453.)

The declarations filed in support of the request for TRO and preliminary injunction offer various portraits of how the inability to suction dredge mining has allegedly impacted the declarants’ lives<sup>3</sup>. However, there is nothing new or significantly different before this Court today that has not been weighed and considered before ruling on the previous requests for injunctive relief. Plaintiffs have not shown that they will suffer significant irreparable injury if the instant request for TRO or preliminary injunction is not granted. Claims of economic hardship, taking of property, and possible or actual arrest are generally redressable or avoidable. There is nothing new in the nature of damages or injury being alleged before this Court that has not been considered and found outweighed when ruling on an injunction in these matters.

**C. Nor are Plaintiffs Likely to Prevail on their Request for a Preliminary Injunction**

When ruling on a request for preliminary injunction, the court must evaluate two interrelated factors: (1) the likelihood that the Plaintiff will prevail on the merits at trial and (2) the interim harm that the Plaintiff would be likely to sustain if the injunction were denied as compared to the harm the defendant would be likely to suffer if the preliminary injunction were issued.” (*Smith v Adventist Health System/West* (2010) 182 Cal.App.4th 729, 749.) The court’s determination must be guided by a “mix” of potential-merit and interim harm factors: the greater

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<sup>3</sup> Defendants reserve their right to make evidentiary objections to the declarations due to the short amount of time they were given to respond to the request for a TRO.



1 the Plaintiff's showing on one, the less must be shown on the other to support an injunction.( *Butt*  
2 *v State of Cal.* (1992) 4 Cal. 4th 668, 677-678.)

3 The miners' attack on AB 120 and SB 1018 appear to be a facial attack. A facial attack on  
4 the constitutionality of a statute requires a court to start from the premise that the statute is valid,  
5 resolve all doubts in favor of its constitutionality, and uphold it unless it is in clear and  
6 unquestionable conflict with the state or federal constitutions. (*County of Sonoma v. State Energy*  
7 *Resources Cons. and Dev. Com.* (1985) 40 Cal.3d 361, 368.) As with any law, the Legislature is  
8 afforded a significant amount of deference by the courts, and its enactments are presumed valid.  
9 This deference arises because the California Legislature "may exercise any and all legislative  
10 powers which are not expressly . . . denied to it by the [California] Constitution." (*Methodist*  
11 *Hospital of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691.) "In other words, we do not look to  
12 the Constitution to determine whether the Legislature is authorized to do an act, but only to see if  
13 it is prohibited." (*Ibid.*) Any "restrictions and limitations [imposed by the Constitution] are to be  
14 construed strictly, and are not to be extended to include matters not covered by the language  
15 used." (*Ibid.*) Thus, "[i]f there is any doubt as to the Legislature's power to act in any given case,  
16 the doubt should be resolved in favor of the Legislature's action." (*Ibid.*) In light of the  
17 presumption in favor of upholding AB 120 and SB 1018, the miners' likelihood of success on the  
18 merits is uncertain at best, particularly in the context of their ex parte application.

19 On this ex parte application, Defendants have not had time to brief the merits of this  
20 complex constitutional issue. But at first blush, Plaintiffs seem to be arguing that California's  
21 2011 and 2012 natural resources budget trailer bills, which implement and enact laws in that  
22 subject area against the backdrop of the fiscal year's budget act, are unconstitutional because the  
23 trailer bills address a number environmental statutes and codes. In so doing practically speaking,  
24 Plaintiffs are asking the court to upend ex parte years-old budget trailer bills on a constitutional  
25 theory that has been raised previously, to be briefed in turn, in the present coordinated  
26 proceedings since 2013. And regardless, without addressing the merits of the claim, and even  
27 assuming arguendo Plaintiffs could show some likelihood of success on the merits, Plaintiffs still  
28 have not shown that they will suffer irreparable harm if the requested injunction is denied.

Furthermore, Defendants have already shown the harm to the environment that would likely occur should an injunction issue. (See Declaration of Stafford Lehr In Support of Defendants' Opposition to miners' Joint Motion for Injunction, filed June 9, 2015, attached as Exhibit C.) Defendants' opposition to the miners' Joint Motion for an Injunction was heavily briefed and supported with declarations and evidence of the harm that would ensue were the injunction granted. While Defendants are unable to mount the same paper-storm of evidence on three days' notice, they proffer their previously filed opposition and supporting evidence in support of the harm to be suffered, and ask that the Court consider those documents in the Court file.<sup>4</sup>

**Further Factors weighing against granting the Plaintiffs injunctive relief are the following:**

**1. An Injunction Would Encourage Illegal Activity**

For at least twenty-five years, the law has been clear that suction dredge mining requires a permit under the federal Clean Water Act. (*Rybachek v. U.S. Env'tl. Prot. Agency* (9th Cir. 1990) 904 F.2d 1276, 1285-86; see also Declaration of Elizabeth Haven in Support of Defendants' Opposition to Motion for Preliminary Injunction in *Kimble v. Harris*, filed May 1, 2013.) Until the miners obtain a Clean Water Act Permit, they will not be able to suction dredge mine lawfully.

**2. Suction Dredge Mining without a Water Quality Permit Raises Issues of Safety**

Because suction dredge mining generally is done where gold mining occurred historically, there are serious issues with mercury. (Haven Decl., ¶¶ 12-15.) Mercury is a potent neurotoxin, accumulating in fish and humans, and found to be toxic. (Haven Decl., ¶¶ 13-15.)

**3. Suction Dredging During This Year's Drought Will Cause Harm**

The issuance of the requested injunction also has the potential to create great harm. With the Kimble preliminary injunction motion, Defendants showed the well-established, harmful

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<sup>4</sup> Defendants' opposition to the last injunction included references to declarations from their opposition to the miners' first request for injunctive relief in 2013. Defendants again refer to the documents they filed in opposition to both of the miners' prior injunction requests, including but not limited to the Declarations of Stafford Lehr, the Declaration of Lynn Haven and the Declaration of Mark Stopher.

1 effects on fish and water quality due to suction dredge mining. (See Declaration of Mark Stopher  
2 in Support of Defendants' Opposition to Motion for Preliminary Injunction in *Kimble v. Harris*,  
3 filed May 1, 2013; Declaration of Stafford Lehr in Support of Defendants' Opposition to Motion  
4 for Preliminary Injunction in *Kimble v. Harris*, filed May 1, 2013; Haven Decl.) With the  
5 drought continuing this year, that harm is even more evident. As the Court knows, California is  
6 under extreme drought conditions. This means that fish, especially the threatened fish species of  
7 coho salmon, Chinook salmon, and steelhead that the 2012 regulations sought to protect, are  
8 under extreme stress. (Declaration of Stafford Lehr, Ex. C, ¶¶ 9-14.) They do not have enough  
9 water, the water is warmer than usual, and there are high levels of disease present. (*Id.*, ¶¶ 9, 13.)  
10 The Department is taking extreme and unprecedented measures to prevent high levels of death  
11 amongst those fish, including moving over 100,000 of them to better waters and releasing more  
12 water from dams. (*Id.*, ¶ 10.) Still, there is high risk for these species. (*Id.*, ¶¶ 9-14.) Adding  
13 suction dredge mining to the mix will make an already bad situation even worse. (*Id.*, ¶ 14.)

#### 14 **4. The Miners Have a Remedy**

15 As stated above, since the miners are seeking an injunction against a government  
16 agency, they must make "significant" showing of irreparable harm. (*Tahoe Keys, supra*, 23  
17 Cal.App.4th at p. 1471.) And because the miners' claims are economic, as the moving party, they  
18 must prove that the harms are not compensable. (*Ibid.*) The gold they seek to mine will remain  
19 where it is, therefore, it would seem hard to prove that any injury is irreparable. And most of the  
20 miners have takings claims seeking damages. The Court has already ruled, both on the first and  
21 second motions for preliminary injunction, that the miners' alleged economic losses do not  
22 constitute an irreparable injury. Therefore, there is still no showing of irreparable harm.

23 The miners also claim that the threat of arrest and confiscation of property are irreparable  
24 injuries. Both threats are wholly avoidable by compliance with the law. Most miners, and  
25 presumably those who have been cited are connected with these cases either directly or through  
26 the organizational Plaintiffs, and represented by the same counsel in this case. Those individuals  
27 were not cited for suction dredge mining because of their inadvertence or ignorance as they were  
28 most likely informed of the Court's decisions denying injunctive relief. The fact that certain



1 individuals were suction dredge mining, and were cited, is undoubtedly related to a failure to  
2 acknowledge that this Court's determination of the status quo has not been altered.

3 **5. Granting the Miners Any Injunctive Relief which Allows them To Mine Would**  
4 **Create Inconsistent Rulings Among the Coordinated Cases**

5 One of the express purposes of coordinating the suction dredge mining cases was to avoid  
6 inconsistent rulings. See Coordination Order signed by Judge Alvarez on October 2, 2012.  
7 Chaos would ensue, both in the field, and in this Court, were some plaintiff miners to obtain  
8 suction dredge mining rights while others did not.

9 **D. The Scope Of The Requested Injunctive Relief Is Inappropriate**

10 Plaintiffs are challenging the two amendments to Fish and Game Code section 5653.1, as  
11 enacted through AB 120 and SB 1018. If the relief they requested were granted and those  
12 sections were found to violate the California Constitution, Article IV section 9, Fish and Game  
13 Code section 5653.1 as originally enacted by Senate Bill 670 on August 6, 2009 would still stand.  
14 So too would the remainder of the Fish and Game Code, including section 5653. Plaintiffs'  
15 allegations have nothing to do with Fish and Game Code section 5653, which requires miners to  
16 obtain a permit from the Department under the Department's regulations. Therefore, their request  
17 that they be allowed to mine without permits is completely beyond the scope of the matter at issue  
18 in their lawsuit.

19 **The Injunctive Relief Requested is Problematic and Inadministerable**

20 Furthermore, even if the Court were inclined to grant injunctive relief, the miners' request  
21 is untenable. They have asked the Court to enjoin the Department from "enforcing the Fish and  
22 Wildlife (sic.) Code prohibiting suction dredge mining against Plaintiffs and members of the New  
23 49'ers operating on federal mining claims in Siskiyou County owned or controlled by The New  
24 49'ers, provided that all such mining must be in compliance with the provisions of the 2012  
25 Regulations (other than the provisions requiring a permit)", among other things.

26 This would create inconsistent findings in the coordinated cases, call upon Fish and  
27 Wildlife Wardens to identify and provide special treatment to members of The New 49'ers,  
28 (notwithstanding the lack of class certification), determine the federal mining claims owned and

1 controlled by The New 49'ers, and allow them to mine, without a permit, in Siskiyou County  
2 only. There is no part of that request that is reasonable, workable, or warranted.

3 **CONCLUSION**


4 In accordance with the goals of case coordination, and because Plaintiffs have again failed  
5 to show irreparable harm, the requested TRO and Preliminary Injunction should be denied.  
6 In considering the public interest (*Tahoe Keys, supra*, 23 Cal.App.4th at p. 1473), the Court must  
7 consider the practical benefits and harms to issuing the requested injunction. Here, the economic  
8 harms to recreational miners, a handful of professional miners, and a few persons who work in  
9 mining-related businesses are redressable and do not outweigh the risk that the injunction will  
10 encourage suction dredge miners across the State to conduct an activity that is illegal under  
11 federal law and that will harm fish, other aquatic species, and water quality.

12 For the reasons stated, the Defendants request that the request for a Temporary Restraining  
13 Order and Preliminary Injunction be denied.

14  
15 Dated: July 8, 2015

Respectfully Submitted,

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18 ROBERT W. BYRNE  
Senior Assistant Attorney General

19  
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21 BARBARA C. SPIEGEL  
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23 *Department of Fish & Wildlife*

24 SF2010202278  
41325208.doc

**DECLARATION OF SERVICE BY E-MAIL and U.S. Mail**

Case Name: **The New 49'ers, Inc. a California Corporation, Derek D. Eimer; Stephen Jones; David Guidero; Marvin Garry Lampshire II; and Dyton W. Gilliland v. California Department of Fish and Wildlife, and Charlton H. Bonham**  
Case No.: **CIVDS 1509427**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On July 8, 2015, I served the attached **OPPOSITION TO APPLICATION FOR TEMPORARY RESTRAINING ORDER/PRELIMINARY INJUNCTION** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

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**Via U.S. Mail only**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 8, 2015, at San Francisco, California.

Michelle CoSeng  
Declarant

  
Signature

# **EXHIBIT A**



1 KAMALA D. HARRIS  
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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

JUN 23 2015

BY Kimberly Poland  
KIMBERLY POLAND, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

Coordination Proceeding Special Title (Rule  
1550(b))

Coordinated Case No. JCCP4720

SUCTION DREDGE MINING CASES

**STIPULATION AND [PROPOSED]  
ORDER SETTING BRIEFING AND  
HEARING DATES FOR (1) MINERS'  
MOTION(S) FOR AN INJUNCTION (2)  
CEQA/APA HEARING**

Dept: S36  
Judge: The Honorable Gilbert G. Ochoa  
Trial Date: None Set

At the Court's direction, the parties in these coordinated proceedings wish to schedule the consideration of two items on the Court's calendar.

First, the plaintiffs in *The New 49'ers Inc. v. California Department of Fish and Game* have indicated they wish to file a motion for an injunction based on the Court's May 1, 2015 ruling on the cross-motions for summary adjudication. The Court has tentatively scheduled a hearing on this motion for June 23, 2015, at 8:30 a.m. The other miner plaintiffs have indicated they may file a companion motion for injunction.

1 All parties to these coordinated proceedings **DO HEREBY STIPULATE** to the following  
2 briefing and hearing schedule, and request that the Court order this schedule:

3 (a) Plaintiffs', represented by Mr. Buchal, Motion to be e-mailed to the parties and  
4 dispatched by overnight delivery for filing and service on May 18, 2015;

5 (b) Plaintiffs', represented by Mr. Young, companion filing to be e-mailed to the parties  
6 and dispatched by overnight delivery for filing and service on May 20, 2015;

7 (c) Responses by Defendants and *Karuk Tribe* plaintiffs to be e-mailed to the parties and  
8 dispatched by overnight delivery for filing and service by June 10, 2015;

9 (d) Replies to be e-mailed to the parties and dispatched by overnight delivery for filing and  
10 service by June 17, 2015; and

11 (e) Hearing to be held at 8:30 a.m. on June 23, 2015.

12 Service shall be by email and/or overnight mail. Briefs shall be limited as follows: opening,  
13 twenty (20) pages each; response briefs, twenty (20) page each; reply briefs, ten (10) pages each.

14 Second, the Court has indicated it wishes to schedule briefing and hearing on the record-  
15 based matters challenging the actions in 2012 by the California Department of Fish and Wildlife  
16 in adopting new suction dredge mining regulations (at California Code of Regulations, title 14,  
17 sections 228 and 228.5) and certifying its environmental impact report on the Department's  
18 suction dredge permitting program. These matters raise issues under the Fish and Game Code,  
19 the Administrative Procedure Act, and the California Environmental Quality Act. This briefing  
20 and hearing is to resolve the entire *Karuk Tribe* case, the fourth cause of action in *The New 49ers*  
21 case, and the first, second, and third causes of action in the *Public Lands for the People* case. An  
22 administrative record for these matters has been lodged with the Court.

23 All parties to these coordinated proceedings **DO HEREBY STIPULATE** to the following  
24 briefing and hearing schedule for these record-based matters:

25 (a) Opening briefing to be e-mailed to the parties and dispatched by overnight delivery for  
26 filing and service by August 31, 2015;

27 (b) Responses to be e-mailed to the parties and dispatched by overnight delivery for filing  
28 and service by November 17, 2015;

1 (c) Replies to be e-mailed to the parties and dispatched by overnight delivery for filing and  
2 service by December 22, 2015;

3 (d) Hearing to be held the week of January 18, 2016, or as otherwise set by the Court.

4 The following briefing limitations shall apply:

5 In the *Karuk Tribe* case,

6 (1) Plaintiffs' Opening Brief shall be limited to forty (40) pages;

7 (2) Defendants' Response Brief shall be limited to forty (40) pages;

8 (3) Plaintiffs', in *The New 49ers* and *Public Lands for the People*, Response Brief(s) shall  
9 be limited to forty (40) pages total (to be shared between all of those plaintiffs);

10 (4) Plaintiffs in *Karuk Tribe* and defendants' Reply Briefs are limited to twenty (20) pages  
11 each. Plaintiffs', in *The New 49ers* and *Public Lands for the People*, Reply Brief(s) are  
12 limited to twenty (20) pages total (to be shared between all of those plaintiffs).

13 In *The New 49ers*, and *Public Lands for the People* cases,

14 (1) Plaintiffs', in *The New 49ers* and *Public Lands for the People*, Opening Brief(s) are  
15 limited to fifty (50) pages total (to be shared between all of those plaintiffs);

16 (2) Defendants' Response Brief shall be limited to fifty (50) pages;

17 (3) Plaintiffs', in *Karuk Tribe*, Response Brief shall be limited to fifty (50) pages;

18 (4) Plaintiffs', in *The New 49ers* and *Public Land for the People*, Reply Brief(s) are limited  
19 to twenty-five (25) pages total (to be shared between all of those plaintiffs). Defendants  
20 and Plaintiffs', in *Karuk Tribe*, Reply Briefs are limited to twenty-five (25) pages each.

21 Should a party choose to respond or reply to multiple briefs in a single brief, the party will  
22 be allowed the same number of pages that would have been allowed had the party chosen to  
23 respond or reply to the briefs separately.

24 Service shall be by email and/or overnight mail.

25 ///

26 ///

27 ///

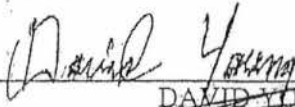
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1 IT IS SO STIPULATED.

2  
3 Dated: \_\_\_\_\_

LYNNE R. SAXTON  
Attorney for Plaintiffs in the *Karuk Tribe Action*

4  
5 Dated: 5/13/15 \_\_\_\_\_

  
DAVID YOUNG  
Attorney for Plaintiffs in *Kimble and*  
Petitioners/Plaintiffs *Public Lands for the People,*  
*Inc. Actions*

6  
7  
8  
9 Dated: \_\_\_\_\_

JAMES BUCHAL  
Attorney for Plaintiffs/Petitioners in *New 49'ers,*  
*Inc. Action*

10  
11  
12 Dated: \_\_\_\_\_

JONATHAN EVANS  
Attorney for Plaintiffs in the *Karuk Tribe Action*

13  
14 Dated: \_\_\_\_\_

BRADLEY SOLOMON  
Deputy Attorney General for  
Defendant/Respondent California Department of  
Fish and Wildlife

15  
16  
17  
18  
19 ORDER

20 IT IS SO ORDERED. The motion(s) for an injunction will be heard at 8:30 a.m. on June  
21 23, 2015, and that the matter be briefed as scheduled in the stipulation herein. The parties'  
22 record-based claims hearing will be held at \_\_\_\_\_ a.m. on January \_\_\_\_\_, 2016, and that  
23 the matter be briefed as scheduled in the stipulation herein.

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25 Dated: \_\_\_\_\_

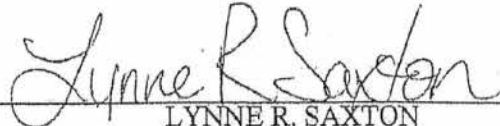
GILBERT G. OCHOA  
Judge of the Superior Court

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1 IT IS SO STIPULATED.

2 Dated:

5/13/15



LYNNE R. SAXTON  
Attorney for Plaintiffs in the Karuk Tribe Action

4 Dated:

DAVID YOUNG

Attorney for Plaintiffs in *Kimble* and  
Petitioners/Plaintiffs *Public Lands for the People,*  
*Inc.* Actions

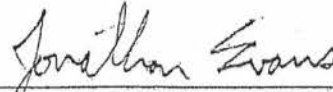
6 Dated:

JAMES BUCHAL

Attorney for Plaintiffs/Petitioners in *New 49'ers,*  
*Inc.* Action

8 Dated:

5/13/15



JONATHAN EVANS  
Attorney for Plaintiffs in the Karuk Tribe Action

10 Dated:

BRADLEY SOLOMON

Deputy Attorney General for  
Defendant/Respondent California Department of  
Fish and Wildlife

12 ORDER

13 IT IS SO ORDERED. The motion(s) for an injunction will be heard at 8:30 a.m. on June  
14 23, 2015, and that the matter be briefed as scheduled in the stipulation herein. The parties'  
15 record-based claims hearing will be held at \_\_\_\_\_ a.m. on January \_\_\_\_\_, 2016, and that  
16 the matter be briefed as scheduled in the stipulation herein.

17 Dated:

GILBERT G. OCHOA  
Judge of the Superior Court

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IT IS SO STIPULATED.

Dated: \_\_\_\_\_

LYNNE R. SAXTON  
Attorney for Plaintiffs in the *Karuk Tribe* Action

Dated: \_\_\_\_\_

DAVID YOUNG  
Attorney for Plaintiffs in *Kimble* and  
Petitioners/Plaintiffs *Public Lands for the People,*  
*Inc. Actions*

Dated: 5/13/15

JAMES BUCHAL  
Attorney for Plaintiffs/Petitioners in *New 49'ers,*  
*Inc. Action*

Dated: \_\_\_\_\_

JONATHAN EVANS  
Attorney for Plaintiffs in the *Karuk Tribe* Action

Dated: \_\_\_\_\_

BRADLEY SOLOMON  
Deputy Attorney General for  
Defendant/Respondent California Department of  
Fish and Wildlife

ORDER

IT IS SO ORDERED. The motion(s) for an injunction will be heard at 8:30 a.m. on June 23, 2015, and that the matter be briefed as scheduled in the stipulation herein. The parties' record-based claims hearing will be held at \_\_\_\_\_ a.m. on January \_\_\_\_\_, 2016, and that the matter be briefed as scheduled in the stipulation herein.

Dated: \_\_\_\_\_

GILBERT G. OCHOA  
Judge of the Superior Court

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1 IT IS SO STIPULATED.

2  
3 Dated: \_\_\_\_\_

LYNNE R. SAXTON  
Attorney for Plaintiffs in the *Karuk Tribe* Action

4  
5 Dated: \_\_\_\_\_

DAVID YOUNG  
Attorney for Plaintiffs in *Kimble* and  
Petitioners/Plaintiffs *Public Lands for the People,*  
*Inc.* Actions

6  
7  
8 Dated: \_\_\_\_\_

JAMES BUCHAL  
Attorney for Plaintiffs/Petitioners in *New 49'ers,*  
*Inc.* Action

9  
10 Dated: \_\_\_\_\_

JONATHAN EVANS  
Attorney for Plaintiffs in the *Karuk Tribe* Action

11  
12 Dated: May 14, 2015

Bradley Solomon  
BRADLEY SOLOMON  
Deputy Attorney General for  
Defendant/Respondent California Department of  
Fish and Wildlife

13  
14  
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16  
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18  
19 ORDER

20 IT IS SO ORDERED. The motion(s) for an injunction will be heard at 8:30 a.m. on June  
21 23, 2015, and that the matter be briefed as scheduled in the stipulation herein. The parties'  
22 record-based claims hearing will be held at 8:30 a.m. on January 20, 2016, and that  
23 the matter be briefed as scheduled in the stipulation herein.

24  
25 Dated: 6-23-15

Gilbert G. Ochoa  
GILBERT G. OCHOA  
Judge of the Superior Court

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GILBERT G. OCHOA

# **EXHIBIT B**

## IN RE SUCTION DREDGE MINING CASES

### Included Actions:

- *Kimble, et al. v. Harris, et al.*, Case No. CIVDS1012922, San Bernardino County, Filed September 15, 2010 ("*Kimble*");
- *Karuk Tribe, et al. v. Calif. Dept. of Fish & Game, et al.*, Case No. RG12623796, Alameda County, filed April 2, 2012 ("*Karuk IP*");
- *Public Lands for the People, et al. v. State of Calif., et al.*, Case No. CIVDS1203849, San Bernardino County, filed April 12, 2012 ("*PLP*")
- *The New 49'ers, Inc., et al. v. Calif. Dept. of Fish & Game, et al.*, Case No. SCCVCV1200482, Siskiyou County, filed April 13, 2012 ("*New 49'ers*");
- *Walker v. Kamala Harris, et al.*, Case No. 34-2013-80001439, Sacramento County, filed March 14, 2013 ("*Walker*"); and
- *Foley v. Calif. Dept. of Fish & Wildlife, et al.*, Case No. SCCVCV1300804, Siskiyou County, filed July 1, 2013 ("*Foley*")

Motion: Miners' Joint Motion for Injunction

Movant: Plaintiffs/Petitioners Kimble, PLP, and The New 49er's

Respondent: Defendant/Respondent California Department of Fish and Wildlife, and separately, Plaintiff/Petitioner Karuk Tribe of California

This Court has already ruled, in denying the earlier motion for preliminary injunction brought by the Kimble Plaintiffs, that the Plaintiffs/Petitioners will not suffer irreparable injury from the continued status quo – a ruling which the Kimble Plaintiffs appealed, but then voluntarily dismissed.

In addition, as properly noted by CDFW and Karuk, the case of *People v. Rinehart*, Case S222620, is currently before the Supreme Court, and the appellate decision heavily relied on by this Court was depublished shortly after this Court issued its ruling on the summary adjudication

motions. As all parties are aware, the Third Appellate District's opinion in *Rinehart* examined the issue of federal preemption and the enforceability of Fish & Game Code § 5653 in light of the provisions of Section 5653.1. As a result, the very issue that was at the center of this Court's January 2015 ruling are now up for review. On balance and considering all the issues, the Court cannot conclude that either factor would weigh in favor of the movant. The injunction is denied.

CDFW to prepare the order.



KAMALA D. HARRIS  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



455 GOLDEN GATE AVENUE, SUITE 11000  
SAN FRANCISCO, CA 94102-7004

Public: (415) 703-5500  
Telephone: (415) 703-5627  
Facsimile: (415) 703-5480  
E-Mail: Bradley.Solomon@doj.ca.gov

June 26, 2015

The Honorable Gilbert G. Ochoa  
San Bernardino County Superior Court  
247 W. Third Street Dept. S36  
San Bernardino, CA 92415

RE: Suction Dredge Mining Cases  
Superior Court of California, County of San Bernardino, Coord. Case No. JCCP4720

Dear Judge Ochoa,

Enclosed please find a proposed order denying miners motion for injunction. This proposed order represents a final draft that has been approved as to form by all counsel including our office, Mr. Buchal, Mr. Young, and Ms. Saxton. All counsel are submitting this proposed order for your review and signature. Please do not hesitate to let us know if we can provide any further information while you review this matter. Thank you for your kind attention.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bradley Solomon".

BRADLEY SOLOMON  
Deputy Attorney General

For KAMALA D. HARRIS  
Attorney General

BAS:

cc: David Young; Lynne R. Saxton ; E. Robert Wright; Glen Spain; James L. Buchal; Jonathan Evans;  
James R. Wheaton ; Keith Robert Walker

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1 KAMALA D. HARRIS  
Attorney General of California  
2 ROBERT W. BYRNE  
Senior Assistant Attorney General  
3 GAVIN G. MCCABE  
Supervising Deputy Attorney General  
4 BRADLEY SOLOMON, SBN 140625  
BARBARA SPIEGEL, SBN 144896  
5 MARC N. MELNICK, SBN 168187  
J. KYLE NAST, SBN 235883  
6 Deputy Attorneys General  
455 Golden Gate Avenue, Suite 11000  
7 San Francisco, CA 94102-7004  
Telephone: (415) 703-5627  
8 Fax: (415) 703-5840  
E-mail: Bradley.Solomon@doj.ca.gov  
9 Attorneys for Defendants

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN BERNARDINO

12  
13 Coordination Proceeding Special Title (Rule  
1550(b))

14  
15 **SUCTION DREDGE MINING CASES**

16  
17  
18 **Included Actions:**

19  
20 Karuk Tribe of California, et al. v. California  
Department of Fish and Game

21 Kimble, et al. v. Kamala Harris, Attorney  
22 General of California, et al.

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

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

26 Walker v. Harris, et al.

27 Foley et al. v. California Department of Fish  
and Wildlife, et al.  
28

Coordinated Case No. JCCP4720

**[PROPOSED] ORDER DENYING  
MINERS' MOTION FOR INJUNCTION**

Date: June 23, 2015  
Time: 8:30 a.m.  
Dept: S36J  
Judge: The Honorable Gilbert G. Ochoa

RG 12623796 - Alameda County

CIVDS 1012922 - San Bernardino County

CIVDS 1203849 - San Bernardino County

SCCVCV120048 - Siskiyou County

34-2013-80001439 - Sacramento County

SCCVCV1300804 - Siskiyou County

1 Plaintiffs in the *Kimble*, *Public Lands for the People*, and *The New 49ers* cases have  
2 brought a motion for injunction based on the Court's ruling on the cross-motions for summary  
3 adjudication regarding preemption. The motion sought to enjoin Defendants from enforcing (1)  
4 Fish and Game Code section 5653's permit requirement, (2) Fish and Game Code section 5653.1  
5 (which currently imposes a moratorium on those permits pending certain conditions), and (3) the  
6 suction dredge regulations adopted in 2012 (Cal. Code Regs., tit. 14, §§ 228, 228.5). The motion  
7 for injunction came before the Court for hearing on June 23, 2015. David Young and James L.  
8 Buchal appeared for the *Kimble*, *Public Lands for the People*, and *The New 49ers* Plaintiffs.  
9 Lynne R. Saxton and Jonathan Evans appeared for the *Karuk Tribe* Plaintiffs. Bradley Solomon,  
10 Marc N. Melnick, and John Mattox appeared for Defendants.

11 The Court has already ruled, denying the earlier motion for preliminary injunction brought  
12 by the *Kimble* Plaintiffs, that the Plaintiffs/Petitioners will not suffer irreparable injury from the  
13 continued status quo – a ruling which the *Kimble* Plaintiffs appealed, but then voluntarily  
14 dismissed.

15 In addition, as properly noted by Defendants and the *Karuk Tribe* Plaintiffs, the case of  
16 *People v. Rinehart*, Case No. S222620, is currently before the Supreme Court, and the appellate  
17 decision heavily relied on by this Court was depublished shortly after this Court issued its ruling  
18 on the summary adjudication motions. As all the parties are aware, the Third Appellate District's  
19 opinion in *Rinehart* examined the issue of federal preemption and the enforceability of Fish and  
20 Game Code section 5653 in light of the provisions of Section 5653.1. As a result, the very issue  
21 that was at the center of this Court's January 2015 ruling is now up for review.

22 On balance and considering all the issues, the Court cannot conclude that either factor  
23 would weigh in favor of the movant. The injunction requested, which would have prohibited the  
24 Attorney General and the California Department of Fish and Wildlife from enforcing the permit  
25 requirement in Fish and Game Code section 5653, Fish and Game Code section 5653.1, and the

26 ///

27 ///

28 ///

1 suction dredge mining regulations adopted in 2012, is DENIED.

2 IT IS SO ORDERED.

3  
4  
5 Dated: \_\_\_\_\_

\_\_\_\_\_  
HON. GILBERT G. OCHOA  
Judge of the Superior Court

6  
7 Approved as to form:

8 Dated:  
9  
10

11 \_\_\_\_\_  
James L. Buchal  
MURPHY & BUCHAL LLP  
12 *Attorneys for The New 49ers Plaintiffs*

13 Dated:  
14  
15

16 \_\_\_\_\_  
David Young  
*Attorneys for Kimble and Public Lands for the People Plaintiffs*

17 Dated:  
18  
19

20 \_\_\_\_\_  
Lynne R. Saxton  
*Attorneys for Karuk Tribe Plaintiffs*

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# **EXHIBIT C**



KAMALA D. HARRIS  
 Attorney General of California  
 ROBERT W. BYRNE  
 Senior Assistant Attorney General  
 ANNADEL ALMENDRAS  
 Supervising Deputy Attorney General  
 MARC N. MELNICK, SBN 168187  
 BRADLEY SOLOMON, SBN 140625  
 Deputy Attorneys General  
 1515 Clay Street  
 Oakland, CA 94612  
 Telephone: (510) 622-2133  
 Fax: (510) 622-2272  
 E-mail: Marc.Melnick@doj.ca.gov  
*Attorneys for Defendants*

**FILED**  
 SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SAN BERNARDINO  
 SAN BERNARDINO DISTRICT

JUN 11 2015

BY *Chloe Rodriguez*  
 DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

Coordination Proceeding Special Title (Rule 1550(b))

**SUCTION DREDGE MINING CASES**

Coordination Case No. JCPDS 4720

**DECLARATION OF STAFFORD LEHR  
 IN SUPPORT OF DEFENDANTS'  
 OPPOSITION TO MINERS' JOINT  
 MOTION FOR INJUNCTION**

Date: June 23, 2015  
 Time: 8:30 a.m.  
 Dept: S36  
 Judge: Honorable Gilbert Ochoa  
 Trial Date: None Set

**Included Actions:**

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

RG 12623796 - 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 and Game

CIVDS 1203849 - San Bernardino County

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

SCCVCV120048 - Siskiyou County

1 I, Stafford Lehr, declare as follows:

2 1. I am the Chief of the Fisheries Branch for the California Department of Fish and  
3 Wildlife (CDFW) (named the California Department of Fish and Game before January 1, 2013)  
4 and have served in that specific capacity since February 2011. This is a position within the  
5 Wildlife and Fisheries Division of CDFW. I am responsible for developing and implementing  
6 Department-wide policies programs for fisheries and related aquatic resource management. This  
7 includes, for example: directing complex sensitive research activities involving statewide habitat  
8 monitoring, data collection, and analysis of inland sport fish regulations; recommending and/or  
9 establishing policy level direction on environmental issues involving California Environmental  
10 Quality Act review and impact on sensitive fish species and associated aquatic habitats.  
11 Additionally, I work with State, Federal and local government agencies, private organizations,  
12 and constituent groups to strategically develop and implement CDFW fisheries policies and  
13 programs. I represent the CDFW on high-level task forces and committees, before the legislature,  
14 and through various other venues relating to fishery issues. I also oversee the policy and  
15 programmatic operation of all CDFW fish hatcheries.

16 2. I have been employed by the CDFW since January 1992. From January 2008 to  
17 January 2011, I served as a Senior Environmental Scientist, in the North Central Region of  
18 CDFW, specifically supervising biologists in the Sierra districts (Calaveras to Plumas counties) of  
19 the Region. In that capacity, I supervised the staff involved in the development and review of the  
20 suction dredge analysis for the North Central Region of the Department. My staff participated in  
21 the review of the fisheries and aquatic resource distribution and accompanying analysis of effects  
22 of suction dredging upon those resources. From September 2006 until December 2008, I was a  
23 Senior Fisheries Biologist in the North Central Region of the CDFW. In that role I represented the  
24 Department in Federal Energy Regulatory Commission relicensing proceedings and other water  
25 rights and development projects. I performed technical analyses for aquatic resource issues  
26 associated with large-scale hydroelectric and water development. Those issues ranged from fish  
27 population, habitat, hydraulic, and temperature modeling to amphibian and benthic  
28 macroinvertebrate assemblages. During that time frame I was also acting District Fisheries

1 Biologist for Lake Tahoe and Alpine, Amador, Calaveras, and El Dorado counties. From 1992  
2 through 2008, I was the District Fisheries Biologist for Lake Tahoe and Alpine, Amador,  
3 Calaveras, and El Dorado counties. In that capacity, I oversaw all fisheries management issues.  
4 Additionally, I evaluated existing fishery and ecosystem conditions for fish populations,  
5 amphibians, macroinvertebrates, riparian and habitat conditions and recommended management  
6 plans to enhance the fisheries or ecosystems on both federal and private lands. I also evaluated  
7 and assessed suction dredge operations in aquatic habitats under the 1994 regulations.

8 3. From August 1990 through December 1991 I was a Fisheries Technician for Habitat  
9 Restoration Group, a private consulting firm. I performed field evaluations of aquatic ecosystems  
10 for environmental compliance programs.

11 4. I have a Bachelor of Science degree in Wildlife Zoology, with an emphasis in  
12 Fisheries Ecology and three years of graduate course work in aquatic ecology and fish  
13 populations from California State University, San Jose.

14 5. In 2009, I was asked to participate in the amendment of 1994 regulations for suction  
15 dredge mining and the preparation of related studies and documentation for the California  
16 Environmental Quality Act (CEQA). In my capacity, as supervisor of the Sierra Districts of the  
17 North Central Region, I assigned staff to provide geographic and species specific expertise to the  
18 regulatory and CEQA analysis. During my 16-year tenure as a District Biologist I evaluated and  
19 performed site assessments for dozens of individual suction dredge operations in west slope  
20 Sierra Nevada river systems.

21 6. In April of 2013, I was asked to prepare a Declaration In Support of Defendant  
22 California Department of Fish and Wildlife's Opposition to Motion for Preliminary Injunction in  
23 *Kimble v. Harris*. (A copy of which is attached hereto as Exhibit A to this Declaration.)

24 7. All of the statements in my 2013 Declaration still hold true today.

25 8. I have reviewed the plaintiff's opening brief on this motion as well as well as the  
26 declarations of James Buchal, Joseph Greene, and Eric Maksymyk.

27 9. In 2014 and 2015 the Klamath River and its tributaries are experiencing deteriorating  
28 water quality and quantity conditions due to the exceptional drought conditions in California.

1 (The same conditions are being observed in waterbodies throughout the State of California.)  
2 Currently, flows are stable but dropping and we already are experiencing temperature and disease  
3 (*Ceratomyxa shasta*) stressors. As of May 13, 2015 close to 100 percent of wild fall run Chinook  
4 salmon (*Oncorhynchus tshawytscha*) juveniles have clinical signs of disease due to this parasite.  
5 Populations of State and federal-listed threatened coho salmon (*Oncorhynchus kitsutch*) have  
6 been stressed due to lack of suitable spawning and rearing habitat in the Shasta and Scott Rivers  
7 (major tributaries to the Klamath River). Spring-run Chinook are still depressed and further  
8 exacerbated by drought conditions.

9 10. The Department of Fish and Wildlife has engaged in an unprecedented effort to work  
10 with local landowners and non-governmental organizations to reach agreements in the Klamath  
11 River watershed to improve conditions. These agreements have put more water in the system by  
12 having landowners forego or reschedule water diversions. They have also allowed the  
13 Department to physically rescue and relocate (to places higher in the watershed, with more water)  
14 more the 116,000 juvenile coho and thousands of juvenile steelhead from the Shasta and Scott  
15 Rivers in 2014. .

16 11. If the miners were allowed to operate under the 1994 suction dredge regulations there  
17 would be no ability to suspend or close suction dredging due to adverse conditions resulting from  
18 drought. Under the 2012 regulations, cold water refugia areas would be protected. In either case,  
19 the conditions in the Klamath River watershed are under extreme duress due to drought, and  
20 suction dredge activity, whether on Federal or private property, is highly likely to have an adverse  
21 effect. Protection of cold water refugia is even more critical under the current drought conditions.  
22 State, Federal and Tribal interests are working on mitigating flow regimes in the Klamath River  
23 watershed to provide suitable water quality criteria. Monitoring of disease conditions raised the  
24 Alert Level for fish health to Orange, a high level. Agencies are positioning options to release  
25 pulse flows to mitigate high *C. shasta* spore levels and these conditions are likely to worsen  
26 through the summer and fall months. High parasite loads caused an extreme fish kill (greater than  
27 40,000+ fish) in 2002 in the lower Klamath River and a similar event was prevented in 2014 due  
28 to pulse flows released from reservoirs in the Klamath-Trinity watershed.

1           12. If suction dredging were permitted in these drought conditions, habitat alteration  
2 could affect the minimal cold water refugia present near the confluences of tributary streams and  
3 within those systems where spring sources enter deeper pool networks. This would likely further  
4 stress populations of listed and non-listed salmonids. Alteration of spawning gravels could  
5 further reduce limited spawning habitat that is currently affected by the continued exceptional  
6 drought.

7           13. Due to the drought conditions, statewide water quality and quantity in many systems  
8 is likely to be inadequate to support fish survival as the summer progresses, resulting from  
9 impeded passage of spawning fish, increased vulnerability to mortality from predation and  
10 physiological stress. Furthermore, survival of eggs and juvenile fish in these systems over the  
11 coming months will be extremely low. The historically low water conditions in the Klamath  
12 River watershed will concentrate coldwater fish populations into shrinking pools of cold water  
13 habitat. Suction dredging along with other human-related disturbances within freshwater habitats  
14 when coupled with drought-related environmental stressors, such as high water temperature, low  
15 dissolved oxygen, and severely reduced suitable habitat, may seriously affect reproductive  
16 success and survival rates.

17           14. We do not know how all these factors will play out in the summer months, and where  
18 the tipping point will be to cause a massive fish kill in the Klamath River watershed or elsewhere.  
19 But the current drought conditions are very extreme. Adding one more stressful event, such as  
20 suction dredge mining, could have large impacts.

21           15. Other watersheds in California have been experiencing the fourth year of exceptional  
22 drought. As of May 11, 2015 the California snow pack was estimated at less than 1 percent.  
23 Streams and rivers are currently experiencing flow conditions that are more indicative of  
24 conditions in late-September/early October. If suction dredging were to be occurring in habitats  
25 where sensitive fish and amphibians reside there would likely be additional stressors on  
26 populations already negatively affected by the ongoing exceptional drought. Fish and amphibians  
27 already have limited nursery and rearing habitat and alterations of those habitats could result in  
28 negative impacts to those populations.

1           16. Many of the declarations submitted by the Miners state that the fish love to feed in the  
2 plumes and that the miners have never witnessed adverse effects upon the individual fish  
3 behavior. What they are missing is the altered feeding station effects that are artificially created  
4 by the dredge operation. When that operation ceases, the fish then must redistribute themselves  
5 into normal feeding station locations that may or may not be as productive due to the alteration of  
6 the habitat. Fish during the warmer summer months must position themselves in high feeding  
7 lanes to compensate for increased metabolic activity and fish swimming performance. The  
8 analogy is that the plumes created by suction dredge activities create a false feeding habitat and  
9 the fish are in something akin to a "zoo". Take the "zoo" away and the population must develop  
10 compensatory mechanisms to adapt. Intraspecific competition will then result in concert with  
11 artificially elevated fish densities brought forth from the artificial forage environment. In  
12 addition to this, suction dredge mining changes the bottom of streams to an artificially  
13 homogenous condition, without the places to hide and forage that fish (and especially juvenile  
14 fish) need to survive and thrive. All of these changes impact fish after the suction dredge miners  
15 leave, and so it is not the least bit surprising that miners do not see these effects.

16           17. I have reviewed the declaration submitted by Joseph Greene. Mr. Greene is an  
17 ecotoxicologist according to his Curriculum Vitae. He does not possess a degree in Fisheries  
18 biology or ecology and does not appear to have a degree in geomorphology. I would question his  
19 assessment of the purported positive effects of suction dredging on riverbed features and  
20 hydraulic dynamics as he states. He also does not possess credentials regarding fish biological  
21 responses to feeding strategies resultant from altered habitat conditions or water quality.

22           18. I have reviewed the declaration submitted by Eric Maksymyk. Mr. Maksymyk is  
23 obviously a highly educated veteran and an expert in Systems Management and Operations. His  
24 analysis and conclusions regarding the lack of negative effects upon native passerines does not  
25 take into consideration nesting habitat disturbance. I am not an expert ornithologist but many  
26 activities on public lands are regulated to protect nesting areas and surrounding habitat.  
27 Disturbance (for example, public recreational activities and other uses) are regulated to minimize  
28 negative effects upon nesting and breeding activity areas. Mr. Maksymyk states that birds do not



1 nest "in the middle of rivers and streams where they operate...." This is not a true statement.  
2 Several of the birds discussed in the 2012 environmental impact report are nesting in the river  
3 banks themselves, and many birds nest in branches and overhanging vegetation that can extend  
4 into areas where suction dredge activities may alter behavior patterns and thus the Department  
5 needs to provide minimization recommendations to protect that habitat.  
6

7 I declare under penalty of perjury that the foregoing is true and correct. Executed this 9th  
8 day of June 2015, in Sacramento, California.

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