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5  
6 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
7 COUNTY OF SAN BERNARDINO

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

**Case No. JCCP4720**

9 **SUCTION DREDGE MINING CASES**

**STATUS CONFERENCE  
STATEMENT OF THE MINERS**

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16 **Included Actions:**

17  
18 *Kimble, et al. v. Harris et al.*

CIVDS 1012922 – San Bernardino County

19 *Public Lands for the People, Inc. et al. v. California*  
20 *Department of Fish and Wildlife*

CIVDS 1203849 – San Bernardino County

21 *The New 49ers et al. v. California Department of*  
22 *Fish and Wildlife, et al.*

SCCVCV 1200482 – Siskiyou County

23 *Walker v. Harris, et al.*

34-2013-80001439 – Sacramento County

24 *Foley et al. v California Department of Fish and*  
25 *Wildlife, et al.*

SCCVCV-13-00804 – Siskiyou County

26 *Eimer et al. v. California Department of Fish and*  
27 *Wildlife, et al.*

CIVDS 1509427 – San Bernardino County

1 **Statement**

2 This Status Conference Statement is filed on behalf of *New 49'ers, Inc. et al., Kimble, et*  
3 *al., and Public Lands for the People, Inc. et al.*, (hereafter collectively, the "Miners"). This Court  
4 stayed these cases until the California Supreme Court issued its opinion in *People v. Rinehart*,  
5 which occurred on August 22, 2016. Though a petition for rehearing is pending, unless granted,  
6 it will be denied by operation of law on November 20, 2016. At this juncture, the Miners see two  
7 primary potential paths, settlement or continued litigation, and see the November 15<sup>th</sup> status  
8 conference as an opportunity to discuss if not determine the path.<sup>1</sup>

9 **The Settlement Path**

10 This Court and the parties have invested substantial time and energy into settlement  
11 discussions. In the wake of the *Rinehart* decision, all of the interests concerned with motorized  
12 mining in California waters may be more able to forge a settlement, to the extent that the State of  
13 California is committed to balancing conflicting interests consistent with applicable law.

14 Involvement of the State Water Resources Control Board in settlement negotiations,  
15 however, is essential if they are to have any prospect of success. Indeed, the Miners are  
16 convinced that these cases cannot be settled without the participation of the Board, and have no  
17 interest in the settlement path without Board participation.

18 Fortunately, Rule 3.1380 empowers this Court to set mandatory settlement conferences,  
19 with the persons attending to include "trial counsel, parties, and persons with full authority to  
20 settle the case". Under the present circumstances, "full authority to settle the case" does not  
21 reside exclusively within the officials of the Department of Fish and Wildlife. Rather, "full  
22 authority to settle the case" will require a signoff from both agencies.

23 The Board operates under the auspices of the California Environmental Protection  
24 Agency, while the Department operates under the auspices of the Natural Resources Agency.

25 \_\_\_\_\_  
26 <sup>1</sup> Counsel for the Miners has been advised by the Clerk that he may attend the November 14<sup>th</sup>  
27 status conference by CourtCall and assumes this determination was cleared with the Court.  
28 Counsel is presently scheduled to argue a summary judgment motion in Klamath County, Oregon  
at 10:30 a.m. on November 14<sup>th</sup>, and trusts that the 9:00 a.m. status conference time will not  
conflict.

1 These are two different cabinet-level agencies, which creates political deadlock in attempting to  
2 resolve regulatory matters within the purview of both agencies, particularly in a context where  
3 one agency is a party defendant with regard to the issues and one is not.

4 The Court may recall that the Board provided \$500,000 in funding for the Final  
5 Subsequent Environmental Impact Report (FSEIR), and although it was prepared for the  
6 California Department of Fish and Wildlife, the Board had substantial involvement with the  
7 FSEIR. Among other things, the issues presently before the Court involve whether or not the  
8 FSEIR's analysis of water quality effects within the jurisdiction of the Board was adequate. This  
9 involvement by the Board confirms the necessity of involving Board representative in securing  
10 "full authority to settle the case" at a settlement conference.

11 Moreover, both the Department and the Board are instrumentalities of the State of  
12 California, which is *itself* a defendant and party in the following actions: *Kimble et al. v. Harris*  
13 *et al.*, Case No. CIVDS1012922, San Bernardino County; *The New 49'ers, Inc. v. State of*  
14 *California et al.*, SCCVCV1200482, Siskiyou County; and *Walker v. Harris, et al.*, Case No. 34-  
15 2013-80001439, Sacramento County. Rule 3.1380 also empowers the Court to order the State to  
16 appear as a "party" to these actions, and with inherent authority for the Court to specify those  
17 state actors required for the benefit of the settlement process.

18 The Miners anticipate a potential objection to a settlement path may be the Board's  
19 position that a water quality permit under the federal clean water act must be developed and  
20 required for suction dredge mining, with procedural steps culminating in U.S. EPA review of the  
21 permit. We are familiar with this process and are aware that the U.S. EPA has approved such  
22 permits in other states. Additional procedural steps are also required by SB 637, including four  
23 public workshops and a public hearing.

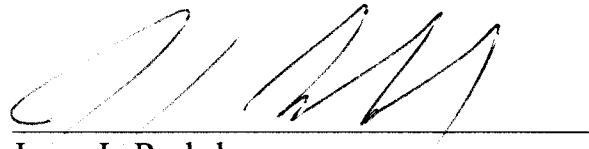
24 Nothing prevents the Board and Department, however, from reaching a global settlement  
25 of the environmental issues set forth in the FSEIR presently before this Court, including a set of  
26 proposed regulations/permit conditions, and then securing the necessary public review and  
27 approvals of that settlement, notwithstanding potential risk that further developments might  
28 require a return to the bargaining table. Given the fantastically and unreasonably complex

1 regulatory environment, such a joint agency approach is perhaps the most practical means of  
2 resolving these ongoing disputes. Absent that approach, the Miners anticipate that further  
3 litigation will develop concerning the Board’s implementation of SB 637, which may come  
4 before this Court.

5 **The Litigation Path**

6 To the extent that the Court is not disposed to devote additional resources to settlement  
7 discussions based on concerns of futility—concerns frankly shared by the Miners—the next step  
8 on the litigation path would be to set a new hearing date for the pending CEQA/APA and “one  
9 subject rule” motions. CEQA and the APA require a transparent process which identifies real,  
10 rather than speculative, environmental concerns and imposes the least burdensome mitigation  
11 measures possible to resolve conflicting interests. The *Rinehart* case does not change this law,  
12 and the State of California cannot continue indefinitely to eliminate an important economic  
13 activity that can be safely conducted.

14 Dated: November 7, 2016.

15 

16 \_\_\_\_\_  
17 James L. Buchal

1 PROOF OF SERVICE

2 I, Carole A. Caldwell, hereby declare under penalty of perjury under the laws of the State  
3 of 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 November 7, 2016, I caused the following document to be served:

8 CASE STATUS STATEMENT OF THE MINERS

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  
14 247 West 3<sup>rd</sup> Street  
15 San Bernardino, CA 92415-0210  
16 *Via U.S. Mail*

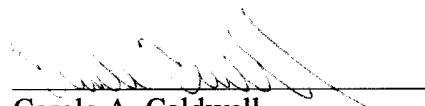
Chair, Judicial Council of California  
Administrative Office of the Courts  
Attn: Court Programs and Services Division  
(Civil Case Coordination)  
455 Golden Gate Avenue  
San Francisco, CA 94102  
*Via U.S. Mail*

17 Bradley Solomon  
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28 *Via E-mail & U.S. Mail*

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Carole A. Caldwell  
Declarant