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9 THE NEW 49'ERS, INC., a California corporation, and
10 RAYMOND W. KOONS, an individual

11
12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION
15

16 KARUK TRIBE OF CALIFORNIA and LEAF
17 HILLMAN,

18 Plaintiffs,

19 v.

20 CALIFORNIA DEPARTMENT OF FISH
21 AND GAME and RYAN BRODDRICK,
22 Director, California Department of Fish and
23 Game,

24 Defendants.

Case No. RG05 211597

**FOURTH DECLARATION OF DAVID
MCCRACKEN IN SUPPORT OF THE
REPLY MEMORANDUM IN
OPPOSITION TO PROPOSED
STIPULATED JUDGMENT OF THE
NEW 49'ERS AND RAYMOND W.
KOONS**

Res. No.: 556514

Date: January 26, 2006

Time: 9:00 a.m.

Judge: Honorable Bonnie Sabraw

Place: Department 512

Action Filed: May 6, 2005

Trial Date: None Set

25 David McCracken, being duly sworn, deposes and says:

26 1. I am President of The New 49'ers, Inc., a California corporation that is based in
27 Happy Camp, California, Siskiyou County, and make this Declaration in further support of the
28 opposition of The New 49'ers, Inc. and Raymond W. Koons to the Proposed Stipulated Judgment.

2. There are approximately 88 miles of Klamath River waterway between the
confluence of the Scott River and the community of Orleans. Our organization presently leases

1 the mineral rights along about half of this waterway. Through extensive sampling activities over
2 the past 20 years, we have confirmed that most of the streambed throughout the 40 miles of claims
3 that we lease contain high-grade gold deposits. Because most of the high-grade deposits are
4 located along the bottom of these waterways, submerged underwater, there is no other practical
5 way to recover the gold except through gold dredging.

6 3. To my knowledge, during the entire time period that the Department of Fish &
7 Game (DFG) has been issuing dredge permits, the regulations have allowed year-round dredging
8 along the 82-mile stretch of Klamath River between the Scott and Salmon Rivers. During the EIR
9 process in 1994, it was clearly established that dredging activity on a year-round basis was not
10 deleterious to fish.

11 4. An average mining claim along this stretch of river is worth \$6,000. Proven high-
12 grade claims can sell for as much as \$25,000 or more at the present value of gold. The value of
13 every claim is different, depending upon the nature of the high-grade gold deposits that exist there.
14 A typical claim is 20 acres, taking up a quarter-mile of river. The claims we lease are especially
15 valuable, because they are often adjoined in continuous lengths of up to 5 miles. We have devoted
16 20 years to accumulating extensive lengths of gold-rich properties to make them available to our
17 members. From a business standpoint, our members have increased the value of these claims by
18 establishing valuable gold deposits on them. We have further escalated the value of the claims to
19 our organization and members by securing long, continuous stretches for our members to work.

20 5. We presently have around 1,000 active members in our organization. Most of them
21 support our organization because we make mining property available on a year-round basis. Year-
22 round dredging opportunity in Siskiyou County will be virtually eliminated by the Stipulated
23 Agreement.

24 6. A mining claim is only as valuable as it can be worked. A mining claim that can
25 only be worked ten weeks out of the year is not nearly as valuable as the same mining claim that
26 can be worked 52 weeks out of the year. The Stipulation put forward by DFG and the Karuks
27 reduces the mining season on around 40 miles of the mining claims we lease from 52 weeks down
28 to 10 weeks. That is a seasonal reduction of 80%. When considered against the long-term

1 productive life of these claims, along with the ever-rising market price of gold, this will cause a
2 huge loss of value to the claim owners, to our members and to our organization.

3 7. Our organization leases 6 miles of mining claims in the 44 miles of Klamath River
4 between the Scott River and Iron Gate Dam. Over the years, we have also proven that most of
5 these 44 miles of river are also rich in gold deposits, which mostly can only be worked with gold
6 dredges to extract gold from underwater deposits. The Stipulated Agreement proposes to trim 6
7 weeks off a dredging season that has remained at 16 weeks since the EIR was completed in 1994.
8 That is a seasonal reduction of 37.5%. But the loss to miners is much more than 37.5%, because
9 some portion of a season must be invested in sampling to establish and develop high-grade gold
10 deposits. There comes a point where the season is too short to allow for sampling and
11 development, and the commercial value of the claim is eliminated altogether. For example, no one
12 would propose to invest in a commercial dredging opportunity if they only had a week or two to
13 complete the whole project. A miner must have enough time to develop the deposit and recoup
14 his or her investment. This 37.5% reduction in the mining season will render lower-grade gold
15 deposits as unworkable and render some mining claims as valueless. Said another way, many
16 commercially viable gold deposits will lose their value, because not enough time will be allowed
17 in the dredging season to recoup investment. The assertion by proponents of the Proposed
18 Stipulated Judgment that the reduced seasons for miners is not a significant loss to the miners is
19 not based upon an understanding of the needs of miners – which would be brought to the attention
20 of DFG if a proper CEQA process was used to propose new regulations.

21 8. Our organization leases 7 miles of the 16-mile stretch of mainstem Salmon River.
22 The mainstem Salmon River is one of the richest gold-bearing waterways in California. By the
23 nature of this river, most of the gold deposits are located in deep ravines that can only be mined
24 using suction dredges.

25 9. Our organization leases around 8 miles of the 15 miles of gold-bearing waterway of
26 Elk Creek, and 4 miles of the 15-mile stretch of gold-bearing Elk Creek. The rich gold-bearing
27 history of Elk and Indian Creeks is well established.

1 10. The Salmon River, Indian Creek and Elk Creek have been mined by gold
2 prospectors on a continuing basis since even before California became a State. In fact, it was the
3 presence of gold that opened up routes and established the communities along these waterways.
4 Happy Camp was named by gold miners who first found gold at the mouth of Indian Creek. Gold
5 mining is as much of the established community, culture and heritage along these waterways and
6 Siskiyou County as the Native American culture. It is a very important activity that supports the
7 modern economy in rural communities that have few other sources of income. The existing
8 parties may not understand this because they have not performed a proper CEQA process that
9 requires a balance of these important values when proposing alternative solutions to perceived
10 problems.

11 11. The Proposed Stipulated Judgment proposes to completely shut down modern gold
12 mining (suction dredging) on the entirety of mainstem Salmon, Indian and Elk Creeks. That is 71
13 miles of lost productive mineral potential in some of Siskiyou County's most productive gold
14 bearing waterways. This solution will destroy the value of the 18 miles of mining claims that our
15 organization leases on these waterways. That would be a huge loss to us, because many of our
16 members only support our organization because we make these smaller-sized gold-rich waterways
17 available to them.

18 12. Complete loss of our smaller-sized waterways, and reduction of the Klamath River
19 to a 10-week season, combined, potentially eliminates most of our more serious members
20 (Klamath River) along with our smaller-scale members who are not prepared to take on a larger-
21 sized waterway.

22 13. Our organization is the most productive private enterprise along the Klamath River
23 for bringing people and income into the area. Our members spend millions of dollars each year in
24 Happy Camp and the other river communities. Loss usage of these mining claims will diminish
25 the number of miners who come in, and reduce the time spent there by the fewer number that do
26 come. While this will be a loss of income to our organization, the loss to other community
27 services and private enterprise will be even more severe. The economic loss to the area will be
28 very substantial.

1 14. Furthermore, our organization is only leasing 66 miles of 247 miles of waterway
2 that will be directly impacted by the Proposed Stipulated Judgment. The remaining 181 miles of
3 gold-bearing waterway are owned by individual claim owners and private land owners. There are
4 hundreds of private land owners and claim holders whose properties will be substantially reduced
5 in value by the Proposed Stipulated Judgment. Most of those owners have no idea that DFG has
6 changed its regulations. They will be under the impression that a proper CEQA process would be
7 required, which would allow them an opportunity to participate.

8 15. At a minimum value of \$24,000 per mile, the mineral rights on the 247 miles of
9 waterway affected by this Stipulation are worth a minimum of \$6 million. As I said, some
10 established properties are worth much more, so the full loss could amount to three times this
11 estimate or more. There would be, in substance, a complete loss of value on 71 miles of
12 waterway where DFG proposes to eliminate suction dredging altogether. But the loss to local
13 communities would be even more substantial, because local communities are already struggling
14 due to the substantial reduction of the timber industry along our river communities.

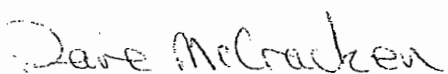
15 16. It is my own experience in dealing with regulatory agencies during the past 25
16 years that once they take something away, it is near to impossible to ever get it back again. This is
17 why we insisted that DFG follow CEQA to the letter when the dredge regulations were adopted in
18 1994. Gold mining is not like agriculture or manufacturing where you can relocate a productive
19 activity to somewhere else. Gold mining must be performed where the gold deposits are located.
20 In this case, it is along the bottom of some waterways in Siskiyou County. This stipulation attacks
21 the most productive areas of these waterways. This stipulation basically eliminates the existing
22 productive small-scale mining program in Siskiyou County; something that has been ongoing
23 since the area was discovered by explorers in 1849. That is a big bite for a regulatory agency that
24 is mandated by law to even make emergency regulations through a public process.

25 17. DFG says in its reply brief that these are not really changes to our dredging
26 regulations; that they are something else. But the dredging regulations which DFG is issuing in
27 2006 specifically have changed, and they are enforcing the provisions of the stipulation upon our
28 industry. They may call it what they want, but the bottom line is that we are no longer being

1 allowed productive use of our mining property. Allowing a State agency to make major changes
2 in the way an industry may conduct its affairs by private agreement with an anti-industry group
3 will undermine the very confidence that is necessary to encourage investment. Not just in mining,
4 but anywhere where the State enforces rules upon any industry. It would be a waste of time to
5 proceed through a CEQA process, if the State can trade it all away to an anti-industry group in a
6 private settlement as they are attempting to do with the Stipulated Agreement.

7 I swear under penalty of perjury under the laws of California that the foregoing is true and
8 correct to the best of my knowledge.

9 Dated: January 24, 2006

10 
11 David McCracken