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

9 THE NEW 49'ERS, INC., a California  
10 corporation,

11 Plaintiffs,

12 v.

13 CALIFORNIA DEPARTMENT OF FISH AND  
WILDLIFE and CHARLTON H. BONHAM,  
14 Director of the California Department of Fish and  
Wildlife,

15 Defendants.  
16

Case No.

**[PROPOSED] TEMPORARY  
RESTRAINING ORDER AND ORDER TO  
SHOW CAUSE**

17 Plaintiffs having moved for a temporary restraining order and order to show cause why a  
18 preliminary injunction should not issue; and

19 The Court having had a hearing attended by counsel for plaintiff and defendants, and having  
20 considered the declarations and other papers filed concerning the motion;

21 **THE COURT FINDS THAT:**

22 1. Plaintiffs have demonstrated that they are likely to succeed on the merits of their  
23 claim that the Department's emergency regulation modifying 14Cal. Code § 228(a) was unlawfully  
24 adopted, and in particular that there was no "emergency" within the meaning of Government Code  
25 to justify departure from ordinary rulemaking procedure; and  
26

27 [PROPOSED] TRO AND ORDER TO SHOW CAUSE

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1           2.       Plaintiffs have demonstrated that they will suffer irreparable injury without equitable  
2 relief, insofar as at least one plaintiff faces criminal prosecution for relying upon the Department's  
3 advice concerning the meaning of the preexisting regulation, and all plaintiffs face financial losses  
4 as to which there is no apparent remedy at law for damages against the Department; and

5           3.       The balance of hardships and the public interest favoring granting the relief;

6           AND IT IS HEREBY ORDERED THAT:

7           1.       The Department, the Director and all those in active concert with them are restrained  
8 and enjoined from issuing any citations or otherwise taking enforcement action against any miner  
9 based on the miner's use of a device rendered unlawful by virtue of the amendment to 14 Cal. Code  
10 § 228, as amended effective June 28, 2013; and

11          2.       Plaintiffs are (a) excused from posting an undertaking on the ground that they are  
12 generally impecunious and entry of the injunction serves the public interest [or] (b) ordered to post  
13 bond in the amount of \$\_\_\_\_\_ to make this TRO effective.

14          3.       The Director shall appear before this Court on \_\_\_\_\_, 2013, at  
15 \_\_\_\_\_ o'clock to show cause why a preliminary injunction should not be entered continuing  
16 the relief granted herein.

17          Dated: July \_\_\_\_\_, 2012

18  
19 \_\_\_\_\_  
20 Superior Court Judge

21 Submitted by:

22 MURPHY & BUCHAL LLP

23  
24 \_\_\_\_\_  
25 James L. Buchal, SBN 258128  
*Attorney for Plaintiffs*

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27 [PROPOSED] TRO AND ORDER TO SHOW CAUSE       2  
28 Case No.

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