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6
7 IN THE SUPERIOR COURT OF CALIFORNIA
8 FOR THE COUNTY OF SAN BERNARDINO
9

10 THE NEW 49'ERS, INC., a California
corporation, DEREK D. EIMER; STEPHEN
11 JONES; DAVID GUIDERO; MARVIN GARRY
LAMPSHIRE II; and DYTON W. GILLILAND,
12

13 Plaintiffs and Petitioners,

14 v.

15 CALIFORNIA DEPARTMENT OF FISH AND
WILDLIFE and CHARLTON H. BONHAM, in
16 his capacity as Director of the California
Department of Fish and Wildlife,
17

18 Defendants and Respondents.

Case No.

**PLAINTIFFS' COMPLAINT AND
PETITION**

19
20 **Introduction and Parties**

21 1. Plaintiff and Petitioner THE NEW 49'ERS, INC., is a California corporation
22 operating in Siskiyou County. THE NEW 49'ERS, INC. is a mining association with the purpose
23 of providing hassle-free mining opportunities within Siskiyou County to its members. THE NEW
24 49'ERS, INC. sues individually, for damage to its own business interests, and on behalf of its
25 members.
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27 PLAINTIFFS' COMPLAINT AND PETITION
28 Case No.

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1 15. This bill addressed the single subject of regulation of suction dredging.

2 16. On July 26, 2011, the Governor signed Assembly Bill No. 120, which amended Fish
3 and Game Code § 5653.1 and stated:

4 “Notwithstanding Section 5653, the use of any vacuum or suction dredge equipment in any
5 river, stream, or lake of this state is prohibited until June 30, 2016, or until the director
6 certifies to the Secretary of State that all of the following have occurred, whichever is
7 earlier:

8 “(1) The department has completed the environmental review of its existing
9 suction dredge mining regulations, as ordered by the court in the case of
10 *Karuk Tribe of California et al. v. California Department of Fish and Game*
11 *et al.*, Alameda County Superior Court Case No. RG 05211597.

12 “(2) The department has transmitted for filing with the Secretary of State pursuant to
13 Section 11343 of the Government Code, a certified copy of new regulations adopted,
14 as necessary, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of
15 Division 3 of Title 2 of the Government
16 Code.

17 “(3) The new regulations described in paragraph (2) are operative.

18 “(4) The new regulations described in paragraph (2) fully mitigate all
19 identified significant environmental impacts.

20 “(5) A fee structure is in place that will fully cover all costs to the
21 department related to the administration of the program.

22 17. Assembly Bill 120 contained provisions on a wide variety of subjects arising under
23 the Business and Professions Code, the Fish and Game Code, the Food and Agricultural Code, the
24 Government Code, the Public Resources Code, the Revenue and Taxation Code, and the Water
25 Code.

26 18. On March 16, 2012, defendant California Department of Fish and Game issued a
27 “Notice of Determination” in which it defined a “project” consisting “of the February/March 2011
28 proposed suction dredging regulations . . . modified by substantially related revisions noticed by the
Department of Fish and Game in February 2012, along with a handful of nonsubstantive or
grammatical corrections”.

19 19. The Notice of Determination states: “this is to advise that . . . the California
20 Department of Fish and Game has approved the above-described project on March 16, 2012”.

1 20. The Department also posted “Final Adopted Regulations” on its website, stating that
2 “on March 16, 2012, the Department . . . took final action to adopt updated regulations”
3 (<http://www.dfg.ca.gov/suctiondredge/>) . Such regulations are referred to herein as the “2012
4 Regulations”.

5 21. On April 27, 2012, the State of California, Office of Administrative Law, issued a
6 “Notice of Approval of Regulatory Action,” stating that it “approves this regulatory action pursuant
7 to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/27/12.”

8 22. On June 27, 2012, On July 26, 2011, the Governor signed Senate Bill No. 1018,
9 which amended Fish and Game Code § 5653.1 and stated:

10 “Notwithstanding Section 5653, the use of any vacuum or suction dredge equipment in any
11 river, stream, or lake of this state is prohibited until the director certifies to the Secretary of
12 State that all of the following have occurred, whichever is earlier:

13 “(1) The department has completed the environmental review of its existing
14 suction dredge mining regulations, as ordered by the court in the case of
15 Karuk Tribe of California et al. v. California Department of Fish and Game
16 et al., Alameda County Superior Court Case No. RG 05211597.

17 “(2) The department has transmitted for filing with the Secretary of State pursuant to
18 Section 11343 of the Government Code, a certified copy of new regulations adopted,
19 as necessary, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of
20 Division 3 of Title 2 of the Government
21 Code.

22 “(3) The new regulations described in paragraph (2) are operative.

23 “(4) The new regulations described in paragraph (2) fully mitigate all
24 identified significant environmental impacts.

25 “(5) A fee structure is in place that will fully cover all costs to the
26 department related to the administration of the program.

27 23. Senate Bill 1018 contained provisions on a wide variety of subjects arising under the
28 Fish and Game Code, the Food and Agricultural Code, the Government Code, the Public Resources
Code, the Water Code, the Education Code, the Health and Safety Code, the Vehicle Code, and
certain School Bond Facilities Acts.

1 34. Plaintiffs are entitled to a writ of prohibition restraining defendants from giving any
2 force or effect to these Bills.

3 35. By operation of SB 670, and the passage and effectiveness of the 2012 regulations,
4 the Department is not constrained by law from issuing permits.

5 36. The Department fails and refuses to issue suction dredging permits.

6 37. Plaintiffs are entitled to relief against this unlawful scheme including:

7 (a) A writ of mandate prohibiting and enjoining the Defendants and Respondents from
8 enforcing AB 120 and SB 1018

9 (b) A writ of mandate compelling the Department to resume issuing permits for suction
10 dredging;

11 (c) Equitable relief restraining and enjoining the Defendants and Respondents from
12 citing, arresting, harassing, seizing the equipment of, or otherwise taking any action against
13 plaintiffs who are suction dredging in compliance with the 2012 Regulations other than the
14 permit requirement.

15 **SECOND CLAIM FOR RELIEF: FEDERAL PREEMPTION¹**

16 38. Plaintiffs reallege paragraphs 1 through 37 as if set forth herein.

17 39. Defendants' refusal to issue permits under §§ 5653 and 5653.1 of the California Fish
18 and Game Code is contrary to the U.S. Constitution on the ground of the Supremacy Clause (U.S.
19 Constitution, Article VI, Clause 2), insofar as defendants are interfering with the federal purpose of
20 fostering mineral development on federal property, and stand as an obstacle to the accomplishment
21 and execution of the purposes and objectives of Congress.

22 40. Plaintiffs have no adequate remedy at law, but require injunctive relief to prevent
23 immediate irreparable injury.

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26 ¹ This Claim is not asserted in this action by THE NEW 49'ERS, INC., as they have this Claim
pending in another action.

1 **Prayer for Relief**

2 Wherefore, plaintiffs pray for:

3 1. Injunctive relief (a) restraining defendants from continued enforcement of § 5653
4 upon mining claims owned or controlled by The New 49'ers so long as members are acting in
5 accordance with the 2012 Regulations and (b) immediately returning plaintiffs' wrongfully-seized
6 mining equipment.

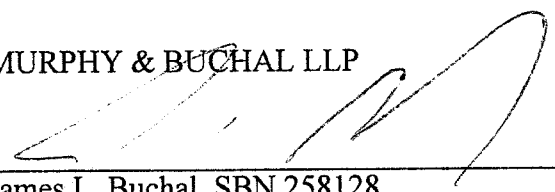
7 2. A writ of mandate (a) prohibiting and enjoining the Defendants and Respondents
8 from enforcing AB 120 and SB 1018; and (b) compelling the Department to resume issuing permits
9 for suction dredging;

10 3. Plaintiffs' reasonable attorney fees pursuant to § 1021.6 of the Code of Civil
11 Procedure; and

12 4. For such other and further relief as may be just and proper.

13 Dated: July 3, 2015.

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15 MURPHY & BUCHAL LLP

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18 James L. Buchal, SBN 258128
19 *Attorney for Plaintiffs*