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11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

14 KARUK TRIBE OF CALIFORNIA,

15 Plaintiff,

16 v.

17 UNITED STATES FOREST SERVICE, *et al.*,

18 Defendants.

Case No. 04-4275 (SBA)

**DECLARATION OF DENNIS MARIA IN
OPPOSITION TO PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

Date: June 21, 2005

Time: 1:00 p.m.

19 Ctrm: 3, 3d Floor

20 Judge: Hon. Sandra B. Armstrong

21
22 I, Dennis Maria, declare as follows:

23 1. I reside in Yreka, California. I am 55 years old and competent to testify.

24 2. I am a watershed biologist by profession. I obtained my Bachelor of Science degree in
25 wildlife management from Humboldt State University in Arcata, California in June, 1973. I have
26 spent nearly my entire professional life since 1975 working with fish and fisheries management
27 issues with 24 years working specifically on fishery related issues related to the Klamath-Trinity
28 Basin.

1 3. Until I retired on April 1, 2005, I was employed full-time by the California Department of
2 Fish and Game as the watershed biologist assigned to the portion of the Klamath River watershed
3 extending upstream from the confluence of the Trinity River to the Oregon border. Including
4 seasonal work, I have worked for the California Department of Fish and Game for thirty-one and-
5 a-half years, with nearly twenty-five of those years in the capacity as a fishery biologist.

6 4. I have spent a lot of time observing dredging operations on the Scott, Salmon and Klamath
7 Rivers. This included underwater observations of suction dredging operations in order to determine
8 the effects of suction dredging on fish, benthic invertebrates, and other species. I provided key
9 input to the CEQA process described below that created existing dredging regulations, restrictions,
10 and allowances applicable to Siskiyou County and the Klamath National Forest. I have actively
11 monitored existing conditions and dredging activity since the adoption of the existing dredging
12 regulations, and have made recommendations concerning the need for any changes.

13 5. I have reviewed the declarations of Leaf Hillman and Toz Soto in support of the Plaintiff's
14 Motion for Summary Judgment, as well as the Summary of Fishery Issues Concerning Suction
15 Dredge Mining ("Grunbaum Summary") by Jon Grunbaum dated April 20, 2004 (Administrative
16 Record of Suction Dredging Activities ("A.R.") at 294-99).

17 6. In my experience and based on my observations, suction dredging in the Klamath National
18 Forest does not cause any significant harm to fish and other wildlife if it is conducted in accordance
19 with California law and regulations. The Hillman and Soto Declarations and the Grunbaum
20 Summary fail to show that suction dredging causes harm to the resources that allegedly support the
21 Karuk Tribe. In fact, during the fall of 2004, I made several requests by e-mail to Mr. Toz Soto
22 asking him for his field data and field notes in order to evaluate his allegations that fish, specifically
23 sturgeon, lamprey and coho, were being irreparably harmed by dredging. My intent was to evaluate
24 his data in order to determine if suction dredge regulation changes were needed on the Salmon
25 River. I never received a response from either e-mail request I made.

26 7. The Hillman and Soto Declarations and the Grunbaum Summary do not mention that
27 California regulates suction dredging. The statutes controlling suction dredging are Cal. Fish and
28 Game Code §§ 5653-5653.9. These statutes require suction dredgers to obtain an annual permit and

1 follow the dredging regulations. The suction dredging statutes give the California Department of
2 Fish and Game the authority to issue regulations concerning suction dredging. The regulations are
3 codified at Cal. Code of Regulations. Title. 14, §§ 228 and 228.5 (1994)(copies are at A.R. 280-
4 293). Failure to obtain a permit before dredging or to follow the dredging regulations is punishable
5 as a misdemeanor. In addition, failure to follow the dredging regulations may subject the dredger to
6 civil penalties under Cal. Fish and Game Code § 1602, as in a case in which I provided testimony
7 concerning river flows and levels at the trial. *People v. Osborn*, 116 Cal. App. 4th 764 (2004). In
8 the Osborn case the defendant suction dredger was alleged to have dredged into the bank and was
9 sued for violation of former Cal. Fish and Game Code § 1603 (now § 1602) which prohibits
10 substantially changing the bed, channel or bank of a river without first providing notification to the
11 California Department of Fish and Game.

12 8. The Soto Declaration states, for example, at paragraph 9 that “[l]arge boulders, stumps, and
13 rootwads in the stream may be moved before a site is excavated, which reduces stream stability.”
14 The dredging regulations prohibit, among other actions, moving anchored, exposed woody debris
15 such as root wads, stumps or logs. Cal. Code Regs. tit. 14, § 228(f)(4)(1994)(A.R. at 286).

16 9. The Hillman and Soto Declarations and the Grunbaum Summary do not mention that an
17 extensive process was undertaken by the State of California as required by the California
18 Environmental Quality Act (CEQA)), codified at Cal. Pub. Res. Code §§ 21000-21178.1, to finalize
19 an Environmental Impact Report on the effects of suction dredging. A copy of the summary of the
20 Final Environmental Impact Report of April 1994 for “Adoption of Regulations for Suction Dredge
21 Mining,” which explains the process and the considerations considered in developing the current
22 dredging regulations, is attached as Exhibit 1 to this declaration. As a result of the CEQA process,
23 regulations were created to mitigate concerns and reduce negative impacts to less than significant.
24 This included regulations to close streams to protect salmon redds (eggs) and juveniles during
25 critical time periods, restrict the size of dredges allowed in different waterways, prevent dredging
26 into the banks of rivers, prevent importation of silt into the waterway, and many other measures to
27 reduce or eliminate impacts that potentially could create a significant impact. I personally
28

1 contributed to the CEQA process insofar as Siskiyou County (location of the Klamath National
2 Forest) waters are concerned.

3 10. Mr. Hillman's declaration simply consists of unsupported conclusions concerning the effect
4 of suction dredging on fish and other natural resources. Mr. Grunbaum and Mr. Soto are known to
5 me to work as fisheries biologists working in the Klamath National Forest. Despite having the
6 opportunity to observe and measure the effects of dredging operations in the Klamath National
7 Forest the Soto Declaration and the Grunbaum Summary state only speculations unsupported by
8 data or actual observation. They contain no actual data, observations, or measurements concerning
9 the effects of actual suction dredging operations in the Klamath National Forest or anywhere, apart
10 from the four photographs of showing dredges contained in Exhibit 2 to the Soto Declarations.

11 11. I have personally observed actual suction dredging sites and determined whether such
12 operations were likely to affect fish species. For example, on September 15, 2003 (the final day of
13 the California dredging season along the Salmon River), the California Department of Fish and
14 Game (DFG) organized an inspection, to which it invited the Karuk Tribe, the U.S. Forest Service,
15 the local environmental activist group called the Salmon River Restoration Council (SRRC), any
16 local residents who might want to attend, and The New 49'ers. Thirteen people participated in the
17 inspection, including Pete Brucker from SRRC, seven people from the Forest Service (including
18 two District Rangers, three minerals officers and one fish biologist), and three representatives of
19 The New 49'ers. I headed up the inspection as the lead California Department of Fish and Game
20 fishery biologist from Yreka, accompanied by my supervisor, Mr. Bob McAllister from Redding.
21 We examined several locations on the main stem of the Salmon River that had experienced
22 dredging during the 2003 dredging season on that river (July 1-September 15).

23 12. At least three of the photographs in Exhibit 2 of the Soto Declaration show dredges at a part
24 of the Salmon River approximately one mile upstream from the confluence of the Salmon River
25 with the Klamath River. This was the first site we examined on September 15, 2003. I observed
26 that this region was primarily a run with little if any cover associated with the wetted channel. The
27 dredge holes in the riverbed created the only discernable juvenile rearing habitat that I witnessed.
28 My experience also tells me that the dredge holes that were created likely were providing thermal

1 relief in a reach of the Salmon River that typically exceeds 70F during July and August, benefiting
2 primarily juvenile steelhead and coho salmon. My files indicate that little, if any spawning by coho
3 salmon occurs in this reach of the Salmon River and Mr. Brucker of the SRRC confirmed this was
4 true based on numerous SRRC s surveys conducted over recent years.

5 13. I wrote a report concerning my observations from this inspection. I concluded as follows: “I
6 saw nothing that would be considered a violation or that would have a significant impact to the
7 fishery or significantly negatively impact the overall biotic community of the Salmon River.”

8 14. The California Department of Fish and Game was approached last year by the Karuk Tribe
9 (represented by Mr. Soto), the Six Rivers National Forest, and the Klamath National Forest, with
10 request to restrict suction dredging by persuading the Department to change the dredging
11 regulations to make them more restrictive by closing certain waterways to dredging, further limiting
12 the dredging season, and the like. The Department’s position was that it is interested in considering
13 the merits of regulation changes that have demonstrable benefits to fish species, and particularly the
14 anadromous fish species. However, any changes to the regulations must be supported by data, such
15 as survey and trapping reports, which clearly confirm that the current regulations result in negative
16 impacts to fish. Furthermore, the data would have to show that the changes would decrease those
17 impacts. The “concerns” raised by the Hillman and Soto Declarations and the Grunbaum Summary
18 are examples of the data-free submissions that cannot support a regulation change at this time.

19 15. The Administrative Record for this lawsuit contains a good example of a request to change
20 the dredging regulations to make them more restrictive. The supervisors of the Klamath National
21 Forest and the Six Rivers National Forest wrote to the director of the California Department of Fish
22 and Game on November 19, 2004 requesting that the Department consider changes to the dredging
23 seasons (set forth in Section 228.5 of the dredging regulations) because “the current suction
24 dredging regulations create administrative challenges to the Six Rivers and Klamath National
25 Forests” and incidentally “**may cause** direct impacts to several fish species on the Klamath and Six
26 Rivers National Forests.” (A.R. at 300-302) The only supporting documentation was a one page
27 chart (A.R. at 302) of alleged life phases of five fish species with respect to the dredging seasons on
28 various rivers. The only support for this chart was said to be “the review that was based on current

1 literature, field surveys by the Forest Service, Fish and Wildlife Service, and the Karuk Tribe, and a
2 discussion with California Department of Fish and Game biologist Dennis Maria [the undersigned
3 declarant].” (A.R. at 300) The response dated February 24, 2005, by Regional Manager Donald B.
4 Koch of the California Department of Fish and Game, requested the data supporting negative
5 impact of current regulations and decrease of impact due to the requested changes in the
6 regulations. (A.R. at 304-305) The Administrative Record reveals no further correspondence
7 concerning this request.

8 16. I am familiar with the Klamath National Forest and its watercourses. The “Riparian
9 Reserves” in that Forest, as shown in the Management Area 10 map in the Klamath National Forest
10 Land and Resource Management Plan available at :
11 [http://www.fs.fed.us/r5/klamath/publications/pdfs/forest](http://www.fs.fed.us/r5/klamath/publications/pdfs/forest_management/managementareamaps2.pdf) management/managementareamaps2.pdf
12 (accessed May 14, 2005), includes essentially all land in the Klamath National Forest that is near a
13 watercourse or body of water. The Klamath National Forest contains rugged terrain that has many
14 streams and creeks in addition to the rivers. Only the sides of mountains and hills that have no
15 streams and the tops of the mountains and hills are not in “Riparian Reserves.”

16 I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

17
18 DATED: This 17th day of May, 2005.

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20
21 /s/ Dennis R. Maria
22 Dennis R. Maria
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1 **CERTIFICATE OF SERVICE**

2 I certify that on May 17th, 2005, I electronically filed the foregoing
3 DECLARATION OF DENNIS MARIA IN OPPOSITION TO PLAINTIFF'S MOTION FOR
4 SUMMARY JUDGMENT, with the Clerk of the Court, using the CM/ECF system, which will send
5 notification of such filing to the following:

6 Joshua Borger, srmeredith@envirolaw.org

7 James Russell Wheaton, sarah-rose@thefirstamendment.org

8 Roger Flynn, wmap@igc.org

9 Barclay Thomas Sanford, Clay.Samford@usdoj.gov

10 Brian C. Toth, brian.toth@usdoj.gov

11
12 s/ James L. Buchal _____
13 JAMES L. BUCHAL
14 Attorney for The New 49'ers, Inc. and Raymond W. Koons
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1 **ATTESTATION OF SIGNATURE**

2 I hereby attest that I have on file all holograph signatures for any signatures indicated by a
3 “conformed” signature (/S/) within this efiled document.

4 Executed this 17th day of May, 2005.

5
6
7 s/ James L. Buchal _____
8 James L. Buchal

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