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

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

9 **SUCTION DREDGE MINING CASES**
10
11

12 **Included Actions:**
13

14 Karuk Tribe of California, *et al.* v. California
Department of Fish and Wildlife

15 Hillman, *et al.* v. California Department of Fish and
Wildlife

16 Karuk Tribe of California, *et al.* v. California
Department of Fish and Wildlife

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

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

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

20 Walker v. Harris, *et al.*

21 Foley *et al.* v California Department of Fish and
Wildlife, *et al.*
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Case No. JCPDS4720

**PLAINTIFFS AND PETITIONERS'
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

Date: January 20, 2016

Time: 8:30 a.m.

Dept.: 33J

Judge: Hon. Gilbert Ochoa

Incl. Action Filed: July 6, 2015

RG 05211597 – Alameda County

RG 09434444 – Alameda County

RG 12623796 – Alameda County

CIVDS 1012922 – San Bernardino County

CIVDS 1203849 – San Bernardino County

SCCVCV 1200482 – Siskiyou County

34-2013-80001439 – Sacramento County

SCCVCV-13-00804 – Siskiyou County

PLAINTIFFS AND PETITIONERS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

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

CIVDS 1509427 – San Bernardino County

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Summary of Argument and Statement of Facts

At this juncture, the California Department of Fish and Wildlife continues to take the position that it may both lawfully refuse to issue suction dredging permits and prosecute miners for mining without them. The Department refuses to issue permits because, among other things, § 5653.1(b)(4) of the Fish and Game Code requires a certification that the Department’s regulations fully mitigate all identified significant environmental impacts. There is no dispute that the Department has declined to issue any such certification, as the Department explained at length in its April 1, 2013 Report to the Legislature. (*See* Exhibit 4 to Plaintiffs and Petitioners’ Request for Judicial Notice (“RJN”) filed herewith, at 3-4, 14.)

As the Court may recall, the permitting moratorium proceeded through three statutory iterations, Senate Bill 670, Assembly Bill 120, and Senate Bill 1018, copies of which are attached as RJN Exhibits 1-3. The requirements of § 5653.1(b)(4) & (5) were added to Senate Bill 670 by the latter two bills. (*Compare* Exhibit 1, at 2 *with* Exhibit 2, at 10 & Exhibit 3, at 19.) The purpose of this motion is to establish that the sections of § 5653.1 added by the latter two bills are unconstitutional, such that they do not and cannot continue to operate as a barrier to the Department issuing permits.

The latter two bills blatantly violated Article IV, § 9 of the California Constitution, which provides that “a statute shall embrace but one subject”. A bare glance at the first page of these exhibits shows that the latter two bills amended numerous different California Codes on a dizzying array of subjects from overtime costs at poultry processing plants (RJN Ex. 2, at 18) to transparency in regard to the Western Climate Initiative (RJN Ex. 3, at 23)—subjects that manifestly have nothing to do with suction dredging.

With these two bills recognized to be unconstitutional and void for violating the California Constitution—in addition to violating the U.S. Constitution for reasons this Court has already declared—the operative moratorium bill (but for federal preemption) is Senate Bill 670, which provided that the moratorium only persisted until the department completed the EIR, filed the new regulations, and they became effective. (RJN Ex. 1, at 2.)

1 prevents the passage of laws that otherwise might not have passed had the
2 legislative mind been directed to them.”

3 *Homan v. Gomez*, 37 Cal. App.4th 597, 600 (1995). In short, the courts of California do not give
4 effect to enactments such as Assembly Bill 120 and Senate Bill 1018, which obviously represent
5 a “log rolling” exercise where various special interests to concatenate their requests to the abuse
6 of honest government. The initial Senate Bill 670 in 2009 merely declared that the Department
7 should finish its EIR and update regulations before issuing permits—manifestly a bill that could
8 secure broader appeal than its more extreme successors. The more noxious requirements of
9 Assembly Bill 120 and Senate Bill 1018, establishing legally and factually impossible
10 requirements for the Department as a *sub rosa* prohibition, had to be glued together with other,
11 unrelated subjects in order to secure passage—precisely what the California Constitution will not
12 permit.

13 In the *Homan* case, the Legislature placed into a budgetary act a rider which forbid the
14 Department of Corrections from using any funds to support unsupervised visits for certain sex
15 offenders. *Homan*, 37 Cal. App.4th at 599. Even though the Legislature had at least the fig leaf
16 of couching its substantive restrictions in the form of funding restrictions, thus asserting the “one
17 subject” was the budget, the Court had no trouble issuing a peremptory writ so that sex offenders
18 might have visits in prison. *Id.* at 602 (“Let a peremptory writ of mandate issue directing James
19 Gomez, as Director of the Department of Corrections, to refrain from enforcing the
20 unconstitutional provision of the Budget Act of 1994 herein challenged”); *see also Planned*
21 *Parenthood Affiliates v. Swoap*, 173 Cal. App.3d 1187, 1192 (1985) (enjoining enforcement of
22 bill forbidding family planning funding). Are not the miners entitled to such relief as even sex
23 offenders and abortionists might obtain from the unconstitutional deprecations of the Legislature?

24 The Department may argue that Article IV, § 9 only refers directly to voiding parts of a
25 statute not listed in the title. The Supreme Court has rejected precisely this argument, stating that
26 “the two aspects of section 9 relating to the subject of an act and its title are independent
27 provisions which serve separate purposes”. *Harbor v. Deukmejian*, 42 Cal.3d 1078, 1096 (1987).
28 A title that lists the Fish and Game Code among many other Codes simply will not comply. *See*

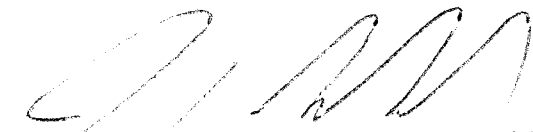
1 *id.* at 1097-1102. Rather, all provisions of a challenged bill must be “functionally related in
2 furtherance of . . . a common underlying purpose”. *Id.* at 1098 (quoting *Amador Valley Joint*
3 *Union High School Dist. v. State Board of Equalization*, 22 Cal.3d 208, 230 (1978)¹).

4 Assembly Bill 120 and Senate Bill 1018 do not begin to meet this test. This is as blatant
5 violation of Article IV, § 9 as can be imagined, as there is no sense in which all of these subjects
6 can be viewed as “one subject”. The only thing all these subjects have in common is that they are
7 changes in statutes. The Supreme Court of California has long rejected the proposition that “the
8 provision of the constitution in question can be entirely avoided by the simple device of putting
9 into the title of an act words which denote a subject ‘broad’ enough to cover everything.” *Lewis v.*
10 *Dunne*, 134 Cal. 291, 295 (1901).

11 Conclusion

12 For the foregoing reasons, this Court should enter summary judgment declaring Assembly
13 Bill 120 and Senate Bill 1018 unconstitutional.

14 Dated: November 6, 2015.



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26 ¹ The Supreme Court analogized to standards contained in the “one subject” rule commonly
27 applied to strike down initiatives under Article II, § 8(d) of the California Constitution. *See also*
28 *California Trial Lawyers Assn. v. Eu*, 200 Cal. App. 3d 351 (1988); *Chemical Specialties*
Manufacturers Assn., Inc. v. Deukmejian, 227 Cal. App. 3d 663 (1991).

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 6, 2015, I caused the following document to be served:

8 PLAINTIFFS AND PETITIONERS' MEMORANDUM OF POINTS AND AUTHORITIES IN
9 SUPPORT OF MOTION FOR SUMMARY JUDGMENT

10 by transmitting a true copy in the following manner on the parties listed below:

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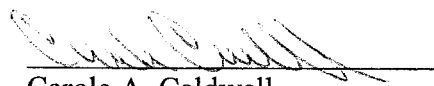
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