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5 THE NEW 49'ERS, INC., a California corporation, and
RAYMOND W. KOONS, an individual
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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
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12 KARUK TRIBE OF CALIFORNIA and LEAF
HILLMAN,

13 Plaintiffs,

14 v.

15 CALIFORNIA DEPARTMENT OF FISH
16 AND GAME and RYAN BRODDRICK,
17 Director, California Department of Fish and
Game,

18 Defendants.
19

Case No. RG05 211597

**DECLARATION OF JAMES L.
BUCHAL IN SUPPORT OF
OBJECTIONS OF THE NEW 49'ERS
AND RAYMOND W. KOONS TO THE
PROPOSED STIPULATED
JUDGMENT**

Date: January 26, 2006
Time: 9:00 a.m.
Judge: Honorable Bonnie Sabraw
Place: Department 512

Filing Date: January 10, 2006
Trial Date: None Set

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22 James L. Buchal declares:

23 1. I am counsel to proposed intervenors The New 49'ers, Inc., a California
24 corporation, and Raymond W. Koons, an individual (hereafter, the Miners). I make this
25 Declaration in support of the Miners' opposition to entry of the Proposed Stipulated Judgment
presented by the parties to this action.

1 2. Exhibit 1 to the Proposed Stipulated Judgment is entitled “Prohibitions on Suction
2 Dredge Mining”, and though paragraph 1 of the Proposed Stipulated Judgment, defendants agree
3 to an injunction barring them from issuing any permits for suction dredge mining in the areas set
4 forth in Exhibit 1 where suction dredge mining is prohibited.

5 3. The Department of Fish and Game adopted such prohibitions on or about
6 November 30, 2005, coincident with its execution of the Joint Stipulation for Entry of Judgment.
7 The adoption is reflected in a memorandum to “All Suction Dredge Permittees” which appears on
8 the Department’s website at <http://www.dfg.ca.gov/licensing/pdf/SuctionDredgeRegs.pdf>, a
9 true copy of which is attached as Exhibit 1 to this Declaration. The memorandum sets forth “new
10 restrictions” identical in substance to those set forth in the Proposed Stipulated Judgment and
11 states that all persons who obtain permits after November 30, 2005 “will need to comply with the
12 new restrictions”.

13 4. I have reviewed the public records of the Department and other California agencies
14 to reach the following conclusions, which I have verified with counsel for the Department: (1) the
15 Department has not followed any rulemaking process, even an emergency rulemaking process, in
16 connection with the promulgation of the “new restrictions”; and (2) the Department has not made
17 any determinations under CEQA with respect to the “new restrictions”.

18 5. In an attempt to respond to the Proposed Stipulated Judgment by this Court’s
19 deadline of January 10, 2006, I made contact with former California Department of Fish and
20 Game biologist Dennis Maria on or about December 23, 2005. He informed me that he was about
21 to drive to Quartzite, Arizona where he would be staying in a recreational vehicle park, and that he
22 was unsure of his ability to communicate electronically or by telephone from that location. Before
23 he left he reviewed the Proposed Stipulated Judgment and we discussed it. Among other things,
24 he told me that some of the areas the Department was closing to suction dredging, particularly the
25 lower reaches of the Scott and Salmon Rivers, were too warm to provide habitat for juvenile coho
26 and other salmonid species. He also suggested that there was no evidence to support restricting

1 the season on the Klamath River back to September 15th (from September 30th) because there was
2 no evidence of any fish spawning during that time period.

3 6. Unfortunately, after I wrote up this information in the form of a second declaration
4 from Mr. Maria, to be filed in this action, he had apparently departed for Arizona and I have since
5 been unable to make contact with him. I subsequently learned from an acquaintance of his that he
6 was using cell phone which he intended to replace once the minutes had run out, which may
7 explain my inability to reach him by phone. It is my understanding that he is willing to testify, but
8 that communications problems (rather than any reluctance to execute a declaration) have
9 prevented me from presenting this information to the Court in declaration form.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12 Dated: January 9, 2006

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James L. Buchal