

1 JAMES L. BUCHAL (SBN 258128)
2 MURPHY & BUCHAL LLP
3 3425 S.E Yamhill, Suite 100
4 Portland, OR 97214
5 Telephone: (503) 227-1011
6 Facsimile: (503) 573-1939
7 *Attorney for Plaintiffs*

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPERIOR COURT OF CALIFORNIA
IN THE COUNTY SISKIYOU

THE NEW 49'ERS, INC., a California corporation, STEVE KLESZYK, BILLY and CHAD STANFORD, DAVID GAREY, DAVID RANSOM, RICHARD and SUE BURTON, ELIZABETH and MARK CUTLER, EDWARD MURPHY, MARTHA CRONIN, RAYMOND PHILLIPS, ROBERT and ANNA SONNENBURG, RAY DERRICK, RONALD BURNSIDE and NORTHWEST MINING LLC, an Oregon limited liability company,

Plaintiffs,

v.

STATE OF CALIFORNIA, CALIFORNIA DEPARTMENT OF FISH AND GAME, and CHARLTON H. BONHAM, Director of the California Department of Fish and Game,

Defendants.

Case No.

COMPLAINT AND PETITION FOR WRIT OF MANDATE

(Code of Civil Procedure §§ 382, 1060, 1085 & 1094.5; Public Resources Code § 21000 *et seq.*; Government Code § 11350.)

Amount demanded exceeds \$10,000

INTRODUCTION AND PARTIES

1. This case concerns federally-registered property rights in the form of mining claims located on federal lands under the 1872 Mining Law, as amended. Plaintiffs and others are required to file location notices in the California counties where their mining claims are located, which notices contain the precise location of such claims, and then to register the claims with the

1
COMPLAINT AND PETITION FOR WRIT OF MANDATE
Case No.

James L. Buchal (SBN 258128)
MURPHY & BUCHAL LLP
3425 S.E. Yamhill, Suite 100
Portland, OR 97214
Tel: 503-227-1011
Fax: 503-573-1939

1 U.S. Bureau of Land Management, which assigns a unique registration number to each claim. For
2 brevity, we identify the property at issue only by means of this registration number.

3 2. The defendants are the STATE OF CALIFORNIA, the CALIFORNIA
4 DEPARTMENT OF FISH AND GAME, and CHARLTON H. BONHAM, Director of the
5 California Department of Fish and Game (sued in his official capacity).

6 3. THE NEW 49'ERS, INC., a California corporation and owner of eight mining claims
7 uniquely identified as CAMC230531, CAMC277792, CAMC280549, CAMC266842,
8 CAMC277793, CAMC286320, CAMC261915, and CAMC282633, all situated in Siskiyou
9 County, is a plaintiff.

10 4. STEVE KLESZYK, a California resident and owner of a mining claim uniquely
11 identified as CAMC283048, situated in Siskiyou County, is a plaintiff.

12 5. BILLY and CHAD STANFORD, California residents and owners of two mining
13 claims uniquely identified as CAMC281177 and CAM271616, all situated in Siskiyou County, are
14 plaintiffs.

15 6. DAVID GAREY, a Nevada resident, and DAVID RANSOM, a California resident,
16 owners of a mining claim uniquely identified as CAMC281100, situated in Siskiyou County, are
17 plaintiffs.

18 7. RICHARD BURTON and SUE BURTON, California residents and owners of a
19 mining claim uniquely identified as CAMC283494, situated in Siskiyou County, are plaintiffs.

20 8. ELIZABETH and MARK CUTLER, California residents and owners of mining
21 claims uniquely identified as CAMC287856 and CAMC282628, situated in Siskiyou County, are
22 plaintiffs.

23 9. EDWARD MURPHY, a California resident and owner of a mining claim uniquely
24 identified as CAMC293219, situated in Siskiyou County, is a plaintiff.

1 10. MARTHA CRONIN and RAYMOND PHILLIPS, North Carolina residents and
2 owners of three mining claims uniquely identified as CAMC297290, CAMC297291,
3 CAMC297292, situated in Siskiyou County, are plaintiffs.

4 11. ROBERT and ANNA SONNENBURG, Oregon residents and owners of two mining
5 claims uniquely identified as CAMC281773 and CAMC280774, situated in Siskiyou County, are
6 plaintiffs.

7 12. RAY DERRICK, a Texas resident, and RONALD BURNSIDE, a Arizona resident,
8 owners of a mining claim uniquely identified as CAMC279663, situated in Siskiyou County, are
9 plaintiffs.

10 13. NORTHWEST MINING LLC, an Oregon limited liability company and owner of
11 two mining claims uniquely identified as CAMC296932 and CAMC296931, is a plaintiff.

12 14. The foregoing mining claims are identified herein as the "Mining Claims". To the
13 extent class certification is granted, the term "Mining Claims" should also be understood to refer
14 to the additional mining claims thereby brought into the suit as owned by class members.

15 15. All plaintiffs are suffering irreparable injury by reason of defendants' refusal to
16 permit suction dredging insofar as no amount of money can fully compensate them for the ongoing
17 loss of dredging seasons and opportunities to develop their own private property, as alleged herein.

18 **JURISDICTION AND VENUE**

19 16. This Court has jurisdiction over this action pursuant to §§ 382, 1060, 1085, 1094.5 of
20 the California Code of Civil Procedure, §§ 21168 and 21168.5 of the Public Resources Code, and
21 § 11350 of the Government Code.

22 17. On April 12, 2012, prior to commencement of this action, plaintiffs took the
23 following steps:

24 (a) plaintiffs served written notice of commencement of this action on defendants pursuant
25 to Public Resources Code § 21167.5. A true and correct copy of this notice (without enclosure) is
26 attached as Exhibit A.

1 (b) plaintiffs served a copy of this pleading upon the Attorney General pursuant to and Code
2 of Civil Procedure § 388 and otherwise. A true and correct copy of proof of such service (without
3 enclosure) is filed herewith as Exhibit B.

4 (c) plaintiffs expect, pursuant to Public Resources Code § 21167.67.6(b)(2), that an
5 alternative method of preparation of the record of proceedings will be utilized, because suit has
6 already been filed which requires the same record in *Karuk Tribe et al. v. California Department of*
7 *Fish and Game et al.* (filed April 2, 2012 in Alameda County), and at least one additional suit is
8 expected to be filed in San Bernardino County. For reasons of judicial economy and economy to th
9 parties, plaintiffs propose to coordinate their CEQA pleadings with these other cases in a fashion
10 that will utilize the single, pre-existing record.

11 18. Venue in this County is proper pursuant to Government Code § 955. Venue is also
12 proper pursuant to Code of Civil Procedure § 393 insofar as some part of the cause of action arise
13 in this County.

14 **BACKGROUND ALLEGATIONS**

15 19. California contains rich gold deposits, which have been the subject of
16 extraordinarily-extensive historical mining efforts. There are two basic forms of gold deposit:
17 lode, being the original seams or veins of gold bearing minerals, and placer, representing the
18 destination, typically in alluvial gravels, of lode deposits that have weathered away.

19 20. Many rivers and streams in California contain underwater placer gold deposits which
20 were not mined in historical times. Unless they could dry out the river channel by a diversion,
21 historical miners typically focused on placer deposits on the banks of these rivers and streams, or
22 lode deposits. Where historical miners did mine within the water, hydrological and weathering
23 processes have often replenished gold-bearing materials in commercially-significant quantities, a
24 process that has not occurred with similar rapidity outside the water bodies.

25 21. The only practicable method of removing present underwater gold deposits is
26 through suction dredge mining. Suction dredge mining involves divers utilizing small motorized

1 vacuum hoses to remove the deposits from California rivers and streams. The vacuumed materials
2 are passed over a device which removes the gold and returns the water, gravel, and other
3 vacuumed materials to the river. No chemical treatment processes are used.

4 22. There are extremely small-scale nonmotorized recreational mining activities,
5 including panning for gold, that remain lawful in California, but it is not possible to recover
6 commercially-significant amounts of gold through such means.

7 23. For many years, the Department, on authority set forth in § 5653 *et seq.* of the
8 California Fish and Game Code, issued permits for suction dredging.

9 24. More recently, defendants have engaged in a series of at least three initiatives,
10 consisting of two statutory moratoriums and a new set of suction dredging regulations, identified
11 herein as the “Actions,” which have operated to ban suction dredge mining within the State of
12 California.

13 25. On August 9, 2009, the Governor signed Senate Bill No. 670, which established a
14 state-wide moratorium on suction dredging, and provided:

15 “Notwithstanding Section 5653, the use of any vacuum or suction dredge equipment in any
16 river, stream, or lake of this state is prohibited until the director certifies to the Secretary of
State that all of the following have occurred:

17 “(1) The department has completed the environmental review of its existing suction
18 dredge mining regulations, as ordered by the court in the case of *Karuk Tribe of
California et al. v. California Department of Fish and Game et al.*, Alameda County
19 Superior Court Case No. RG 05211597.

20 “(2) The department has transmitted for filing with the Secretary of State pursuant to
21 Section 11343 of the Government Code, a certified copy of new regulations adopted,
as necessary, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of
Division 3 of Title 2 of the Government Code.

22 “(3) The new regulations described in paragraph (2) are operative.

23 By its terms, this moratorium was of indefinite duration, but would have expired upon issuance of
24 new regulations.

25 26. On July 26, 2011, the Governor signed Assembly Bill No. 120, which amended Fish
26 and Game Code § 5653.1 and stated:

1 “Notwithstanding Section 5653, the use of any vacuum or suction dredge equipment in any
2 river, stream, or lake of this state is prohibited until June 30, 2016, or until the director
3 certifies to the Secretary of State that all of the following have occurred, whichever is
4 earlier:

5 “(1) The department has completed the environmental review of its existing
6 suction dredge mining regulations, as ordered by the court in the case of
7 *Karuk Tribe of California et al. v. California Department of Fish and Game*
8 *et al.*, Alameda County Superior Court Case No. RG 05211597.

9 “(2) The department has transmitted for filing with the Secretary of State pursuant to
10 Section 11343 of the Government Code, a certified copy of new regulations adopted,
11 as necessary, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of
12 Division 3 of Title 2 of the Government
13 Code.

14 “(3) The new regulations described in paragraph (2) are operative.

15 “(4) The new regulations described in paragraph (2) fully mitigate all
16 identified significant environmental impacts.

17 “(5) A fee structure is in place that will fully cover all costs to the
18 department related to the administration of the program.

19 This moratorium will not expire before June 30, 2016, for reasons alleged elsewhere herein.

20 27. On March 16, 2012, defendant California Department of Fish and Game issued a
21 “Notice of Determination” in which it defined a “project” consisting “of the February/March 2011
22 proposed suction dredging regulations . . . modified by substantially related revisions noticed by
23 the Department of Fish and Game in February 2012, along with a handful of nonsubstantive or
24 grammatical corrections”.

25 28. The Notice of Determination states: “this is to advise that . . . the California
26 Department of Fish and Game has approved the above-described project on March 16, 2012”.

27 29. On or about March 20, 2012, the Department released its Final Statement of Reasons
28 and CEQA Findings of Fact, and Final Supplemental Environmental Impact Review (FSEIR).

29 30. The Department also posted “Final Adopted Regulations” on its website, stating that
30 “on March 16, 2012, the Department . . . took final action to adopt updated regulations”
(<http://www.dfg.ca.gov/suctiondredge/>). Such regulations are referred to herein as the
“Regulations”.

1 31. Under the regulations, numerous water bodies in California are designated “Class A”
2 and closed to suction dredge mining. In addition, numerous “thermal refugia” are created where
3 suction dredge mining is prohibited. Pursuant to § 5653(d), it is “unlawful to possess a vacuum or
4 suction dredge in areas, or in or within 100 yards of waters, that are closed to the use of vacuum or
5 suction dredges,” which substantially expands the areas where suction dredging is prohibited under
6 the Regulations. For purposes of this pleading, areas which under the Regulations are closed to
7 dredging are identified as the “Closed Areas”.

8 32. The Mining Claims are located, in whole or in part, in Closed Areas.

9 33. The Regulations also establish a total cap of 1,500 on the number of suction dredge
10 permits that may be issued, with no provision to guarantee plaintiffs (or any of them) one of the
11 limited number of permits. This number is far, far below the number of placer mining claims that
12 can only be worked with suction dredges.

13 34. Notwithstanding the Department’s final action to adopt the Regulations, no permits
14 will be issued for suction dredging until at least June 30, 2016, because the Director cannot certify
15 the requisite conditions under AB 120.

16 35. Even if, after June 30, 2016, the AB 120 moratorium expires, the Regulations will
17 not permit suction dredge mining on the Mining Claims, or in some cases, on portions thereof, and
18 will operate to forbid suction dredge mining for those holders of Mining Claims not able to obtain
19 a permit before the 1,500 annual limit is exhausted.

20 **BACKGROUND ALLEGATIONS PERTAINING TO THE ENVIRONMENT**

21 36. Because suction dredge divers dig by hand, and in flowing waters, all traces of their
22 activities are typically obliterated during the high-flow winter months when it is not practical to
23 engage in suction dredging.

24 37. There are no significant and adverse effects of suction dredge mining whatsoever.
25 All conclusions to the contrary in the FSEIR are wrong.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

44. The persons in the classes are so numerous, consisting of at least several thousand individuals, that the joinder of all such persons is impracticable and the disposition of their claims in a class action rather than in individual actions will benefit the parties and the Court.

45. There is a well-defined community of interest in the questions of law and fact involved affecting the plaintiff classes in that all questions of law and most questions of fact are common, including but not limited to the question whether the Actions by defendants constitute a taking, and the affirmative defenses, if any, to be raised by defendants. The only individualized questions involve the value of particular claims at the time of trial, and plaintiffs would expect to develop streamlined procedures in consultation with defendants for resolving these questions.

46. The claims of the plaintiffs are typical of those of the class, and plaintiffs will fairly and adequately represent the interests of the class.

47. There is no plain, speedy or adequate remedy other than by maintenance of this class action since defendants have failed and refused to provide constitutionally-adequate notice of their Actions to the plaintiff class, and there is no practical means for plaintiffs to learn of the Actions prior to the expiration of the applicable statutes of limitation to bring any claim for inverse condemnation. Failure to allow a class remedy in this context would deny class members other than plaintiffs due process of law, insofar as defendants, with full knowledge of their individual property rights and the scope thereof, knowingly refrained from providing individualized notice of the Actions.

48. The prosecution of individual remedies by members of the plaintiff class would tend to establish inconsistent standards of conduct for the defendants and result in impairment of class members' rights and the disposition of their interests though actions to which they were not parties.

FIRST CAUSE OF ACTION: INVERSE CONDEMNATION (BY ALL PLAINTIFFS)

49. Plaintiffs reallege paragraphs 1–48 and paragraphs 58–80 as if set forth herein.

1 59. Congress acted through the 1872 Mining Law, as amended, and related statutes to
2 create federal property rights in mining claims in furtherance of general federal policy to foster
3 mineral development on federal lands. Pertinent federal statutes and regulations include:

4 (a) The Mining Acts of 1866 (14 Stat. 251).

5 (b) The Federal Mining Law of 1872, as amended (30 U.S.C. § 22 *et seq.*);

6 (c) The Mining and Minerals Policy Act of 1970, 30 U.S.C. § 21a;

7 (d) 16 U.S.C. § 481 (Use of Waters); 43 U.S.C. § 661 (Appropriation of waters on public
8 lands);

9 (e) The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 *et seq.*,
10 including without limitation §§ 1732(b);

11 (f) Multiple Surface Use Act, 30 U.S.C. §§ 612(b), 613, 615; and

12 (g) Numerous sections of the Code of Regulations, including without limitation,
13 36 C.F.R Part 228 and 43 C.F.R. Part 3800.

14 60. Congress also possesses plenary power over federal property (U.S. Constitution,
15 Article IV, § 3).

16 61. Defendants' Actions, individually and/or in any combination thereof, are void as
17 against the U.S. Constitution on the ground of the Supremacy Clause (U.S. Constitution,
18 Article VI, Clause 2), insofar as they interfere with the federal purpose of fostering mineral
19 development on federal property, and stand as an obstacle to the accomplishment and execution of
20 the purposes and objectives of Congress.

21 **THIRD CAUSE OF ACTION: CEQA (BY ALL PLAINTIFFS)**

22 62. Plaintiffs reallege paragraphs 1–61 and paragraphs 67–80 as if set forth herein.

23 63. Defendants violated CEQA by certifying an EIR for the program that fails to comply
24 with CEQA in at least the following ways:

25 (a) Defendants prejudicially exaggerated the environmental impacts of suction
26 dredge mining, while prejudicially ignoring the benefits thereof.

1 (b) Defendants adopted an unlawful environmental baseline.

2 (c) Defendants failed to acknowledge and respect plaintiffs' property rights in
3 their Mining Claims.

4 64. Defendants proceeded in excess of jurisdiction and prejudicially abused their
5 discretion.

6 65. Defendants' decision is not supported by their findings, and their findings are not
7 supported by substantial evidence in the light of the whole record.

8 66. As a result of the foregoing defects, plaintiffs are entitled to a writ of mandate setting
9 aside defendants' approval of the "program" and findings supporting the approval and vacating
10 and setting aside certification of the FSEIR.

11 **FOURTH CAUSE OF ACTION: REGULATION CHALLENGE (BY ALL PLAINTIFFS)**

12 67. Plaintiffs reallege paragraphs 1–66 and paragraphs 78–80 as if set forth herein.

13 68. The Regulations exceed the scope of Defendants' statutory authority under Fish and
14 Game Code § 5653.

15 69. The Regulations were and are not reasonably necessary to effectuate the purpose of
16 the statute and address the alleged problem for which they were proposed.

17 70. The Defendant's determination that the regulation was reasonably necessary was not
18 supported by substantial evidence.

19 71. Defendants failed adequately to provide an adequate rationale and explanation for
20 their determination that adoption of the Regulations was necessary to carry out the purpose and
21 address the alleged problem for which the Regulations were adopted in violation of Government
22 Code § 11346.2(b)(1).

23 72. Defendants failed to provide an adequate analysis of reasonable alternatives in
24 violation of Government Code § 11346.2(b)(5)

25 73. The Regulations constituted a "major regulation," insofar as the adverse economic
26 impact on California gold miners exceeds \$50,000,000.

1 74. Defendants failed to provide an adequate estimate of the economic impact of the
2 Regulations and to provide a lawful standardized regulatory impact analysis in violation of
3 Government Code §§ 11346.2(b)(2) and 11346.3.

4 75. Defendants failed to provide an adequate economic analysis of the Regulations in
5 violation of Government Code § 11346.3.

6 76. The Defendant's determination pursuant to Government Code § 11346.5(8) is in
7 conflict with substantial evidence in the record.

8 77. Plaintiffs are entitled, pursuant to Government Code § 11350 and otherwise, to a
9 judicial declaration that the Regulations are invalid and an order repealing the Regulations.

10 **FIFTH CAUSE OF ACTION: DECLARATORY JUDGMENT (BY ALL PLAINTIFFS)**

11 78. Plaintiffs reallege paragraphs 1–77 as if set forth herein.

12 79. Actual controversies now exist between plaintiffs and defendants concerning:

- 13 (a) Whether defendants' Actions constitute an unconstitutional taking of
14 plaintiffs' Mining Claims;
- 15 (b) Whether defendants' Actions are preempted by federal law;
- 16 (c) Whether defendants violated CEQA in preparing the FSEIR and taking final
17 action to adopt the Regulations; and
- 18 (d) Whether defendants' adoption of the Regulations was contrary to law.

19 80. Plaintiffs desire a judicial determination and declaration of the parties' respective
20 rights and duties, including a declaration of whether the decisions, actions, and findings of the
21 Department with respect to these issues comply with law. Such a declaration is necessary and
22 appropriate at this juncture.

23 WHEREFORE, plaintiffs pray for judgment against defendants as follows:

- 24 1. For damages in the amount of \$500,000 per claim for each plaintiff, or such other
25 amount as may be proved at trial, with interest thereon at the legal rate from the date of the taking.

1 2. For a writ of mandate vacating and setting aside approval of the program and
2 findings supporting the approval, vacating and set aside certification of the FSEIR, and vacating and
3 setting aside the Regulations;

4 3. For a writ of mandate compelling the Department to continue issuing permits under
5 the pre-existing set of suction dredging regulations.

6 4. For a judgment declaring that:

7 (a) Defendants’ Actions constitute an unconstitutional taking of plaintiffs’
8 Mining Claims;

9 (b) Defendants’ Actions are preempted by federal law;

10 (c) Defendants violated CEQA in preparing the FSEIR and taking final action to
11 adopt the Regulations

12 (d) Defendants’ adoption of the Regulations was contrary to law.

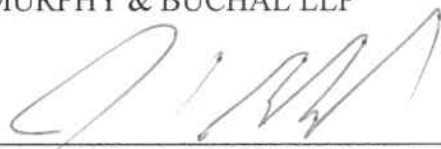
13 5. For costs of suit incurred, including reasonable attorneys’, appraisal, and other costs
14 according to proof, pursuant to Code of Civil Procedure §§ 1021.5 and 1036 and otherwise.

15 6. For such other and further relief as the Court may deem proper.

16 Dated: April 12, 2012

17
18
19
20
21
22
23
24
25
26
27
28

MURPHY & BUCHAL LLP



James L. Buchal, SBN 258128
Attorney for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I am the attorney for plaintiffs. Pursuant to Code of Civil Procedure section 446, I state that I have read the foregoing pleading and believe the matters therein to be true and on that ground allege that the matters stated therein are true, under penalty of perjury under the laws California.

Executed on April 12, 2012 at Portland, Oregon.



James L. Buchal, SBN 258128

James L. Buchal

telephone: 503-227-1011
fax: 503-573-1939
e-mail: jbuchal@mbllp.com

April 11, 2012

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

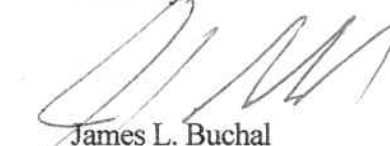
Charlton H. Bonham, Director
California Department of Fish and Game
Sacramento, CA 95814

Dear Director Bonham:

You are hereby notified pursuant to the requirements of California Public Resources Code § 21167.5 and otherwise that The New 49'ers, Inc., Steve Kleszyk, Billy and Chad Stanford, David Garey, Richard and Sue Burton, Elizabeth and Mark Cutler, Edward Murphy, Martha Cronin, Raymond Phillips, Robert and Anna Sonnenburg, Ray Derrick, and Northwest Mining LLC will commence an action against you, the State of California and California Department of Fish and Game (the "Department") under California Public Resources Code § 21167. This action will allege that you and the Department have improperly determined that the suction dredge mining regulation "project" may have a significant effect on the environment. We are also asserting that the State's regulation of suction dredging is unconstitutional in the sense of being contrary to the Supremacy Clause of the U.S. Constitution because it interferes with federal mining law and policy, and bringing a claim for inverse condemnation. A draft Complaint and Petition for Writ of Mandate is enclosed.

Pursuant to requirements of Public Resources Code § 21167.67.6(b)(2), we expect to discuss with your staff an alternative method of preparation of the record of proceedings because suit has already been filed which requires the same record in *Karuk Tribe et al. v. California Department of Fish and Game et al.* (filed April 2, 2012 in Alameda County).

Sincerely,



James L. Buchal
Attorney for Plaintiffs

Enclosure

1 JAMES L. BUCHAL (SBN 258128)
MURPHY & BUCHAL LLP
2 3425 S.E Yamhill, Suite 100
Portland, OR 97214
3 Telephone: (503) 227-1011
Facsimile: (503) 573-1939
4 *Attorney for Plaintiffs*

5
6 IN THE SUPERIOR COURT OF CALIFORNIA
7
8 IN THE COUNTY SISKIYOU

9 **BILLY and CHAD STANFORD, DAVID**
10 **GAREY, RICHARD BURTON, ELIZABETH**
11 **CUTLER, EDWARD MURPHY, MARTHA**
12 **CRONIN, ROBERT and ANNA**
13 **SONNENBURG, RAY and PEGGY**
14 **DERRICK, and NORTHWEST MINING**
15 **LLC,**

16 Plaintiffs,

17 v.

18 **STATE OF CALIFORNIA, CALIFORNIA**
19 **DEPARTMENT OF FISH AND GAME, and**
20 **CHARLTON H. BONHAM, Director of the**
21 **California Department of Fish and Game,**

22 Defendants.

Case No.

PROOF OF SERVICE BY MAIL

23 **PROOF OF SERVICE BY MAIL**

24 I, Carole Caldwell, hereby declare:

25 I am over the age of 18 years and am not a party to this action. My business address is 3425 S.E
26 Yamhill, Suite 100, Portland, OR 97214.

27 ///

28 ///

PROOF OF SERVICE BY MAIL
Case No.

1

EXHIBIT A
PAGE 1 OF 3

James L. Buchal (SBN 258128)
MURPHY & BUCHAL LLP
3425 S.E. Yamhill, Suite 100
Portland, OR 97214
Tel: 503-227-1011
Fax: 503-573-1939

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

On April 12, 2012, I caused to be served the following:

1. Notice of Action against the State of California, Charlton H. Bonham, Director of the California Department of Fish and Game and the California Department of Fish and Game pursuant to CCP § 388 & California Public Resources Code § 21167.7.

I caused the above described document addressed to the party listed below to be deposited for collection at a certified United States Postal Service box following the regular practice for collection and processing of correspondence for mailing with the United States Postal Service.

Charlton H. Bonham, Director
California Department of Fish and Game
1416 9th Street
Sacramento, CA 95814

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this Declaration was executed in Portland, Oregon on April 12, 2012.



Carole Caldwell
Declarant

James L. Buchal

telephone: 503-227-1011
fax: 503-573-1939
e-mail: jbuchal@mbllp.com

April 11, 2012

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

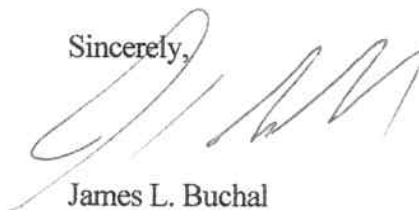
Kamala D. Harris
Office of the Attorney General
1300 "I" Street Sacramento, CA 95814-2919

Dear Ms. Attorney General:

You are hereby notified pursuant to the requirements of California Public Resources Code § 21167.5 and otherwise that The New 49'ers, Inc., Steve Kleszyk, Billy and Chad Stanford, David Garey, Richard and Sue Burton, Elizabeth and Mark Cutler, Edward Murphy, Martha Cronin, Raymond Phillips, Robert and Anna Sonnenburg, Ray Derrick, and Northwest Mining LLC will commence an action against the State of California, Charlton H. Bonham, Director of the California Department of Fish and Game, and California Department of Fish and Game (the "Department") under California Public Resources Code § 21167. This action will allege that Charlton H. Bonham and the Department have improperly determined that the suction dredge mining regulation "project" may have a significant effect on the environment. We are also asserting that the State's regulation of suction dredging is unconstitutional in the sense of being contrary to the Supremacy Clause of the U.S. Constitution because it interferes with federal mining law and policy, and bringing a claim for inverse condemnation.

We are hereby furnishing you with a draft of the Complaint and Petition for Writ of Mandate.

Sincerely,



James L. Buchal
Attorney for Plaintiffs

Enclosure

1 JAMES L. BUCHAL (SBN 258128)
MURPHY & BUCHAL LLP
2 3425 S.E Yamhill, Suite 100
Portland, OR 97214
3 Telephone: (503) 227-1011
Facsimile: (503) 573-1939
4 *Attorney for Plaintiffs*

5
6 IN THE SUPERIOR COURT OF CALIFORNIA
7
8 IN THE COUNTY SISKIYOU

9
10 **BILLY and CHAD STANFORD, DAVID**
GAREY, RICHARD BURTON, ELIZABETH
11 **CUTLER, EDWARD MURPHY, MARTHA**
CRONIN, ROBERT and ANNA
12 **SONNENBURG, RAY and PEGGY**
DERRICK, and NORTHWEST MINING
13 **LLC,**

Case No.

PROOF OF SERVICE BY MAIL

14
15 Plaintiffs,

16 v.

17 **STATE OF CALIFORNIA, CALIFORNIA**
DEPARTMENT OF FISH AND GAME, and
18 **CHARLTON H. BONHAM, Director of the**
California Department of Fish and Game,

19 Defendants.
20

21 **PROOF OF SERVICE BY MAIL**

22 I, Carole Caldwell, hereby declare:

23 I am over the age of 18 years and am not a party to this action. My business address is 3425 S.E
24 Yamhill, Suite 100, Portland, OR 97214.

25 ///

26 ///

27 PROOF OF SERVICE BY MAIL
28 Case No.

1

EXHIBIT B
PAGE 2 OF 3

James L. Buchal (SBN 258128)
MURPHY & BUCHAL LLP
3425 S.E. Yamhill, Suite 100
Portland, OR 97214
Tel: 503-227-1011
Fax: 503-573-1939

1 On April 12, 2012, I caused to be served the following:

2 1. Notice of Action against the State of California, Charlton H. Bonham, Director of the
3 California Department of Fish and Game and the California Department of Fish and Game pursuant to
4 CCP § 388 & California Public Resources Code § 21167.7; and

5 2. Complaint (Inverse Condemnation and Declaratory and Injunctive Relief) and Petition
6 for Writ of Mandate.

7 I caused the above described documents addressed to the party listed below to be deposited for
8 collection at a certified United States Postal Service box following the regular practice for collection and
9 processing of correspondence for mailing with the United States Postal Service.

10 Kamala D. Harris
11 Office of the Attorney General
12 1300 "I" Street Sacramento, CA 95814-2919

13 I declare under penalty of perjury, under the laws of the State of California, that the
14 foregoing is true and correct, and that this Declaration was executed in Portland, Oregon on April
15 12, 2012.

17 

18 Carole Caldwell
19 Declarant

20
21
22
23
24
25
26
27 PROOF OF SERVICE BY MAIL
28 Case No.

2

EXHIBIT B
PAGE 3 OF 3

James L. Buchal (SBN 258128)
MURPHY & BUCHAL LLP
3425 S.E. Yamhill, Suite 100
Portland, OR 97201
Tel: 503-227-1011
Fax: 503-573-1939