

1 James R. Wheaton (State Bar No. 115230)  
Lynne R. Saxton (State Bar No. 226210)  
2 ENVIRONMENTAL LAW FOUNDATION  
1736 Franklin Street, 9<sup>th</sup> Floor  
3 Oakland, CA 94612  
4 Tel: (510) 208-4555  
Fax: (510) 208-4562

5 Attorneys for Plaintiffs Leon Hillman, Craig Tucker, David Bitts,  
6 Karuk Tribe, Center for Biological Diversity, Friends of the River,  
7 Klamath Riverkeeper, Pacific Coast Federation of Fishermen's Associations,  
Institute for Fisheries Resources, and California Sportfishing Protection Alliance

8 William ("Zeke") Grader, Jr. (State Bar No. 64142)  
9 Glen H. Spain (State Bar No. 88097)  
PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS  
10 Southwest Regional Office (Spain) Northwest Regional Office (Grader)  
PO Box 11170 PO Box 29370  
11 Eugene, OR 97440-3370 San Francisco, CA 94129-0370  
12 Tel: (541) 689-2000 Tel: (415) 561-5080  
Fax: (541) 689-2500 Fax: (415) 561-5464

13 Attorneys for Plaintiffs Pacific Coast Federation of Fishermen's Associations  
14 and Institute for Fisheries Resources

15 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 IN AND FOR THE COUNTY OF ALAMEDA

17 LEEON HILLMAN; CRAIG TUCKER; DAVID ) Case No.: RG 09434444  
18 BITTS, KARUK TRIBE; CENTER FOR )  
BIOLOGICAL DIVERSITY; FRIENDS OF THE ) **FIRST AMENDED COMPLAINT**  
19 RIVER; KLAMATH RIVERKEEPER, PACIFIC ) **FOR EQUITABLE AND**  
COAST FEDERATION OF FISHERMEN'S ) **INJUNCTIVE RELIEF BASED**  
20 ASSOCIATIONS; INSTITUTE FOR FISHERIES ) **UPON:**  
RESOURCES; CALIFORNIA SPORTFISHING )  
21 PROTECTION ALLIANCE; and DOES 1-100, ) Violations of California Code of  
) Civil Procedure §526a  
22 Plaintiffs, )  
23 vs. )  
24 CALIFORNIA DEPARTMENT OF FISH AND GAME;) Complaint filed February 5, 2009  
DONALD KOCH and DOES 1-100, inclusive, )  
25 )  
26 Defendants. )  
\_\_\_\_\_ )

1 Plaintiffs, by their attorneys, bring this action on their own behalf and behalf of the  
2 general public on information and belief, except those allegations which pertain to the named  
3 plaintiffs or to their attorneys (which are alleged on personal knowledge), and hereby allege as  
4 follows:

### 5 INTRODUCTION

6 1. Under California's Code of Civil Procedure Section 526a, a state agency cannot  
7 spend public funds to support activities or programs that violate the law. This action is brought  
8 by taxpayers against the California Department of Fish and Game and Donald Koch, in his  
9 capacity as Director Fish and Game. Plaintiffs seek to enjoin the Department from continuing to  
10 use general fund money to operate its suction dredge mining program under the Department's  
11 current regulations, which are old and outdated. Suction dredge mining is a type of instream  
12 gold mining conducted as a hobby by recreational gold miners.

13 2. Under Fish and Game Code §§5653 and 5653.9, suction dredge mining is expressly  
14 prohibited in all the rivers and streams of this state. It can be conducted only by a person with a  
15 valid permit, and that permit can only be issued if the Department of Fish and Game: (a) has  
16 valid regulations in place defining when and where the mining can take place; and (b)  
17 affirmatively finds that the mining will not harm any fish. The Department does not have valid  
18 regulations and has testified that the mining does harm fish. Therefore, it simply does not have  
19 the authority to issue suction dredge mining permits until it amends its outdated regulations.  
20 However, it continues to issue approximately 3,000 permits a year.

21 3. The Department admitted in sworn, expert declarations, submitted to a court in 2006,  
22 that suction dredge mining conducted under its current regulations in fact causes deleterious  
23 impacts on fish, including endangered species such as the Coho salmon. The Department further  
24 admitted that suction dredge mining under its current regulations expressly violates both the  
25 California Environmental Quality Act (Public Resources Code §21000, *et. seq.*) ("CEQA") as  
26 well as Fish and Game Code §§5653 and 5653.9, the very statutes that authorize the Department  
27  
28

1 to operate its suction dredge mining program.

2 4. In December 2006, the Department stipulated to a court order requiring it to conduct  
3 a CEQA review of its regulations and to mitigate harms (as necessary) through a formal  
4 rulemaking. This project was required to be completed by June 20, 2008. Two years after entry  
5 of the Order, the Department has *not yet begun* the process. At this late date, the Department is  
6 not likely to adopt new regulations until 2012 or later.

7 5. The Department's explanation for violating the court order is that it lacks the funds to  
8 undertake the rulemaking and review that would bring it into compliance with the Court's Order,  
9 CEQA and the Fish and Game Code. However, the Department has for the last two years  
10 continued to spend general fund money to operate the program and unlawfully issue permits to  
11 suction dredge miners. In short, the Department claims it lacks the funds to bring the program  
12 into compliance, but continues to spend money to operate it out of compliance.

13 6. The current action brings together a coalition of plaintiffs. They are taxpayers, but  
14 they also represent the varied, yet harmonious, ways that a river's resources can be used. The  
15 plaintiffs include the Karuk Tribe, river conservationists, endangered specie protectionists,  
16 commercial fishermen and sports fishermen. Because of their reliance on the health of rivers,  
17 each plaintiff works diligently to protect rivers and the resources they provide.

18 7. While each Plaintiff views the impacts of suction dredge mining from a different  
19 vantage point, they all hold one common understanding: It is fundamentally unfair for the  
20 Department to subsidize recreational mining activities under regulations that it admits causes  
21 harm to endangered fish. The subsidy for hobbyist miners is even more egregious while  
22 California is in such dire financial straits that important government programs are being cut due  
23 to lack of funding.

24 8. Therefore, Plaintiffs seek an injunction to prevent the Department from continuing to  
25 spend general funds to operate its suction dredge mining program until the Court's Order is  
26 satisfied, the required environmental reviews are completed, the harms are mitigated through a  
27

1 formal rulemaking, and the new regulations are in effect.

2 **PARTIES**

3 9. Plaintiff LEEON HILLMAN is a citizen and resident of California and has paid and  
4 is liable for the payment of taxes to the State of California. Mr. Hillman is a member of Plaintiff  
5 Karuk Tribe and sits on the Tribal Council. He has lived on the Klamath River his entire life –  
6 as has his Karuk ancestors before him going back to time immemorial. The River and the fish  
7 that inhabit it are central to the Karuk culture, tradition and religion. As a Councilmember, it is  
8 Mr. Hillman’s charge to protect the health of the river because, in part, it is what ties future  
9 generations of the Karuk to those of the past. This action is brought on Mr. Hillman’s behalf in  
10 his capacity as a taxpayer pursuant to Cal. Code Civ. Proc. §526a.

11 10. Plaintiff CRAIG TUCKER is a citizen of California and has paid and is liable for the  
12 payment of taxes to the State of California. Mr. Tucker is the Campaign Coordinator for  
13 Plaintiff Karuk Tribe and sits on the Board of Directors of Plaintiff Klamath Riverkeepers. In  
14 addition, Mr. Tucker is a resident and homeowner in McKinleyville, CA - a town whose local  
15 economy is dependent on salmon fishing. When salmon populations are in decline, it hurts the  
16 local economy and impacts home values, the goods and services available in town and the price  
17 of healthy food – such as fresh fish. Mr. Tucker also uses California’s rivers for recreation, such  
18 as kayaking and rafting. This action is brought on his behalf and in his capacity as a taxpayer  
19 pursuant to Cal. Code Civ. Proc. §526a.

20 11. Plaintiff DAVID BITTS is a citizen of California and has paid and is liable for the  
21 payment of taxes to the State of California. Mr. Bitts has been a salmon and crab commercial  
22 fisherman since the 1970’s and has earned over 90% of his income from fishing since 1985. Mr.  
23 Bitts is President of Plaintiff Pacific Coast Federation of Fishermen’s Associations and is an  
24 officer of his local Humboldt County Fishermen’s Marketing Association. Mr. Bitts also served  
25 on the Klamath Fisheries Management Council for 14 years and served on the Klamath River  
26 Task Force for 8 years. This action is brought on Mr. Bitts’ behalf and in his capacity as a

1 taxpayer pursuant to Cal. Code of Civ. Proc. §526a.

2 12. Plaintiff KARUK TRIBE is a citizen of California and has paid and is liable for the  
3 payment of taxes to the State of California. The Karuk Tribe is a federally recognized Indian  
4 Tribe with a population of approximately 3,400 members. Its headquarters is located in Happy  
5 Camp, along the Klamath River and in the vicinity of the Salmon and Scott Rivers. The Karuk  
6 Tribe has lived in northern California since time immemorial and its ancestors are considered  
7 among the earliest inhabitants of aboriginal California. The stated mission of the Karuk Tribe is  
8 to promote the general welfare of all Karuk people, establish equality and justice for the Tribe,  
9 restore and preserve Tribal traditions, customs, language, and ancestral rights, and secure for  
10 themselves and their descendants the power to exercise the inherit rights of self-governance.  
11 Among the many goals of the Tribe is the protection and restoration of native fish and wildlife  
12 species that the Tribe has depended upon for traditional cultural, religious, and subsistence uses.  
13 This action is brought on the Karuk Tribe's behalf and on behalf of its members and in its and its  
14 members capacity as taxpayers pursuant to Cal. Code of Civ. Proc. §526a.

15 13. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY ("the Center") is a citizen of  
16 California and has paid and is liable for the payment of taxes to the State of California. The  
17 Center is a non-profit corporation with over 60,000 members and is dedicated to the  
18 preservation, protection, and restoration of biodiversity, native species, ecosystems, and public  
19 lands. The Center seeks to ensure the protection and recovery of all endangered and threatened  
20 species, and has worked to conserve species such as the Coho salmon, chinook salmon, green  
21 sturgeon, and red-legged frog, all of which are harmed by suction dredge mining. This action is  
22 brought on the Center's behalf and on behalf of its members and in its and its members capacity  
23 as taxpayers pursuant to Cal. Code of Civ. Proc. §526a.

24 14. Plaintiff FRIENDS OF THE RIVER ("FOR") is a citizen of California and has paid  
25 and is liable for the payment of taxes to the State of California. FOR is dedicated to preserving  
26 and restoring California's rivers, streams, and their watersheds as well as advocating for  
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1 sustainable water management. FOR accomplishes this goal by influencing public policy and  
2 inspiring citizen action through grassroots organizing. FOR was founded in 1973 during the  
3 struggle to save the Stanislaus River from New Melones Dam. Following that campaign,  
4 the group grew to become a statewide river conservation organization. Friends of the River  
5 currently has nearly 6,000 members. This action is brought on FOR's behalf and on behalf of its  
6 members and in its and its members capacity as taxpayers pursuant to Cal. Code of Civ. Proc.  
7 §526a.

8 15. Plaintiff KLAMATH RIVERKEEPER is a citizen of California and has paid and is  
9 liable for the payment of taxes to the State of California. Klamath Riverkeeper is a non-profit  
10 organization based in the Klamath River watershed of Northern California and Southern  
11 Oregon. The mission of Klamath Riverkeeper is to restore water quality and fisheries throughout  
12 the Klamath watershed, bringing vitality and abundance back to the river and its people.  
13 Working closely with Klamath River tribes, fishermen, recreational groups, and local  
14 communities, Klamath Riverkeeper employs a four-pronged approach in its campaigns and  
15 projects consisting of expert-informed policy advocacy within existing regulatory processes; a  
16 legal strategy; grassroots outreach and education; and scientific needs analysis and water quality  
17 monitoring. This action is brought on Klamath Riverkeeper's behalf and on behalf of its  
18 members and in its and its members capacity as taxpayers pursuant to Cal. Code of Civ. Proc.  
19 §526a.

20 16. Plaintiff PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS  
21 ("PCFFA") is a citizen of California and has paid and is liable for the payment of taxes to the  
22 State of California. PCFFA is the largest trade organization of commercial fishing men and  
23 women on the west coast. PCFFA is a federation of 15 different port associations and marketing  
24 associations in California, Oregon and Washington. Collectively, PCFFA's members represent  
25 over 1,200 commercial fishing families, most of whom are small and mid-sized commercial  
26 fishing boat owners and operators. PCFFA has been active for nearly 30 years in efforts to  
27  
28

1 rebuild salmon populations and correct water pollution problems in Northern Coast salmon-  
2 bearing streams and rivers, as well as watersheds connected to these rivers. This action is  
3 brought on PCFFA's behalf and on behalf of its members and in its and its members capacity as  
4 taxpayers pursuant to Cal. Code of Civ. Proc. §526a.

5 17. Plaintiff INSTITUTE FOR FISHERIES RESOURCES ("IFR") is a citizen of  
6 California and has paid and is liable for the payment of taxes to the State of California. IFR is a  
7 nonprofit organization responsible for meeting the fishery research and conservation needs of  
8 working men and women in the fishing industry by funding and executing PCFFA's expanding  
9 salmon habitat protection programs. From its inception, IFR has helped fishing men and women  
10 in California and the Pacific Northwest address salmon protection and restoration issues, with  
11 particular focus on improving water quality in salmon-bearing rivers and streams throughout  
12 California. IFR is an active leader in several salmon restoration programs affecting winter-run  
13 and spring-run chinook salmon and coho salmon, including the development of better water  
14 quality standards and enforcement. IFR has actively advocated for the protection and restoration  
15 of flows and improving water quality critical to the health of California's North Coast rivers and  
16 streams and their economically important salmon runs. This action is brought on IFR's behalf  
17 and on behalf of its members and in its and its members capacity as taxpayers pursuant to Cal.  
18 Code of Civ. Proc. §526a.

19 18. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE ("CPSA") is  
20 a citizen of California and has paid and is liable for the payment of taxes to the State of  
21 California. CPSA is a nonprofit public benefit conservation and research organization  
22 established in 1983 for the purpose of conserving, restoring, and enhancing the state's water  
23 quality and fishery resources and their aquatic ecosystems and associated riparian habitats.  
24 CPSA has approximately 2,500 members who live, recreate and work in and around waters of  
25 the State of California, including waterways throughout the Sierra Nevada, Central Valley and  
26 the Sacramento-San Joaquin River Delta Estuary. CPSA has actively promoted the protection of  
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1 water quality and fisheries throughout California before state and federal agencies, the State  
2 Legislature and Congress and regularly participates in administrative and judicial proceedings on  
3 behalf of its members to protect, enhance, and restore California's water quality and fisheries.  
4 This action is brought on CSPA's behalf and on behalf of its members and in its and its members  
5 capacity as taxpayers pursuant to Cal. Code of Civ. Proc. §526a.

6 19. The true names and capacities of DOE plaintiffs 1 through 100, inclusive, are  
7 presently unknown to plaintiffs, who therefore refer to these plaintiffs by such fictitious names.  
8 Plaintiffs will seek to amend this Complaint and include these DOE plaintiffs' true names and  
9 capacities when they are ascertained. Each fictitiously named plaintiff is a citizen of California  
10 and has paid and is liable for the payment of taxes to the State of California. Each fictitiously  
11 named plaintiff sues on his behalf and in his capacity as a taxpayer pursuant to Cal. Code of Civ.  
12 Proc. §526a.

13 20. Plaintiffs Leon Hillman, Craig Tucker, David Bitts, Karuk Tribe, Center for  
14 Biological Diversity, Friends of the River, Klamath Riverkeepers, Pacific Coast Federation of  
15 Fishermen's Associations, Institute for Fisheries Resources and California Sportfishing  
16 Protection Alliance and DOE plaintiffs are collectively referred to herein as "Plaintiffs".

17 21. Defendant California Department of Fish and Game ("Fish and Game") is an agency  
18 of the State of California charged by the Legislature with the regulation of suction dredge mining  
19 under California Fish and Game Code §§ 5653 and 5653.9. Among other things, Fish and Game  
20 is required to promulgate regulations under CEQA and the Administrative Procedures Act  
21 (Government Code §11340, *et. seq.*) ("APA") to operate its suction dredge mining program,  
22 designate waters or areas closed to suction dredging as necessary to protect fish species and their  
23 habitat, and issue permits for such dredging if it determines that "the operation will not be  
24 deleterious to fish." Fish and Game expends general funds to issue permits and operate its  
25 suction dredge mining program.

26 22. Defendant DONALD KOCH is the Director of the Department of Fish and Game.  
27  
28



1 KOCH was appointed to the position by the Governor of California and is tasked with providing  
2 leadership over Fish and Game as they continue their role as stewards of California's fish and  
3 wildlife resources. The Director is made a party to this action in his official capacity only.

4 23. The true names and capacities of DOE defendants 1 through 100, inclusive, are  
5 presently unknown to Plaintiffs, who therefore sue these defendants by such fictitious names.  
6 Plaintiffs will seek to amend this Complaint and include these DOE defendants' true names and  
7 capacities once they are ascertained. Each of the fictitiously named defendants is responsible for  
8 the conduct alleged herein and for the injuries suffered by Plaintiffs.

9 24. California Department of Fish and Game, Donald Koch, and DOE defendants are  
10 herein referred to as "Department" or "Defendant".

#### 11 JURISDICTION AND VENUE

12 25. This Court has jurisdiction over all causes of action asserted herein pursuant to the  
13 California Constitution, Article VI, Section 10, because this case is a cause not given by statute  
14 to other trial courts.

15 26. This Court has jurisdiction over Defendant because it is a California agency which  
16 issues permits and operates a program that authorizes suction dredge mining in rivers throughout  
17 California. Defendant's headquarters in Sacramento, California.

18 27. Venue is proper in the Superior Court for the County of Alameda under Code of Civil  
19 Procedure § 401(1), because Fish and Game is a state agency, Director Koch is an officer of Fish  
20 and Game, and the California Attorney General has an office in Oakland, California.

#### 21 FACTUAL AND LEGAL BACKGROUND

22 28. A suction dredge is powered by a diesel engine and uses a hose and nozzle to suction  
23 up the bottom of a riverbed. The river material is run over a sluice, which separates any present  
24 gold fragments from the river material. The remaining material ("tailings") – consisting of  
25 rocks, gravel, silt, plants, invertebrates and fish – is then discharged back into the river in large  
26 piles of debris. Permits for suction dredge mining are primarily requested by recreational or  
27

1 hobbyist gold miners. For a nominal fee, the Department issues an annual permit that allows the  
2 miner to suction dredge in any California river, as allowed under the Department's regulations.

3 29. The Department originally promulgated regulations for its suction dredging program  
4 in 1994. The 1994 Environmental Impact Report concluded that rivers inhabited by threatened  
5 or endangered species and Species of Special Concern (hereinafter "Endangered Species") must  
6 be closed to suction dredge mining to prevent significant impacts to these species. The report  
7 stated that the Department's regulations would need to be reviewed periodically to account for  
8 future listings of Endangered Species.

9 30. The Department has never reviewed its suction dredge mining regulations to  
10 determine the impacts to fish or other animal species listed as threatened or endangered since the  
11 1994 regulations were promulgated.

12 31. In May of 2005, the Karuk Tribe and Leaf Hillman sued the Department under CEQA  
13 to challenge the Department's failure to review and update its regulations. (*Karuk Tribe of*  
14 *California v. California Department of Fish and Game*, Alameda County Superior Court, Case  
15 No. RG 05211597.)

16 32. During the course of litigation, the Department submitted sworn declarations to the  
17 Court admitting that their suction dredging program violates CEQA and Fish and Game Code  
18 §§5653 and 5653.9. The Department's admission is based on its determination that suction  
19 dredge mining under its current regulations causes deleterious effects on Coho salmon in the  
20 Klamath, Scott and Salmon Rivers.

21 33. On December 20, 2006, the court entered an Order and Consent Judgment requiring  
22 the Department to conduct a CEQA review of its regulations as to the impacts of suction  
23 dredging on Endangered Species in the Klamath, Scott and Salmon watersheds. The Department  
24 was further ordered to promulgate any necessary regulations to mitigate harmful impacts. The  
25 CEQA review and the regulations were to be completed in 18 months, which expired on June 20,  
26 2008.

1 34. More than two years have passed since entry of the Order and the Department has not  
2 even started the review. Due to California's current budgetary issues, it is not currently known  
3 when the review will actually begin, but new regulations will not likely be in place until the 2012  
4 suction dredge mining season or later.

5 35. The Department's rationale for failure to comply with the court Order is that it has  
6 insufficient funds to conduct a statewide environmental review of its suction dredge mining  
7 program. However, the Department still issues permits to miners (approximately 3,000 permits  
8 per year) and pays for much of the program through its General Fund.

9 36. In other words, the Department uses taxpayer funds to operate a program that it  
10 determined causes harm to fish -- even endangered fish like the Coho salmon - and refuses to fix  
11 the program because it claims it does not have enough money. While the recreational gold  
12 mining community continues to be subsidized, the harm to California's rivers and fish species  
13 continues with no end date known.

14 **CALIFORNIA CODE OF CIVIL PROCEDURE §526a**

15 37. Under Cal. Code Civ. Proc. §526a, a taxpayer can bring an action to enjoin a  
16 government actor from the illegal expenditure of funds. To prevail, a taxpayer plaintiff must  
17 show an "expenditure" that is "unlawful", such as funding a program that violates a statute or  
18 other proscription of law.

19 38. The Department's suction dredge mining program violates the prior Court Order and  
20 Consent Judgment, as the Department failed to complete the required CEQA review and any  
21 necessary rulemaking within 18 months of entry of the Order. The compliance deadline was  
22 June 20, 2008.

23 39. The Department's suction dredge mining program also violates CEQA (Public  
24 Resources Code §21166; 14 CCR §§15162-15164) because there is sufficient information, not  
25 previously known by the Department, which demonstrates that suction dredge mining will have  
26 new significant effects or substantially more severe effects than was shown in the 1994 EIR and  
27

1 the Department failed to conduct a supplemental or subsequent EIR. In fact, the Department has  
2 admitted that its regulations violate CEQA and a court made the finding that sufficient  
3 information exists and ordered further environmental review under CEQA.

4 40. Lastly, the Department's suction dredge mining program violates Fish and Game  
5 Code §§5653 and 5653.9. These statutes require the Department to adopt regulations that are in  
6 compliance with CEQA and the APA. They also require the Department to issue permits, but  
7 only if it determines that the operation will not have deleterious impacts on fish. The  
8 Department violates these statutes twofold. First, its current regulations are out of compliance  
9 with CEQA, as the Department admits. Second, the Department continues to issue permits even  
10 though it has expressly determined that the operation will have deleterious impacts on fish,  
11 specifically the Coho salmon.

12 41. As the Department is in violation of the above statutes and court order, the  
13 Department's use of money from its General Fund to issue suction dredge mining permits and  
14 operate its program violates Code of Civil Procedure §526a.

15 **FIRST CAUSE OF ACTION**

16 (California Code of Civil Procedure §526a)

17 (By All Plaintiffs Against All Defendants)

18 42. Plaintiffs incorporate by reference all of the above paragraphs as if fully set forth  
19 herein.

20 43. Cal. Code Civ. Proc. § 526a states that California residents who are liable for and  
21 have paid taxes have standing to bring an action enjoining a government actor from illegally  
22 expending funds.

23 44. Defendants California Department of Fish and Game and Donald Koch, in his  
24 capacity as Director of Fish and Game, are government actors.

25 45. The Department spends money from its General Fund to issue permits and operate its  
26 suction dredge mining program.

1 46. The suction dredge mining program violates the following, as described above:

- 2 a. A prior court's entry of an Order and Consent Judgment (*Karuk Tribe of*  
3 *California, et. al. v. California Department of Fish and Game, et. al.*;  
4 Alameda County Superior Court, Case No. RG 05211597; order entered  
5 December 20, 2006);  
6 b. CEQA (Public Resources Code §21166; 14 CCR §§15162-15164); and  
7 c. Fish and Game Code §§ 5653 and 5653.9.

8 47. The Department's expenditure of general funds to issue permits and operate its  
9 suction dredge mining program constitutes an "illegal expenditure" under Cal. Code Civ. Proc. §  
10 526a. Defendants have engaged and continue to engage in conduct that violates Cal. Code Civ.  
11 Proc. § 526a.

12 **THE NEED FOR INJUNCTIVE RELIEF**

13 48. By committing the acts alleged herein, Defendants have caused irreparable harm for  
14 which there is no plain, speedy, or adequate remedy at law. In the absence of equitable relief,  
15 taxpayer funds will continue to be illegally expended to operate a suction dredge mining program  
16 in violation of the law. The court should enjoin Defendants from spending general funds on  
17 activities that allow suction dredge mining to occur under the Department's current regulations.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray for the following relief:

20 A. A temporary restraining order, preliminary and permanent injunction enjoining  
21 Defendants, their agents, employees, assigns, and all persons acting in concert or participating  
22 with them from expending any general fund money to issue permits or operate the suction  
23 dredging program in such a manner that allows suction dredge mining to occur under the  
24 Department's current regulations (14 CCR §§228 and 228.5);

25 B. The said temporary restraining order, preliminary and permanent injunction will  
26 remain in effect until such time as:

- 1           1.     the Department conducts a supplemental or subsequent environmental  
2                 review of its suction dredge mining regulations pursuant to CEQA (Public  
3                 Resources Code §21000, *et. seq.*);
- 4           2.     the Department mitigates negative environmental impacts, as necessary  
5                 and as required under law, through a formal rulemaking pursuant to the  
6                 Administrative Procedures Act (Government Code §11340, *et. seq.*); and
- 7           3.     any challenges to such regulations are resolved and any new regulations  
8                 adopted through the rulemaking are in effect;
- 9         B.     Reasonable attorneys' fees and costs; and
- 10        C.     Such other and further relief as this court may deem necessary and proper.

11  
12 Respectfully submitted,

13  
14 DATED: March 19, 2009

ENVIRONMENTAL LAW FOUNDATION

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LYNNE R. SAXTON

Attorneys for Plaintiffs

18 Leon Hillman, Craig Tucker, and David Bitts,  
19 Karuk Tribe, Center for Biological Diversity,  
20 Friends of the River, Klamath Riverkeeper, Pacific  
21 Coast Federation of Fishermen's Associations,  
22 Institute of Fisheries Resources, and California  
23 Sportfishing Protection Alliance

1 ENVIRONMENTAL LAW FOUNDATION  
James R. Wheaton, State Bar No. 115230  
2 Lynne R. Saxton, State Bar No. 226210  
1736 Franklin Street., 9th Floor  
3 Oakland, CA 94612  
Telephone: 510-208-4555  
4 Facsimile: 510-208-4562

5  
6 Attorneys for Plaintiffs Leon Hillman, Craig Tucker and David Bitts  
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9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF ALAMEDA

11 LEEON HILLMAN; CRAIG TUCKER;  
DAVID BITTS, and DOES 1-100,

12 Plaintiffs,

13 vs.

14 CALIFORNIA DEPARTMENT OF FISH  
AND GAME; DONALD KOCH, and DOES  
15 1-100, inclusive,

16 Defendants.  
17  
18  
19

Case No. RG 05 211597

**PROOF OF SERVICE**

Complaint filed February 5, 2009.

1 **PROOF OF SERVICE**

2 I, Monica Aguilar-Barriga, hereby declare:

3 I am over the age of 18 years and am not a party to this action. I am employed in the  
4 county of Alameda. My business address is Environmental Law Foundation, 1736 Franklin  
5 Street, Ninth Floor, Oakland, CA 94612.

6 On March 20, 2009. I caused to be served the attached:

7  
8 **FIRST AMENDED COMPLAINT FOR EQUITABLE AND INJUNCTIVE  
9 RELIEF BASED UPON: VIOLATIONS OF CALIFORNIA CODE OF CIVIL  
PROCEDURE § 526a**

10  
11        **BY EMAIL.** I caused the above identified document(s) to be sent by facsimile  
12 transmission to the party(ies) listed below at the facsimile number(s) shown.

13   **X**   **BY MAIL.** I caused the above identified document(s) addressed to the party(ies) listed  
14 below to be deposited for collection at the Public Interest Law Offices or a certified United States  
15 Postal Service box following the regular practice for collection and processing of correspondence  
16 for mailing with the United States Postal Service. In the ordinary course of business,  
17 correspondence is deposited with the United States Postal Service on this day.

18        **BY HAND DELIVERY.** I caused the above identified document(s) to be sent by facsimile  
19 transmission to the party(ies) listed below at the facsimile number(s) shown.  
20

21  
22 ***SEE ATTACHED SERVICE LIST***

23 I declare under penalty of perjury, under the laws of the State of California, that the  
24 foregoing is true and correct, and that this Declaration was executed at Oakland, California on  
25 March 20, 2009.

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27   
28 \_\_\_\_\_  
Monica Aguilar-Barriga  
DECLARANT



**SERVICE LIST:**

1  
2 Robert Byrne, Deputy Attorney General BY MAIL  
3 455 Golden Gate Avenue, Suite 11000  
4 San Francisco, CA 94102  
5 Fax: (415) 703-5480

6 James L. Buchal Esq. BY MAIL  
7 MURPHY & BUCHAL LLP  
8 2000 SW First Ave Ste 420  
9 Portland, OR 97201  
10 Fax: (503) 227-1034

11 David Young, Esq. BY MAIL  
12 11150 Olympic Blvd., Suite 1050  
13 Los Angeles, CA 90064-1817  
14 Fax: (310) 575-0311

15 Glen Spain, Esq. BY MAIL  
16 Pacific Coast Federation of Fishermen's Association  
17 Southwest Regional Office  
18 PO Box 11170  
19 Eugene, OR 97440-3370  
20 Fax: (541) 689-2500

21 Honorable Judge Frank Roesch BY MAIL  
22 Superior Court of California County of Alameda  
23 U.S. Post Office Building  
24 201 Thirteenth St., Dept. 31  
25 Oakland, CA 94612

26 Honorable Brenda Harbin-Forte BY MAIL  
27 Hayward Hall of Justice  
28 24405 Amador St, Dept. 516  
Hayward, CA 94544