



ENVIRONMENTAL LAW FOUNDATION



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September 30, 2008

The Honorable Frank Roesch
Department 31
Superior Court of Alameda
US Post Office Building
201 13th Street
Oakland, CA 94612

Re: *Karuk Tribe of California, et. al. v. California Department of Fish and Game, et. al.*, Alameda County, Case No. RG 05 211597

Judge Roesch,

I am the attorney for Plaintiffs, the Karuk Tribe of California and Leaf Hillman. On August 20, 2008, the Court issued a Case Management Conference on Monday, October 6, 2008 at 1:30 p.m. for the above referenced matter. The Court also ordered parties to file a case management statement no later September 1, 2008. Plaintiffs were regrettably unable to file their Case Management Statement at that time and filed it today. I apologize for any inconvenience to the Court for this delay.

Attached to the Case Management Statement are exhibits of a prior Court Order and Consent Judgment, a Court Transcript from August 22, 2007, and two prior Case Status Reports filed by Defendant California Department of Fish and Game. The documents are part of the court record, but I included them as exhibits for the Court's convenience.

Thank you for your attention to this matter. If you have any questions, please contact me at my office.

Sincerely,

Lynne R. Saxton

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> Lynne R. Saxton (SBN 226210) Environmental Law Foundation 1736 Franklin Street, 9th Floor Oakland, CA 94612 TELEPHONE NO.: 510-208-4555 FAX NO. (Optional): 510-205-4562 E-MAIL ADDRESS (Optional): lsaxton@envirolaw.org ATTORNEY FOR (Name): Karuk Tribe of California and Leaf Hillman	FOR COURT USE ONLY				
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: Rene C. Davidson Courthouse MAILING ADDRESS: 1225 Fallon Street CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME:					
PLAINTIFF/PETITIONER: Karuk Tribe of California and Leaf Hillman DEFENDANT/RESPONDENT: California Department of Fish and Game					
<table style="width:100%;"> <tr> <th colspan="2" style="text-align: center; padding: 5px;">CASE MANAGEMENT STATEMENT</th> </tr> <tr> <td style="width:50%; padding: 5px;"> (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) </td> <td style="width:50%; padding: 5px;"> <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less) </td> </tr> </table>	CASE MANAGEMENT STATEMENT		(Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000)	<input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)	CASE NUMBER: <div style="text-align: center; font-size: 1.2em;">RG 05 211597</div>
CASE MANAGEMENT STATEMENT					
(Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000)	<input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)				

A **CASE MANAGEMENT CONFERENCE** is scheduled as follows:
 Date: October 6, 2008 Time: 1:30 p.m. Dept.: 31 Div.: Room:
 Address of court *(if different from the address above)*:
 US Post Office Building, 201 13th Street, Oakland, CA 94612

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** *(answer one)*:
 - a. This statement is submitted by party *(name)*: Plaintiffs, Karuk Tribe of California and Leaf Hillman
 - b. This statement is submitted jointly by parties *(names)*:

2. **Complaint and cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
 - a. The complaint was filed on *(date)*: May 6, 2005
 - b. The cross-complaint, if any, was filed on *(date)*:

3. **Service** *(to be answered by plaintiffs and cross-complainants only)*
 - a. All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
 - b. The following parties named in the complaint or cross-complaint
 - (1) have not been served *(specify names and explain why not)*:
 - (2) have been served but have not appeared and have not been dismissed *(specify names)*:
 - (3) have had a default entered against them *(specify names)*:
 - c. The following additional parties may be added *(specify names, nature of involvement in case, and the date by which they may be served)*:

4. **Description of case**
 - a. Type of case in complaint cross-complaint *(describe, including causes of action)*:
 Action for declaratory and injunctive relief under CEQA for Dept. of Fish and Game's issuance of suction dredge mining permits in a manner that imperils Coho salmon and other endangered species.

PLAINTIFF/PETITIONER: Karuk Tribe of California and Leaf Hillman	CASE NUMBER:
DEFENDANT/RESPONDENT: California Department of Fish and Game	RG 05 211597

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

Please see attachment 4b.

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. **Jury or nonjury trial**

The party or parties request a jury trial a nonjury trial *(if more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

- a. The trial has been set for *(date)*:
 b. No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*:

Order and Consent Judgment was entered Dec. 20, 2006. Plaintiffs seek compliance with Order.

- c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one)*:

- a. days *(specify number)*:
 b. hours *(short causes) (specify)*:

8. **Trial representation *(to be answered for each party)***

The party or parties will be represented at trial by the attorney or party listed in the caption by the following:

- a. Attorney:
 b. Firm:
 c. Address:
 d. Telephone number:
 e. Fax number:
 f. E-mail address:
 g. Party represented:

Additional representation is described in Attachment 8.

9. **Preference**

This case is entitled to preference *(specify code section)*: CEQA, Pub. Res. Code, secs. 21165-21177; 21167.1

10. **Alternative Dispute Resolution (ADR)**

- a. Counsel has has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
 b. All parties have agreed to a form of ADR. ADR will be completed by *(date)*:
 c. The case has gone to an ADR process *(indicate status)*:

PLAINTIFF/PETITIONER: Karuk Tribe of California and Leaf Hillman	CASE NUMBER:
DEFENDANT/RESPONDENT: California Department of Fish and Game	RG 05 211597

10. d. The party or parties are willing to participate in (check all that apply):
- (1) Mediation
- (2) Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
- (3) Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
- (4) Binding judicial arbitration
- (5) Binding private arbitration
- (6) Neutral case evaluation
- (7) Other (specify):
- e. This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
- f. Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
- g. This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):
Case includes prayer for equitable relief and is exempt under Cal. Rules of Court, Rule 1601(b)(1).
11. **Settlement conference**
- The party or parties are willing to participate in an early settlement conference (specify when):
An Order and Consent Judgment has been entered; Plaintiffs seek the case management conference to discuss Defendants' failure to comply with the Order.
12. **Insurance**
- a. Insurance carrier, if any, for party filing this statement (name):
- b. Reservation of rights: Yes No
- c. Coverage issues will significantly affect resolution of this case (explain):
13. **Jurisdiction**
- Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.
- Bankruptcy Other (specify):
- Status: Court retains jurisdiction over the matter, pursuant to the Order and Consent Judgment, attached Ex. A.
14. **Related cases, consolidation, and coordination**
- a. There are companion, underlying, or related cases.
- (1) Name of case:
- (2) Name of court:
- (3) Case number:
- (4) Status:
- Additional cases are described in Attachment 14a.
- b. A motion to consolidate coordinate will be filed by (name party):
15. **Bifurcation**
- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):
16. **Other motions**
- The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):
Plaintiffs will move the court to find Defendants in contempt; new litigation seeking injunctive relief will also be filed within a few weeks.

PLAINTIFF/PETITIONER: Karuk Tribe of California and Leaf Hillman	CASE NUMBER:
DEFENDANT/RESPONDENT: California Department of Fish and Game	RG 05 211597

17. **Discovery**

- a. The party or parties have completed all discovery.
- b. The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
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- c. The following discovery issues are anticipated (*specify*):
 Plaintiffs may seek limited discovery if required to address any defenses raised by Defendants in the contempt motion.

18. **Economic Litigation**

- a. This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

19. **Other issues**

- The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

20. **Meet and confer**

- a. The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
 The parties have met and conferred and attended case status conferences on multiple occasions throughout the past year. Parties will continue to meet and confer regarding any new issues.
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

21. **Case management orders**

Previous case management orders in this case are (*check one*): none attached as Attachment 21.

22. Total number of pages attached (*if any*): 89

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: Sept. 30, 2008

Lynne R. Saxton

 (TYPE OR PRINT NAME)



 (SIGNATURE OF PARTY OR ATTORNEY)

 (TYPE OR PRINT NAME)

 (SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached

1 ENVIRONMENTAL LAW FOUNDATION
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6 Attorneys for Plaintiffs Karuk Tribe of California,
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7

8 SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA
9

10 Karuk Tribe of California;)	
11 and Leaf Hillman,	)	Case No.: RG 05 211597
)	
12 Plaintiffs,	)	PLAINTIFFS' ATTACHMENT 4b TO
13 vs.	)	CASE MANAGEMENT STATEMENT,
	)	JUDICIAL COUNCIL FORM CM-110
14 California Department of Fish)	
15 and Game; and Ryan Broddrick,	)	DATE: October 6, 2008
16 Director, California Department of	)	TIME: 1:30 p.m.
17 Fish and Game,	)	DEPT: 31
	)	JUDGE: Hon. Frank Roesch
18 Defendants.)	
	)	Action Filed: May 6, 2005
19 The New 49'ers, <i>et. al.</i> , and Gerald Hobbs,)	
	)	Order and Consent Judgment Entered
20 Intervenor.	)	December 20, 2006
)	

1 Plaintiffs the Karuk Tribe of California and Leaf Hillman, Vice Chairman of the Karuk
2 Tribe ("Plaintiffs" or "Tribe"), brought this action against the Department of Fish and Game on
3 May 6, 2005 to protect Coho salmon and other endangered fish species from the destruction
4 caused by suction dredge mining. Suction dredging is a form of instream mining primarily
5 practiced by recreational gold miners, such as the Interveners in this action, The New 49ers and
6 Raymond Koons and Gerald Hobbs ("Interveners").¹

7 In December of 2006, the Tribe, the Department and the Interveners arrived at a
8 settlement, which the Court approved and entered as an Order and Consent Judgment ("Order").
9 The terms of the Order were simple: (1) The Department is to conduct an environmental review
10 of the impacts of suction dredge mining on Coho Salmon and other threatened and endangered
11 fish species in the Klamath, Scott, and Salmon River watersheds, pursuant to the California
12 Environmental Quality Act, California Public Resources Code §§ 12000 *et seq.* ("CEQA"); (2)
13 the Department is to implement any necessary mitigation measures through a formal rulemaking,
14 pursuant to the Administrative Procedures Act, Government Code §11340 *et. seq.*; and (3) the
15 Department was to complete the CEQA review and the rulemaking (presuming it is necessary) in
16 18 months. *See* Order and Consent Judgment, dated December 20, 2006, p. 3, attached hereto as
17 Exhibit A.

18 The 18 month deadline expired on June 20, 2008. Three months have passed since the
19 completion deadline and the Department has *not yet started* the CEQA review. Over a year ago,
20 in August of 2007, Plaintiffs became aware of the Department's failure to begin the process and,
21 concerned it would not meet the June 2008 deadline, requested a case status conference with the
22 Court. On August 22, 2007, the parties appeared before Honorable Bonnie Sabraw, who
23 reprimanded the Department's failure to act and strongly urged it to begin the CEQA process or
24 face the possibility of contempt proceedings. *See* Case Management Conference Transcript,
25 August 22, 2007 ("CMC Tr."), p. *6:1-15, p. *27:3-*28:1, attached hereto as Exhibit B.
26 Following the status conference, the Department published a preliminary request for comments

27
28 ¹ Suction dredge mining is an instream mining technique that uses a diesel engine to suction up the bed of a river through a hose. The riverbed material is then passed over a sluice to separate out the gold. The waste material ("tailings") - consisting of rocks, gravel, silt, and biota - is discharged back into the river in piles of debris.

1 as to the scope of the CEQA review. (*See* California Regulations Notice Register 2007, No. 42-
2 Z, pp. 1783-1784.) The Department has taken no further steps since its receipt of those
3 comments in December 2007. Over the past year, the parties returned to court approximately
4 five times for subsequent case status conferences.

5 The Department has flatly refused to take any further moves towards compliance until it
6 receives a \$1 Million appropriation from the Legislature. *See* CMC Tr., p.*20:3-23:3 (Exhibit
7 B). *Ibid.* The Department contends that it must receive an appropriation to conduct a full
8 statewide review of its suction dredge mining regulations until it can perform its responsibilities
9 under the Order, which is limited to a review of the Coho and other endangered fish species in
10 the Klamath, Scott and Salmon Rivers. *Ibid.* While Plaintiffs support a statewide review of the
11 program, it is unacceptable for the Department to indefinitely delay compliance of the Court
12 order based on its determination that it must do a project far beyond the scope ordered by the
13 Court. More importantly, there is simply no provision in the Order stating that compliance is
14 contingent on a Legislative appropriation. *Id.*, p.*22:25-23:3.

15 The Department is aware of the well known harmful impacts caused by suction dredge
16 mining. On October 2, 2006, the Department submitted declarations to the Court, signed under
17 penalty of perjury, that suction dredge mining under its current regulations causes deleterious
18 harm to Coho salmon in the Klamath, Scott and Salmon watersheds. *See* Defendants' Case
19 Status Report with Supporting Declarations of Neil Manji and Banky E. Curtis, dated October 2,
20 2006, p. 2, attached hereto as Exhibit C. Moreover, the Department received public comments
21 from state and federal agencies, universities, Tribes and environmental organizations identifying
22 harms that suction dredging causes to water quality and endangered fish and reptile species in
23 rivers throughout California. *See* Defendants' Case Status Conference Report, dated January 7,
24 2008, p. 3:19-4:5 and Exhibit 1 of the Report, attached hereto as Exhibit D.

25 It appears that the Department will receive the requested funds in the 2008-2009 State
26 Budget. Looking prospectively, that is good news. However, had the Department done what it
27 agreed to and what the Court ordered, then the necessary environmental protections for the Coho
28 salmon and other endangered species would have been in place for the 2008 suction dredging

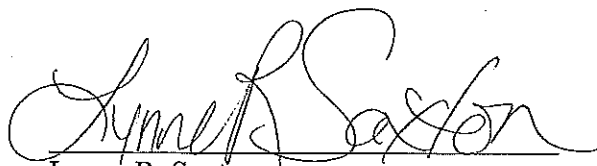
1 season. That did not happen. At this point, it is likely that the necessary protections to these
2 imperiled fish will not be in place until the 2011 suction dredge mining season. This is
3 unacceptable.

4 Plaintiffs stated in court earlier this summer that they intend to take further legal action
5 against the Department to address the fact that the Department is continuing to allow suction
6 dredge mining on California rivers without providing the necessary mitigation measures to
7 protect Coho salmon and other endangered species. Plaintiffs were waiting for the California
8 Legislature to pass its budget and see if the requested appropriation would be granted. Since it
9 appears the Department will receive its funding, Plaintiffs are ready to move forward.

10 Within a couple weeks, Plaintiffs will file papers and move this Court to find the
11 Department in contempt for failure to comply with the December 2006 Order and Consent
12 Judgment. In addition, Plaintiffs will file new litigation seeking injunctive relief. The Karuk
13 Tribe will be joined by additional individuals and statewide environmental organizations.
14 Together they will seek to enjoin the Department from issuing suction dredge mining permits
15 until the CEQA review has been completed and any necessary mitigation measures have been
16 implemented through a formal rulemaking. Plaintiffs will also file a notice of related cases so
17 that both matters may be heard by this court.

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19 Dated: September 30, 2008

Respectfully submitted,

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23 Lynne R. Saxton
24 Attorney for Plaintiffs Karuk Tribe of California
25 and Leaf Hillman
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