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9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA

11 PUBLIC LANDS FOR THE PEOPLE, INC.,
12 a California 501 C-3, non-profit corporation;
13 Gerald E. Hobbs; Patrick Keene; Keene
14 Engineering Co., Inc., a California
15 corporation; Robert Haiduck; Terry Stapp;
16 Dee Stapp; David DeCosta; James Gregory
17 Lee; Mike Holt; Todd Bracken; Shannon Poe;
18 and David Richard,

19 Plaintiffs,

20 v.

21 State of California; Arnold Schwarzenegger, in
22 his official capacity as Governor of the State of
23 California; California Department of Fish &
24 Game; and Donald Koch, in his official
25 capacity as Director, California Department of
26 Fish & Game; and Does 1-20,

27 Defendants.

CIVIL ACTION NO.

COMPLAINT FOR:

Adjudication of Federal Preemption
and Supremacy Relating to the Mining
Laws of the United States;
Deprivation of Property Rights and
Due Process of Law; Denial of Equal
Protection of the Laws; Taking of
Property Without Compensation;
Violation of Civil Rights; Violation of
the Mining and Minerals Policy Act of
1970, 30 *U.S.C.* § 21a; Violation of 30
U.S.C. §§ 21-54 (Mining Act);
Violation of Plaintiffs' Implied Rights
to Use Public Lands (Quiet Title);
Unlawful Interference With
Commerce; Injunctive Relief; and
Damages.

DEMAND FOR JURY TRIAL

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1 **JURISDICTION AND VENUE**

2 1. Jurisdiction is proper in this Court under 28 *U.S.C.* § 1331 because this action
3 arises under the laws of the United States. The conduct complained of creates an actual,
4 justiciable controversy. The California legislature has passed an act, SB 670, and the Governor
5 of California, the Honorable Arnold Schwarzenegger has signed into law SB 670, prohibiting all
6 motorized mining, including vacuum and suction dredge mining, in the rivers, streams, and
7 waterways of California, in derogation of Federal law authorizing, protecting, and permitting
8 such mining.
9

10 2. This Court has jurisdiction, among other matters, pursuant to 28 *U.S.C.* § 1331
11 (federal question), §§ 2201, 2202 (declaratory relief), § 2202 (injunctive relief), and § 2409(a)
12 (quiet title).
13

14 3. This action arises under the various acts, regulations, laws, and constitutions, as
15 set forth in paragraph 8.
16

17 4. This Court has the power to grant declaratory and injunctive relief pursuant to 28
18 *U.S.C.* §§ 2201 and 2202.

19 5. This lawsuit requests judicial review of final actions taken by the Defendants (or
20 their predecessors-in-interest). Defendants' actions unlawfully abrogate, prescribe, and/or
21 prohibit Federal statutorily prescribed rights of unpatented mining claim owners, miners and
22 prospectors as well as violating Federal statutorily prescribed methods relating to mining and
23 prospecting on Federal lands in the State of California.
24

25 6. Defendants are attempting to unlawfully alter the entire Federal regulatory
26 framework for citizens, miners and prospectors in the State of California by adopting a rigid,
27 narrow, and single-focus policy regarding closure of all rivers, streams, and waterways to
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1 motorized mining methods, including without limitation, vacuum and suction dredge mining.
2 Defendants failed to consider any meaningful alternatives which could be applied specifically to
3 miners, prospectors, and other citizens who are potential miners and prospectors.
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5 7. This is an action for declaratory judgment, injunctive relief (Rule 65, *Federal*
6 *Rules of Civil Procedure*), as well as for damages incurred by Plaintiffs. The Plaintiffs request
7 the Court to declare unlawful, enjoin implementation of, and set aside the promulgation and
8 adoption by the legislature and the Governor of California of the prohibition of all motorized
9 means of mining in the rivers, streams, and waterways of California, including without
10 limitation, vacuum and suction dredge mining, not only as it applies to miners and prospectors,
11 but also all other members of the public who are potential mining claimants, miners and
12 prospectors.
13

14 8. The Plaintiffs seek an Order from this Court declaring that Defendants' actions in
15 adopting and implementing a prohibition of all motorized methods of mining, including without
16 limitation, vacuum and suction dredge mining in the rivers, streams, and waterways of California
17 as applied to miners and prospectors, and those who intend to become miners and prospectors,
18 violated the following:
19

20 A. National Environmental Policy Act ("NEPA"), 42 *U.S.C.* § 4321 *et seq.*
21 (1969); and Executive Orders: EO 12291 and EO 12866;
22

23 B. Multiple Use Sustained Yield Act ("MUSYA"), 16 *U.S.C.* § 528 *et seq.*
24 (1960);
25

26 C. Numerous sections of the *Code of Federal Regulations* ("CFR"), as set forth
27 in 36 *CFR* 228 *et seq.*; 36 *CFR* 261 *et seq.*; 43 *CFR* 3800; 43 *CFR* 3809.1 *et*
28 *seq.*, including without limitation 43 *CFR* 3809.3; and also including without

1 limitation, numerous other sections of the CFRs regulating mining,
2 prospecting, and associated activities on Federal lands.

3
4 D. The Federal Lands Policy and Management Act (“FLPMA”) 43 *U.S.C.* § 1701

5 *et seq.*, including without limitation §§ 1732(b), 1761 and 1769;

6 E. PL No. 104-208, 110 Stat.3009 § 108 (Omnibus Consolidated Appropriations
7 Act of 1997);

8 F. 30 *U.S.C.* §§ 21-54 (Mining Act), including without limitation the Mining and
9 Minerals Policy Act of 1970, 30 *U.S.C.* § 21(a);

10 G. 16 *U.S.C.* § 481 (Use of Waters);

11 H. 30 *U.S.C.* § 612, 613, 615 (Multiple Surface Use Act);

12 I. 5 *U.S.C.* §§ 601, 602, 603(b) and (c) (Regulatory Flexibility Act As Amended
13 By The Small Business Regulatory Enforcement Fairness Act of 1996 (5
14 *U.S.C.* §§ 801-808) [SBREFA]);

15 J. The Endangered Species Act 16 *U.S.C.* § 1531;

16 K. California *Civil Code* § 3479 *et seq.*;

17 L. California *Code of Civil Procedure* § 731;

18 M. The 5th and 14th Amendments to the *Constitution of the United States*;

19 N. Article I § 8 (Commerce Clause) of the *Constitution of the United States*;

20 O. Article I § 7(a) of the *Constitution of California*; and

21 P. Article I § 19 of the *Constitution of California*.

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24
25 9. Venue is proper in this Court pursuant to 28 *U.S.C.* §§ 1331, 1391(b) and (e), and
26 because the events and omissions giving rise to Plaintiffs’ claims occurred within this judicial
27 district.
28

1 **INTRODUCTION**

2 10. This case presents a classic conflict between prospectors, miners who hold
3 unpatented or patented mining claims on Federal lands pursuant to the mining laws of the United
4 States, and the State of California, Department of Fish and Game (“DF&G”). Until recently,
5 DF&G issued permits for vacuum and suction dredge prospecting and mining on such claims for
6 rivers, streams, and waterways in the State of California running through such Federal mining
7 claims and estates, and unclaimed Federal lands open to prospecting and mining.
8

9 11. Beginning on August 6, 2009, DF&G would no longer issue permits for vacuum
10 and suction dredge mining on Federal mining claims, and cancelled all such permits previously
11 issued. This had the effect of prohibiting vacuum and suction dredge mining and prospecting in
12 the State of California on all Federal mining claims and lands, and unclaimed lands open to
13 location and entry under the United States mining laws, and unlawfully prohibited the location,
14 utilization and development of mining claims and mineral estates in California. This unlawfully
15 affected and unconstitutionally burdened interstate and foreign commerce, since many of the
16 prospectors, and mining claim and mineral estate owners, are non-residents of California who
17 prospect or work their claims and mineral estates in California with vacuum and suction dredges.
18 This affected not only California residents who are mining claim owners, prospectors and
19 miners, but also non-resident mining claim owners, prospectors and miners who purchased non-
20 resident permits from DF&G in order to engage in vacuum and suction dredge mining in the
21 State of California. This also had the effect of stopping the sale of equipment and accessories for
22 vacuum and suction dredge mining both within and without the State of California. This placed
23 an unlawful, unconstitutional, and undue burden and restriction on interstate and foreign
24 commerce in the sale of the aforesaid mining equipment and accessories.
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1 12. The California DF&G claims authorization to issue permits for vacuum and
2 suction dredge mining in the State of California, even when such mining occurs on Federal lands
3 and is pursuant to the mining laws of the United States. California Fish and Game Code § 5653
4 *et seq.*; California Code of Regulations 14 CCR § 228. Waters within the boundaries of Federal
5 lands, including National Forests, National Parks, and lands within the jurisdiction of the Bureau
6 of Land Management (BLM) may be used for mining. 16 *U.S.C.* § 481. The attempt to stop
7 suction dredge mining in California has a long and tangled history.
8

9 13. In 2004, the Karuk Tribe filed suit in the United States District Court in Oakland,
10 California for declaratory and injunctive relief alleging improper management of suction dredge
11 and other mining operations in waterways and riparian areas within the Klamath National Forest.
12 The Karuk Tribe claimed violation of the National Forest Management Act, National
13 Environmental Policy Act, and the Endangered Species Act. Judgment was rendered against the
14 *Karuk Tribe* and for the defendants. *Karuk Tribe of California vs. United States Forest Service,*
15 *et al.*, 379 F.Supp.2d 1071 (2005). Anticipating a loss in Federal Court, the Karuk Tribe decided
16 to try their legal luck in State Court. On May 6, 2005, the Karuk Tribe of California filed suit
17 against the California Department of Fish and Game in the Superior Court of Alameda County.
18 *Karuk Tribe of California; and Leaf Hillman, Plaintiffs, v. California Department of Fish and*
19 *Game; and Ryan Broddrick, Director, California Department of Fish and Game, Defendants,*
20 Case No. RG 05211597. The case was heard by Judge Bonnie Sabraw. Judge Sabraw is now
21 retired, and the case was transferred to the Honorable Frank Roesch, Judge of the Superior Court,
22 Alameda County. The object of this lawsuit was to stop all suction dredge mining in the
23 Klamath, Scott, and Salmon Rivers, and specified tributaries, supposedly in order to protect
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1 Coho salmon. No notice was initially given to any miners that this litigation had been filed. The
2 Karuk Tribe is headquartered on the Klamath River in Happy Camp, California.

3
4 14. The California Department of Fish and Game (“DF&G”) at first opposed the
5 allegations of the Karuk Tribe as set forth in its Complaint. Soon however, DF&G decided to
6 capitulate to the Karuk Tribe. DF&G, effective November 30, 2005, issued regulations severely
7 restricting suction dredge mining in the Klamath, Scott, and Salmon Rivers and their tributaries.
8 These regulations specifically referenced the litigation brought by the Karuk Tribe in Alameda
9 County. In addition, the Karuk Tribe and DF&G presented to Judge Sabraw a “Proposed
10 Stipulated Judgment,” and later a modified “Proposed Stipulated Judgment,” which would have
11 enjoined and restrained DF&G from issuing permits for suction dredge mining “for the Klamath,
12 Salmon, and Scott Rivers, their tributaries and thermal refugia.”
13

14
15 15. The first that the miners heard of the State Court litigation filed by the Karuk
16 Tribe in Alameda County was approximately December 7, 2005, when they were refused suction
17 dredge mining permits by DF&G affecting the whole State of California, because of the Karuk
18 Tribe litigation. At this stage, Judge Sabraw had issued no order authorizing such prohibition.
19 DF&G did this without any rule making authority or process whatsoever, or in compliance with
20 any court order.
21

22
23 16. The mining claim owners and miners who were denied permits by DF&G
24 contacted Mr. Hobbs, as President of PLP, and informed him of their situation. Mr. Hobbs
25 informed other mining groups of the Karuk Tribe litigation, and the unilateral and unauthorized
26 prohibitions placed on suction dredge mining in California by DF&G. Mr. Hobbs requested the
27 Court not to sign the Proposed Stipulated Judgment (“PSJ”). In 2006, Mr. Hobbs, and another
28 mining organization, were allowed by Judge Sabraw to intervene in the Karuk Tribe litigation.

1 Mr. Hobbs immediately set about opposing the PSJ which the Karuk Tribe and DF&G had
2 presented to Judge Sabraw.

3
4 17. After extensive briefings and hearings by all parties, on June 16, 2006, Judge
5 Sabraw issued the Court's "Order Denying Motion to Enter Judgment." Judge Sabraw
6 specifically found that the PSJ which would have prohibited suction dredge mining in the
7 Klamath, Scott, and Salmon Rivers, and their tributaries, "was contrary to law and public
8 policy."

9
10 18. DF&G initially opposed the Karuk Tribe in the litigation before Judge Sabraw.
11 However, DF&G has openly admitted that it does not want to be the agency administering
12 suction dredge mining in California. Seeing an opportunity to rid itself of issuing permits for
13 suction dredge mining, DF&G decided to switch horses in mid-stream.

14
15 19. Thereafter, DF&G changed its position and filed two affidavits from its officials
16 and employees asserting that suction dredge mining could have an adverse effect on Coho
17 Salmon in the litigation relating to the Klamath, Scott, and Salmon Rivers. The miners strongly
18 disputed any such alleged admissions of DF&G.

19
20 20. No miner in California would ever rely on DF&G to protect his or her interest.
21 The mining community in California has no confidence in DF&G to protect their interest in
22 anything relating to mining.

23
24 21. Judge Sabraw encouraged all parties to enter into settlement negotiations. After
25 two meetings in Sacramento, and much blood, sweat, and tears, all parties were finally able to
26 reach settlement of the Karuk Tribe litigation. On December 20, 2006, Judge Sabraw entered the
27 Court's *Order and Consent Judgment*. The heart of the Court's December 20, 2006, Order and
28 Consent Judgment was that DF&G will conduct a review relating to the Klamath, Scott, and

1 Salmon Rivers, pursuant to the California Environmental Quality Act (“CEQA”), Public
2 Resources Code § 21000 *et seq.*, which was to be completed within 18 months. During this
3 period, suction dredge mining was to be permitted in the Klamath, Scott, and Salmon Rivers, and
4 their tributaries. All requests for injunctive relief against DF&G barring suction dredge mining
5 were withdrawn pending such environmental review. Thus, suction dredge mining continued
6 pending an environmental determination as to whether any prohibition whatsoever would be
7 justified.
8

9
10 22. The heart of Judge Sabraw’s *Order and Consent Judgment* reads as follows:

11 “THEREFORE, the Department is hereby ORDERED to conduct a
12 further environmental review pursuant to CEQA of its suction
13 dredge mining regulations and to implement, if necessary, via
14 rulemaking, mitigation measures to protect the Coho salmon
15 and/or other special status fish species in the watershed of the
16 Klamath, Scott, and Salmon Rivers, listed as threatened or
17 endangered after the 1994 EIR.”

18
19 23. The aforesaid review was to be completed within eighteen months, and the Court
20 retained jurisdiction of the matter. DF&G was not able to complete the review in the time frame
21 set by Judge Sabraw, claiming (a) that they could not do an EIR limited to only the Klamath,
22 Scott and Salmon Rivers, but had to do an all inclusive statewide EIR; and (b) further claiming
23 that the California financial crisis prevented it from being funded by the legislature to complete
24 the DF&G unilaterally expanded statewide review. There is now pending a hearing before Judge
25 Roesch to hold DF&G and its Director, Donald Koch, in contempt for failing to timely complete
26 the DF&G inspired statewide review.

27 24. The two suspect affidavits filed by DF&G turned out to cost the State
28 \$230,000.00. The Karuk Tribe later filed a motion for attorneys fees against DF&G, who, after

1 negotiations, agreed to and did pay the Karuk Tribe \$230,000.00. The Karuk Tribe agreed to
2 seek no further attorneys fees in the litigation before Judge Sabraw.

3
4 25. Although the Karuk Tribe consented to the judgment entered by Judge Sabraw on
5 December 20, 2006, the Karuk Tribe then became an initiator and supporter of new legislation,
6 AB 1032, which supposedly was meant to protect trout by prohibiting suction dredge gold
7 mining in approximately sixty-eight rivers throughout California, including the Klamath, Scott,
8 and Salmon Rivers. AB 1032 was unusual in referring numerous times to the Karuk Tribe
9 litigation in Alameda County, still then pending before Judge Sabraw. AB 1032 by its terms was
10 to remain in effect until January 1, 2011, *unless* DF&G has completed the CEQA environmental
11 review prior to that date which has been mandated by Judge Sabraw in the Karuk Tribe litigation
12 in Alameda County. Thus, the heart of AB 1032 was to prohibit suction dredge gold mining in
13 sixty-eight rivers throughout California, including the Klamath, Scott, and Salmon Rivers, and
14 their tributaries, until the CEQA environmental review is completed. This stood Judge Sabraw's
15 December 20, 2006, *Order and Consent Judgment* on its head.

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18 26. Judge Sabraw refused to prohibit any such suction dredge mining, including gold
19 mining, until the environmental review was completed. The environmental review had to be
20 completed first in order to see whether or not any such prohibition would be justified. Even in
21 the unlikely event an environmental review would justify suction dredge mining prohibitions in
22 the Klamath, Scott, and Salmon Rivers; any such prohibition set forth in AB 1032 would be
23 immediately repealed upon the completion of the environmental review ordered by Judge
24 Sabraw. AB 1032 was inherently illogical, since it applied only to suction dredge gold mining,
25 and allowed all other types of suction dredge mining, including mining for silver, copper, lead,
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1 mercury, and other heavy metals and precious and semi-precious gems. However, AB 1032's
2 inherently illogical provisions were not its chief fault and defect.

3
4 27. AB 1032 was meant to subvert Judge Sabraw's court order permitting suction
5 dredge mining, including gold mining, in the Klamath, Scott, and Salmon Rivers pending an
6 environmental review. AB 1032 was special, private, legislation that enhanced the Karuk
7 Tribe's economic and political position in a way that Judge Sabraw, after hearings and
8 consideration, refused to sanction.

9
10 28. Plaintiff Gerald E. Hobbs testified before the legislature against the passage of
11 AB 1032. However, AB 1032 was eventually passed and went to Governor Schwarzenegger for
12 his signature. What AB 1032 was meant to do is make Governor Schwarzenegger a party to the
13 subversion of a valid court order. AB 1032 struck at the very heart of a court's authority to
14 uphold the rule of law. Governor Schwarzenegger vetoed AB 1032.

15
16 29. In his veto message, Governor Schwarzenegger stated:

17 "I am returning Assembly Bill 1032 without my signature.
18 The purpose of this bill is to protect fish and wildlife from the
19 potential deleterious effects of suction dredge mining. Although I
20 appreciate the author's intent and the need to protect our fish,
21 wildlife, and water resources, this bill is unnecessary. Current law
22 gives the Department of Fish and Game (Department) the
23 necessary authority to protect fish and wildlife resources from
24 suction dredge mining. It has promulgated regulations and issues
25 permits for this activity. Permits for suction dredge mining must
26 ensure that these operations are not deleterious to fish and allow
27 the Department to specify the type and size of equipment to be
28 used. In its regulations, the Department may also designate
specific waters or areas that are closed to dredging. It is unclear
why this bill specifically targets a number of specific waterways
for closure or further restrictions. The listed waterways represent
only a small fraction of the waters in our State where suction
dredging is occurring. The benefit or protection from such a minor
closure is negligible and supports the notion that scientific
environmental review should precede such decisions."

1
2 30. After Governor Schwarzenegger vetoed AB 1032, legislative allies of the Karuk
3 Tribe then attempted to stop suction dredge mining in California by attaching a prohibition of
4 such mining to the California state budget bill. Governor Schwarzenegger line-item vetoed that
5 attempt.

6
7 31. After the stealth attack on suction dredge mining via the state budget failed, the
8 Karuk Tribe then petitioned the Department of Fish & Game to have suction dredge mining
9 prohibited throughout California. DF&G rejected the Karuk Tribe's petition.

10
11 32. This did not stop the Karuk Tribe's longstanding attempt to end suction dredge
12 mining in California. On February 5, 2009, three members and officials of the Karuk Tribe filed
13 a purported taxpayers action in the Alameda County Superior Court seeking to stop suction
14 dredge mining throughout all of California. *Hillman et al. v. California Department of Fish and*
15 *Game*. Case No. RG009 434444. That case was eventually assigned to Judge Roesch, in light of
16 his involvement with the prior Karuk Tribe litigation upon the retirement of Judge Sabraw.

17
18 33. After pointing out to the Court that the supposed outraged taxpayer Plaintiffs were
19 really stand-ins for the Karuk Tribe, an amended Complaint was filed consisting of the Karuk
20 Tribe, its three initial members, and a bevy of environmental groups and allies of the Karuk
21 Tribe.

22
23 34. The same relief the Karuk Tribe sought in the taxpayer suit, *Hillman v. DF&G*,
24 *supra*, could have been brought in the initial case heard by Judge Sabraw, *Karuk Tribe v. DF&G*,
25 *supra*. That case is still subject to the Superior Court's jurisdiction. However, since no further
26 attorneys fees could be obtained in *Karuk Tribe v. DF&G*, a supposed taxpayers' suit was
27 initiated with the hope of obtaining further attorney's fees. The State is concerned that in light of
28

1 the Preliminary Injunction issued by Judge Roesch, they will be subject to further substantial
2 attorney's fees.

3
4 35. The Karuk Tribe then sought a Preliminary Injunction in the taxpayers' action
5 before Judge Roesch. On July 10, 2009, Judge Roesch issued a Preliminary Injunction, relying
6 on the two suspect affidavits filed by officials and employees of DF&G relating to Coho salmon
7 in the Klamath, Scott, and Salmon Rivers in the litigation initiated before Judge Sabraw.

8
9 36. The Preliminary Injunction ordered by Judge Roesch prohibited the California
10 Department of Fish and Game from issuing any permits for suction dredge mining in every river,
11 stream, and waterway throughout California. Judge Roesch's Preliminary Injunction applied to
12 every river, stream, and waterway in California irrespective of whether or not they had any Coho
13 salmon in them or indeed any fish at all. Only a small percentage of the rivers, streams, and
14 waterways in California have any salmon in them whatsoever, and a substantially smaller
15 percentage contain any Coho salmon. The Preliminary Injunction ordered by Judge Roesch is
16 presently on appeal.
17

18 37. On February 27, 2009, another attempt was made by the Karuk Tribe to
19 circumvent Judge Sabraw's Order. Allies of the Karuk Tribe introduced SB 670 in the State
20 Senate again seeking to prohibit all suction dredge mining in every river, stream, lake, and
21 waterway in California until a CEQA review had been completed and new regulations were
22 operative. The prohibition would take place whether or not there were Coho salmon, trout,
23 minnows, or any fish whatsoever in any of the State's waters. SB 670 was, in many respects, a
24 replay of AB 1032.
25

26 38. SB 670 was aimed at suction dredge mining, and prohibited the issuance by
27 DF&G of any new permits for suction dredge mining in California. In addition, SB 670
28

1 invalidated any prior permits issued by DF&G for suction dredge mining. SB 670 prohibited
2 suction dredge mining in every river, stream, lake, and waterway throughout the State of
3 California, not just the three rivers in the initial suit brought before Judge Sabraw--the Klamath,
4 Scott and Salmon Rivers--nor the 68 rivers and streams targeted in AB 1032. This prohibitory
5 progression is regulation run riot.
6

7 39. SB 670 passed the legislature and was sent to Governor Schwarzenegger for his
8 signature. Reversing his position where he vetoed AB 1032, and the attempt to prohibit suction
9 dredge mining through a rider to the state budget. Governor Schwarzenegger signed SB 670 into
10 law. This constituted a triumph of money and raw political power over the laws of the United
11 States, including without limitation, those laws relating to mining on Federal lands.
12

13 40. For Plaintiff Public Lands for the People, Inc. ("PLP"), and its members as well
14 as all other Plaintiffs, suction dredge prospecting and mining in the rivers, streams, and
15 waterways of California is not recreational. It is an important economic endeavor that has a
16 direct economic impact on family finances, business finances, and in these hard economic times,
17 often is the difference between having to choose whether to put gas in the car, or buy food or
18 medicine for the family. For PLP and its members, and all other Plaintiffs, suction dredge
19 prospecting and mining is not merely a question of having "fun". Prohibiting suction dredge
20 mining to prospectors and miners, who are Federal mineral estate grantees, forces them to face
21 serious economic hardship. With a perilous economy, being able to sell even an ounce of gold
22 for over \$900.00 makes a substantial difference as to the economic choices a family has
23 regarding basic necessities.
24

25 41. Prospecting, placer mining, suction dredge mining, and granted rights of way
26 associated with mining and prospecting activities, all of which are mining operations pursuant to
27
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1 the mining laws and the *Code of Federal Regulations* (“*CFR*”), and all of which have valid pre-
2 existing rights pursuant to the mining laws and *CFRs*, are traditionally common in the State of
3 California, and done in accordance with the rules and customs of miners. Suction dredge mining
4 is the only reasonable, economical, and environmentally sound method for extracting precious
5 metals from the rivers, streams, lakes, and waterways in California.
6

7 42. Plaintiffs are informed and believe, and thereon allege, that prohibition of vacuum
8 and suction dredge mining has already taken place and is being implemented. DF&G has sent
9 letters to holders of permits validly issued prior to the passage of SB 670 telling them to cease
10 and desist all suction dredge mining in California. DF&G will no longer issue permits for
11 suction dredge mining in California.
12

13 43. This has direct and immediate effect upon mining claim owners, prospectors and
14 miners in California, in that they need mechanized methods of mining, including vacuum and
15 suction dredge mining, in the rivers, streams, lakes, and waterways of California in order to
16 economically prospect and mine in those rivers, streams, lakes, and waterways, and to engage in
17 other associated mining activities therein. DF&G asserts that permits are needed in order to
18 engage in vacuum or suction dredge mining anywhere in the State of California, whether such
19 mining occurs on private, State, or Federal lands, or pursuant to mining claims authorized by the
20 State of California or the United States, or authorized in any manner whatsoever.
21
22

23 44. Plaintiffs are informed and believe, and thereon allege, that the prohibition of
24 vacuum and suction dredge mining in the rivers, streams, lakes, and waterways of California will
25 affect over ninety-five percent (95%) of all mineral production from the aforesaid rivers,
26 streams, lakes, and waterways.
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1 48. DF&G is authorized to close areas otherwise open for dredging and for which
2 permits have been issued, if there is an unanticipated water level change and the department
3 determines that the closure is necessary to protect wildlife and water resources. 14 CCR § 228.
4 No such determination has been made by DF&G as it relates to SB 670.
5

6 49. Existing law requires DF&G to adopt regulations to implement certain of the
7 vacuum and suction dredge equipment requirements, and authorizes the DF&G to issue
8 regulations with respect to other requirements. Existing law requires that the regulations be
9 adopted in accordance with the requirements of CEQA. CF&GC § 5653.9.
10

11 50. CEQA requires a lead agency, as defined, to prepare, or cause to be prepared by
12 contract, and certify the completion of, an environmental impact report on a “project”, as
13 defined, that it proposes to carry out or approve that may have a significant effect on the
14 environment, or to adopt a negative declaration if it finds that the project will not have that
15 effect. SB 670 declares that the issuance of permits to operate vacuum or suction dredge
16 equipment is a “project” pursuant to CEQA. CF&GC § 5653.1(a).
17

18 51. The act exempts from its provisions, among other things, certain types of
19 ministerial projects proposed to be carried out or approved by public agencies, and emergency
20 repairs to public service facilities necessary to maintain service. CF&GC § 21080(b)(1); 14
21 CCR § 15060(c)(1). The issuance of permits for vacuum or suction dredge mining authorized by
22 Federal law is a non-discretionary and ministerial act.
23

24 52. After SB 670 designated the issuance of permits to operate vacuum or suction
25 dredge equipment to be a “project” under CEQA, it suspended the issuance of permits, including
26 permits issued prior to the passage of SB 670, and any mining pursuant to such permit, until the
27 DF&G has completed an environmental impact report for the “project” as ordered by the Court
28

1 in *Karuk Tribe et al. v. California Department of Fish and Game, et al.*, Alameda County
2 Superior Court, Case No. RG 05211597. DF&G has stated that it will not complete the Court
3 ordered environmental review of its permitting program until, at the earliest, in the late summer
4 of 2011.
5

6 53. SB 670 prohibits the use of any vacuum or suction dredge equipment in any river,
7 stream, or lake, for in-stream mining purposes, until the director of DF&G certifies to the
8 Secretary of State that: 1) The DF&G has completed the environmental review of its existing
9 vacuum or suction dredging regulations as ordered by the Court; 2) DF&G has transmitted for
10 filing with the Secretary of State, a certified copy of new regulations as necessary; and 3) the
11 new regulations are operative. There is no time frame set for this cascade of contingencies, and
12 there is no realistic expectation that they will ever be completed within the next decade, if then.
13

14 54. In trying to explain why the completion of the environmental impact report will
15 take so long, DF&G has stated that:
16

17 **“Q: When will the EIR be completed?** DFG is preparing a
18 Subsequent Environmental Impact Report (EIR) to conduct the
19 court-ordered review. DFG estimates at this point that it will
20 complete and certify the Subsequent EIR (and updates to the
21 existing regulations, if necessary) after a series of public meetings
22 and other opportunities for public comment and review by late
23 summer 2011. The environmental review and regulation processes
24 are governed by the California Environmental Quality Act and the
25 Administrative Procedures Act, respectively. The time line is
26 driven by the requirements of these laws.”
27

28 **“Q: Why is this process going to take so long?** DFG has already
begun the environmental review necessary to analyze the current
regulations; this was last done in 1994. The review process will be
complex and lengthy given the statewide scope of the analysis and
the time that has passed since the last review. In addition to the
detailed written analysis prepared by DFG in coordination with the
State Water Board, the review process will also include several
opportunities for public involvement, both via public meetings and

1 through solicitation of written comments and suggestions. Initial
2 public meetings to discuss the scope of the environmental analysis
3 are currently being planned for November 2009 in Fresno,
4 Sacramento and Redding. Additional details, including the time
5 and place of the meetings, will be posted on the DFG Web site,
6 www.dfg.ca.gov, as they become available.”

7 Although the court-ordered review for the EIR is only for the Klamath, Scott, and Salmon
8 Rivers, DF&G will conduct a statewide review for the EIR. DF&G has stated that:

9 “Based on the information DFG collected from interested parties,
10 DFG informed the Alameda County Superior Court in early 2008
11 that DFG could not proceed with the court-ordered environmental
12 review in reliance on an addendum to the 1994 EIR. DFG
13 informed the court at the same time that more than minor additions
14 or changes to the 1994 EIR would be necessary and that statewide
15 issues would need to be addressed in a subsequent environmental
16 document in order to fulfill DFG’s obligations under CEQA. As a
17 result, DFG informed the Alameda County Superior Court that it
18 intended to prepare a subsequent or supplemental environmental
19 impact report that would be statewide in scope to comply with the
20 December 2006 Court Order.”

21 55. SB 670 is declared to be an “urgency statute,” and without support of any credible
22 evidence whatsoever, and without the completion of any environmental impact report the
23 legislature:

24 “finds that suction or vacuum dredge mining results in various
25 adverse environmental impacts to protected fish species, the water
26 quality of this state, and the health of the people of this state, and,
27 in order to protect the environment and the people of California
28 pending the completion of a court-ordered environmental review
by the Department of Fish and Game and the operation of new
regulations, as necessary, it is necessary that this act take effect
immediately.”

56. Thus, the legislative finding is dependent upon the completion of an
environmental impact review (“EIR”) that is yet to take place, and may never take place. If an
EIR ever does take place, it will most likely affirm that not one fish has ever been killed or

1 harmed through present day suction dredge mining; that such mining causes no discernable harm
2 to the natural environment of the water resources of the State of California; and is, in fact,
3 beneficial to the environment and natural resources of the State of California. The purported
4 legislative finding is without basis in fact, and is a political, not a scientific conclusion, and is
5 contrary to the scientific evidence that was available to the legislature.
6

7 57. DF&G will not issue refunds for those who have purchased permits prior to the
8 passage of SB 670, since SB 670 does not provide for any such refunds.
9

10 58. DF&G has stated that vacuum or suction dredge equipment lawfully placed in the
11 waters of California prior to the passage of SB 670 must be immediately removed pursuant to
12 CF&GC § 5563. No compensation is to be provided by the DF&G or SB 670 to any mining
13 claim owner, miner or prospector for the expense of purchasing such equipment, lawfully
14 placing such equipment in the State's waters, or having to remove such equipment from the
15 waters.
16

17
18 **PARTIES**

19 59. Plaintiff Public Lands for the People, Inc. is a California 501 c-3 non-profit
20 corporation ("PLP"). PLP is a nationwide organization of miners, who are mineral estate
21 grantees, and prospectors. With its constituent members, PLP constitutes approximately 40,000
22 people. Its founder and President is Gerald E. Hobbs of San Bernardino, California. PLP, has
23 among its membership, miners and prospectors with mining claims and estates in National
24 Forests in California, Federal lands administered by the Bureau of Land Management in
25 California, National Parks in California, and other Federal lands in California, and throughout
26 the United States. Large numbers of the membership of PLP receive yearly permits from DF&G
27
28

1 to engage in vacuum or suction dredge mining in California, and do so engage in such mining in
2 California. These PLP members are directly affected in their mining, prospecting and associated
3 operations by passage of SB 670 that prohibits the issuance of permits for vacuum and suction
4 dredge mining by DF&G, and the cancellation by DF&G of permits already issued, for vacuum
5 and suction dredge mining in California. These PLP members are directly and substantially
6 financially harmed by the passage of SB 670.
7

8 60. Gerald E. Hobbs is a member of, founder, and President of PLP. Mr. Hobbs has
9 mining claims and mineral estates in three National Forests, all of which are in California. They
10 are Angeles National Forest, Tahoe National Forest, and Six Rivers National Forest. Mr. Hobbs
11 has permits from DF&G to engage in vacuum and suction dredge mining in California. Mr.
12 Hobbs has paid DF&G for these permits. These permits are subject to cancellation, and have
13 been cancelled, by DF&G pursuant to SB 670. Mr. Hobbs has spent substantial sums in order to
14 engage in suction dredge mining. Mr. Hobbs earned income from suction dredge mining in
15 California which was necessary to maintain his economic viability. Mr. Hobbs is directly and
16 substantially financially harmed by the passage of SB 670.
17
18

19 61. Patrick Keene is part of a third generation family-owned business that has been
20 serving the mining community in California, the United States, and throughout the world for the
21 past 60 years. Mr. Keene is Secretary/Treasurer of Keene Engineering Co., Inc. (“Keene
22 Engineering”) of Chatsworth, California. Keene Engineering is the largest supplier of small
23 scale dredging and mining equipment in the world. The Company, as well as many other
24 manufacturers, sells to small businesses and dealers who provide equipment to prospectors and
25 miners throughout California and the United States. Many of the people who operate suction
26 dredges come to visit California to dredge for gold and work their mining claims. While doing
27
28

1 so, they support local businesses in the process of filling their other needs. Mr. Keene has been
2 working for Keene Engineering for over 30 years. Mr. Keene is a member of PLP. Mr. Keene
3 and Keene Engineering are directly and substantially financially harmed by the passage of SB
4 670.
5

6 62. The economic impact of the prohibition of suction dredge mining in California is
7 devastating to Keene Engineering. Since the majority of Keene Engineering's business is in
8 California, it would not allow the Company and the many others small businesses who also sell
9 prospecting and mining equipment or supplies, to survive. Much of Keene Engineering's
10 business relies on California suction dredge miners. The losses involved with Keene
11 Engineering's business would be in the many millions of dollars.
12

13 63. Since the introduction of SB 670, suction dredge sales by Keene Engineering and
14 its California dealers have stopped. The fear of this activity becoming illegal, and it being a
15 misdemeanor, carrying up to \$1,000.00 in fines, and six months in jail, has been devastating to
16 Keene Engineering's business, as well as its dealers.
17

18 64. Forty percent of Keene Engineering's business is based on equipment sold to
19 small and medium scale suction dredge miners in California, and the people who travel from
20 other states to suction dredge mine in the rivers and streams in California. Thousands of those
21 people also enjoy associated tourism in California and support local seasonal businesses.
22

23 65. Most of Keene Engineering's suppliers, who provided it with components to build
24 suction dredges are profoundly impacted as well. These businesses also have had a substantial
25 drop in their business. The passage of SB 670 has created a ripple effect on many other
26 industries both in and out of the State of California adversely affecting interstate commerce. SB
27 670's prohibition on vacuum and suction dredge mining has cost, or will cost, California
28

1 economic damage in an amount of approximately 60 million dollars a year, and possibly much
2 more.

3 66. SB 670 will put Keene Engineering out of business. Keene Engineering employs
4 35 workers. Keene Engineering will lay off approximately 12 employees in an attempt to
5 economically survive. A number of Keene Engineering's dealers have contacted the Company,
6 and told Keene Engineering that they are closing their doors since they cannot economically
7 survive selling just non-motorized equipment such as sluice boxes and gold pans.
8

9 67. The suction dredge community supports many other businesses in gold bearing
10 areas which are in danger of economic failure. Many jobs are being lost due to the loss of
11 tourism that the passage of SB 670 has engendered. Many campgrounds are empty along rivers
12 and mining areas across California. Many businesses are seasonal, including campgrounds,
13 hotels, restaurants, service stations, and grocery stores. Many of these businesses are located in
14 severely economically depressed areas. These business owners rely on small scale suction
15 dredge miners, prospectors, and tourism in order to survive economically. Many of the counties
16 in Northern California, in the gold bearing area, are economically depressed and having very
17 hard economic times. SB 670 is adding to this economic suffering, eliminating jobs, and
18 creating a loss of tax base for these areas and for the State of California.
19
20

21 68. Californians, and people who come from other states to visit California, spend an
22 average of \$3,200.00 per month in local economies as of a study made in 1994. In 2009, the
23 amount spent is substantially higher. Californians, and people from other states, purchase special
24 vehicles such as trucks, campers, trailers, quads, and recreational vehicles to prospect and mine
25 for gold in California.
26
27
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1 69. Since the passage of SB 670, many mining claim and mineral estates will lose
2 considerable value because their claim owners cannot mine them effectively, and the counties
3 where they are situated will be compelled to reassess the value of their claims. This will create a
4 large loss to County and State tax basis, and will ultimately curtail governmental services.
5

6 70. Mr. Keene is also a small scale independent miner who owns mining claims and
7 estates throughout California. Mr. Keene's mining claims are on Federal land in National
8 Forests in California and on Bureau of Land Management land in California. Mr. Keene engages
9 in vacuum and suction dredge mining in California, and has permits from DF&G allowing him to
10 engage in such mining. Mr. Keene has paid DF&G for these permits. Mr. Keene has spent
11 substantial sums in order to engage in suction dredge mining. Mr. Keene supplements his and
12 his family's income from being able to engage in suction dredge mining. By not being able to
13 engage in suction dredge mining on Federal land in California, Mr. Keene, in his individual
14 capacity, is directly and substantially financially harmed by the passage of SB 670.
15
16

17 71. Robert Haiduck is a prospector and miner with mining claims and mineral estates
18 in the Sequoia National Forest, Trinity National Forest, Cleveland National Forest, and other
19 National Forests in California. Mr. Haiduck also has mining claims on federal lands
20 administered by the Bureau of Land Management ("BLM"). Mr. Haiduck is a member of PLP.
21 Mr. Haiduck engages in suction dredge mining on his mining claims in the National Forests in
22 California, as well as, his mining claims on lands administered by BLM. No waters where Mr.
23 Haiduck has mining claims contain any salmon of any species whatsoever. Pursuant to BLM
24 regulations, every ten (10) acres of his unpatented mining claims on BLM land must be sampled
25 for mineral values. Since these claims are on the water, they have to be suction dredged to be
26 correctly and legally sampled. Mr. Haiduck has permits from DF&G to engage in suction dredge
27
28

1 mining in California. Mr. Haiduck has paid DF&G for these permits. Mr. Haiduck has spent
2 substantial sums in order to engage in suction dredge mining in California. Mr. Haiduck is
3 severely ill. He is financially dependent for the support of himself and his family, which
4 includes three (3) small children, on suction dredge mining on his mining claims in the National
5 Forests and on BLM land in California. Mr. Haiduck and his family have substantial amounts of
6 personal money invested in mining claims that can only be worked feasibly, economically, and
7 in an environmentally friendly manner by suction dredge mining. Without the ability to suction
8 dredge mine Mr. Haiduck and his family stand to lose almost all of their money, and be
9 completely wiped out economically. Being unable to engage in suction dredge mining on his
10 mining claims in the National Forests of California, and BLM land in California, causes
11 immediate and substantial financial harm to Mr. Haiduck and his family. Mr. Haiduck is
12 directly, severely and substantially financially harmed by the passage of SB 670.

13
14
15
16 72. Terry Stapp is a 60% disabled Vietnam veteran who retired in 1991 after 25 years
17 in the United States Air Force. Mr. Stapp is a suction dredge miner and has so mined on Federal
18 land in the Downieville area in Sierra County, California for over 30 years. His mining claims
19 and estates in Sierra County are worthless without the ability to engage in suction dredge mining.
20 The economic loss to Mr. Stapp and his wife, Dee, is devastating. Mr. Stapp supplemented his
21 income by suction dredge mining while he was on active duty in the United States Air Force.
22 Since Mr. Stapp retired from the Air Force, suction dredge mining in California is his sole source
23 of income, other than his military retirement pension. Mr. Stapp is directly and substantially
24 financially harmed by the passage of SB 670.

25
26
27 73. Dee Stapp is the wife of Terry Stapp. Mrs. Stapp is a member of PLP. Mrs.
28 Stapp has mining claims and estates on Federal land in California. Mrs. Stapp engages in suction

1 dredge mining on her claims in California, and has permits from DF&G to engage in such
2 mining. Mrs. Stapp has paid DF&G for these permits. Mrs. Stapp has spent substantial sums in
3 order to engage in suction dredge mining. Mrs. Stapp supplements her and her husband's
4 income through suction dredge mining in California. Mrs. Stapp is directly and substantially
5 financially harmed by the passage of SB 670.
6

7 74. Mrs. Stapp started a gold prospecting store in San Bernardino, California and has
8 run it since August 1, 1978. Mrs. Stapp sells suction dredges and dredge accessories to miners
9 which represent about 60% of the store's income. The passage of SB 670 is a devastating
10 economic blow to Mrs. Stapp's business income. SB 670 has placed in question the economic
11 viability of Mrs. Stapp's business, and the ability of her store to remain open.
12

13 75. Mrs. Stapp sells the gold she and her husband obtain from suction dredge mining
14 through the Internet throughout the United States and in foreign commerce. The inability to
15 suction dredge mine will substantially impact the Stapps' financial and economic well-being,
16 since the Internet sales of suction dredge mined gold amounts to many thousands of dollars per
17 year, and is a necessity for the Stapps to financially survive.
18

19 76. David DeCosta has been a suction dredge miner in California for over 20 years.
20 Mr. DeCosta is a member of PLP. Mr. DeCosta has mining claims and estates on Federal land in
21 California. Mr. DeCosta has permits from DF&G to engage in suction dredge mining in
22 California. Mr. DeCosta has paid DF&G for these permits. Mr. DeCosta has spent substantial
23 sums in order to engage in suction dredge mining. Suction dredge mining has provided
24 additional income for Mr. DeCosta and his family. Mr. DeCosta and his family are directly and
25 substantially financially harmed by the passage of SB 670.
26
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1 77. James Gregory Lee has been a suction dredge miner in California for over 40
2 years. Mr. Lee is partially disabled. Mr. Lee is a member of PLP. Mr. Lee has mining claims
3 and estates on Federal land in California. Mr. Lee has permits from DF&G, including an
4 assistant suction dredge permit for an aide to help him operate his suction dredge, due to his
5 disability, in order to engage in suction dredge mining in California. Mr. Lee has paid DF&G for
6 these permits. Mr. Lee has spent substantial sums in order to engage in suction dredge mining.
7 Suction dredge mining has provided additional income for Mr. Lee and his family. Mr. Lee and
8 his family are directly and substantially financially harmed by the passage of SB 670.
9
10

11 78. Mike Holt has been a suction dredge miner in California for over 24 years. Mr.
12 Holt is a member of PLP. Mr. Holt has mining claims and estates on Federal land in California
13 in the Tahoe National Forest. Mr. Holt has also engaged in suction dredge mining on private
14 properties, for which he needs permits from DF&G. Mr. Holt has permits from DF&G to engage
15 in suction dredge mining in California. Mr. Holt has paid DF&G for these permits. Mr. Holt has
16 spent substantial sums in order to engage in suction dredge mining. Suction dredge mining has
17 provided the main source of income for Mr. Holt and his family. Suction dredge mining has
18 allowed Mr. Holt to support his wife and four children, and in these difficult economic times, to
19 continue to help out his children economically. Mr. Holt and his family are directly and
20 substantially financially harmed by the passage of SB 670.
21
22

23 79. Todd Bracken has been a suction dredge miner in California for over 15 years.
24 Mr. Bracken has been awarded a Certificate of Recognition by the California State Assembly for
25 his mining activities on his family's historic mining claims, and his use and popularization of
26 California gold throughout the world in his artistic creations. Mr. Bracken is a member of PLP.
27 Mr. Bracken has mining claims and estates on Federal land in California on the Yuba River. Mr.
28

1 Bracken has permits from DF&G to engage in suction dredge mining in California. Mr. Bracken
2 has paid DF&G for these permits. Mr. Bracken has spent substantial sums in order to engage in
3 suction dredge mining. Suction dredge mining has provided additional income for Mr. Bracken
4 and his family. Mr. Bracken takes much of the gold he obtains from suction dredge mining and
5 uses it to make fine jewelry. Mr. Bracken sells that jewelry throughout the United States and in
6 foreign commerce. This involves many thousands of dollars in sales per year. Mr. Bracken
7 maintains a website advertising his jewelry for sale. That website states that Mr. Bracken sells
8 natural California gold jewelry. California gold commands a higher price in the market place
9 because of its natural purity and the history of gold mining associated with California. The
10 prohibition of suction dredge mining in California dramatically and drastically affects Mr.
11 Bracken's mining and jewelry business, and its economic viability. Mr. Bracken and his family
12 are directly and substantially financially harmed by the passage of SB 670.

13
14
15
16 80. Shannon Poe is suction dredge miner in California. Mr. Poe is a member of PLP.
17 Mr. Poe has mining claims and estates on Federal land in California, including National Forest
18 and Bureau of Land Management lands in California. Mr. Poe has permits from DF&G to
19 engage in suction dredge mining in California. Mr. Poe has paid DF&G for these permits. Mr.
20 Poe has spent over \$27,000.00 since January 1, 2009 in order to engage in suction dredge
21 mining. Suction dredge mining has provided additional income for Mr. Poe and his family. Mr.
22 Poe and his family are directly and substantially financially harmed by the passage of SB 670.

23
24 81. David Richard has been a suction dredge miner in California for over 20 years.
25 Mr. Richard is a member of PLP. Mr. Richard has mining claims and estates on Federal land in
26 California. Mr. Richard has permits from DF&G to engage in suction dredge mining in
27 California. Mr. Richard has paid DF&G for these permits. Mr. Richard has spent substantial
28

1 sums in order to engage in suction dredge mining. Suction dredge mining has provided
2 additional income for Mr. Richard and his family. Mr. Richard and his family are directly and
3 substantially financially harmed by the passage of SB 670.
4

5 82. Defendant State of California is a State of the United States, one of whose
6 agencies is the California Department of Fish and Game (“DF&G”).

7 83. Defendant Arnold Schwarzenegger is the Governor of the State of California, and
8 is sued in his official capacity as Governor.
9

10 84. The California Department of Fish and Game is a department of the Executive
11 Branch of the State of California, and among its other duties, is responsible for the issuing of
12 permits for vacuum and suction dredge mining in the rivers, streams, lakes, and waterways
13 within California.

14 85. Defendant Donald Koch is Director of the California Department of Fish and
15 Game, and is sued in his official capacity as Director of the aforesaid Department.
16

17 86. The true names and capacities, whether individual, corporate, associate, or
18 otherwise, of Defendants DOE 1 through DOE 20 are unknown to Plaintiffs at this time, who
19 therefore sue said Defendants by such fictitious names and will ask leave of Court to amend this
20 Complaint to show their true names and capacities when the same are ascertained. Said
21 Defendants are sued as principals and/or agents, servants, and employees of said principals, and
22 all of the acts performed by them as agents, servants, and employees were performed within the
23 course and scope of their authority and employment. Each of the Defendants is in some way
24 responsible for the injuries sustained by the Plaintiffs.
25

26 87. At all times herein, all named Defendants and Defendants DOES 1 though 20
27 inclusive, and each of them, were the agents and employees of each of the remaining Defendants
28

1 and were at all times acting within the purpose and scope of said agency and employment and
2 each Defendant ratified and approved the acts of its agent.

3
4
5 **CLAIMS FOR RELIEF**

6 **COUNT I: Preemption and the Supremacy Clauses**

7 88. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
8 through 87 of this Complaint.

9
10 89. The heaviest concentrations of placer gold and other valuable minerals on
11 unpatented mining claims held under Federal law, and on unclaimed Federal lands open to
12 mining, are in waterways where a natural concentration of gold and other valuable minerals is in
13 the gravels and on or near the bedrock of the riverbed or streambed. The only viable, economic
14 and environmentally sound manner to recover the placer gold under these conditions is through
15 use of a suction dredge. Suction dredge mining is the highest and best use for placer mining
16 claims. Miners and prospectors have a federally granted right to use such waters in order to
17 develop their mining claims and mineral estates. 16 *U.S.C.* § 481 (Use of Waters). All state
18 laws, or regulations, in conflict with this right, are void and of no effect. 43 *CFR* § 3809.3.

19
20 90. Miners and prospectors have a statutory right, not a privilege, to go upon open
21 Federal public domain lands for mineral prospecting, exploration, and development.
22 Administrators may not unreasonably restrict the exercise of that right. The Federal Mining Law
23 of 1872, as amended (30 *U.S.C.* § 21 *et seq.*), provides that all valuable mineral deposits in lands
24 belonging to the United States shall be free and open to exploration and development. The
25 Supremacy Clause of the *United States Constitution*, Article VI, Clause 2, further provides that
26
27 “the laws of the United States . . . shall be the supreme law of the land . . . with anything in the
28

1 laws of any state to the contrary notwithstanding”. Article IV, § 3, of the *United States*
2 *Constitution*, provides that “Congress shall have the power to dispose of and make all needful
3 rules and regulations respecting the territory or other property belonging to the United States.”
4

5 The absolute prohibition of SB 670 of vacuum or suction dredge mining in the rivers, streams,
6 lakes, and waterways for Federal mining claims within Federal lands in the State of California,
7 directly conflicts with those Federal mining laws, and violates the Supremacy Clause and Article
8 IV, § 3, of the *United States Constitution*.

9
10 91. Plaintiffs are entitled to secure the necessary permits to conduct vacuum or
11 suction dredge mining operations on Federal lands, and the rivers, streams, lakes, and waterways
12 within those Federal lands, pursuant to, and including, without limitation, the Mining Acts of
13 1866 and 1870, the Mining and Minerals Policy Act of 1970, 30 *U.S.C.* § 21a.; the Federal
14 Mining Law of 1872, as amended (30 *U.S.C.* § 21 *et seq.*); 16 *U.S.C.* § 481, (Use of Waters); the
15 Stock Raising Homestead Act of 1916 (Ch. 9, 39 Stat. 862, codified at 43 *U.S.C.* § (1976); the
16 Federal Land Policy and Management Act of 1976 (“FLPMA”) 43 *U.S.C.* § 1701 *et seq.*,
17 including without limitation §§ 1732(b), 1761 and 1769; the National Forest Management Act
18 (“NFMA”); 16 *U.S.C.* § 1600 *et seq.* (1976); Multiple Surface Use Sustained Yield Act
19 (“MUSYA”); 16 *U.S.C.* § 528 *et seq.* (1960); Multiple Surface Use Act, 30 *U.S.C.* §§ 612, 613,
20 615; Americans with Disabilities Act, 42 *U.S.C.* § 12132; 5 *U.S.C.* §§ 601, 602, 603(b),
21 Regulatory Flexibility Act As Amended By The Small Business Regulatory Enforcement
22 Fairness Act of 1996; 5 *U.S.C.* §§ 801-808) [SBREFA]; the National Environmental Policy Act
23 of 1969 (42 *U.S.C.* § 4321 *et seq.*); and numerous sections of the *Code of Regulations* (“*CFR*”),
24 including without limitation, 36 *CFR* 228 *et seq.*; 36 *CFR* 261 *et seq.*; 43 *CFR* § 3800; 43 *CFR* §
25 3809.1 *et seq.*, including without limitation, 43 *CFR* § 3809.3. Thus, SB 670’s absolute
26
27
28

1 prohibition of vacuum or suction dredge mining in the rivers, streams, lakes, and waterways
2 within those Federal lands violates Plaintiffs' rights pursuant to the aforesaid statutes, rules, and
3 regulations mandated by Congress.
4

5 92. SB 670 is prohibitory, not regulatory, in its fundamental character. It strikes at
6 the central purpose and objectives of the applicable Federal law regarding mining. Through SB
7 670, the State of California attempts to substitute its political judgment for that of Congress. The
8 Federal government has authorized a specific use of Federal lands for mining, and California
9 cannot prohibit that use either temporarily or permanently.
10

11 93. Vacuum and suction dredge mining is the only practical way any of the Plaintiffs
12 can economically mine the valuable mineral deposits located in the rivers, streams, lakes, and
13 waterways within Federal lands in California. SB 670 is a de facto prohibition on all such
14 mining. To the extent DF&G may issue permits, plaintiffs are entitled to secure the necessary
15 permits to conduct vacuum and suction dredge mining operations on Federal and non-Federal
16 lands within the State of California pursuant to, and including without limitation, the above-
17 stated statutes and regulations. Thus, SB 670's absolute prohibition of vacuum and suction
18 dredge mining in the rivers, streams, lakes, and waterways within Federal and non-Federal lands,
19 violates Plaintiffs' rights thereto. SB 670 directly conflicts with Federal law relating to mining,
20 and stands as an obstacle to the accomplishment of the full purposes and objectives of Congress
21 in enacting not only the mining laws but all other laws stated above. All matters dealt with by
22 SB 670 are preempted and fully occupied by the laws of the United States, including without
23 limitation, its mining laws, its environmental laws, its laws relating to clean water, 33 *U.S.C.* §
24 1151, *et seq.* (2004), and its laws relating to endangered species, 16 *U.S.C.* §§ 1531, *et seq.*
25 (2004).
26
27
28

1 94. The issuance of a permit for vacuum or suction dredge mining to a mining claim
2 owner, miner and/or prospector by DF&G is a non-discretionary act, and not a discretionary act.
3 The mining laws, as set forth above, give to the miner and/or prospector an absolute and
4 exclusive right to enter and use the Federal public lands, and the rivers, streams, lakes and
5 waterways running therein, for the purpose of mining and developing his or her mineral estate.
6 The Mining Act of 1866 states:

8 “That the mineral lands of the public domain, both surveyed and
9 unsurveyed, are hereby declared to be free and open to exploration
10 and occupation by all citizens of the United States, and those who
11 have declared their intention to become citizens, subject to such
12 regulations as may be prescribed by law, and subject also to the
13 local custom or rules of miners in the several mining districts, so
14 far as the same may not be in conflict with the laws of the United
15 States.”

16 **COUNT II: Deprivation of Property and Due Process**

17 95. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
18 through 94 of this Complaint.

19 96. Prior to the passage of SB 670, plaintiffs invested many thousands of dollars in
20 order to be able to engage in vacuum and suction dredge mining. Plaintiffs obtained Federal
21 mining claims, invested substantial sums in those claims, kept those claims current, paid taxes on
22 those claims, bought and sold equipment, paid permit fees to DF&G, and otherwise spent
23 substantial sums of money for the purpose of conducting mineral exploration and development
24 pursuant to the laws of the United States and the State of California.

25 97. The due process clauses of the 5th and 14th Amendments to the *United States*
26 *Constitution*, and Article I § 7(a) of the *Constitution of California*, prohibit the deprivation of
27 property without due process of law. The Plaintiffs have constitutionally protected property
28

1 rights and mineral estates that they own or lease in California. The passage of SB 670 makes
2 such property and mineral estates worthless or near worthless. The State of California, through
3 and by the passage of SB 670, has wrongfully taken plaintiffs' property without compensation in
4 violation of the *Constitution of the United States* and the *Constitution of the State of California*.
5

6 98. Defendants, through the passage of SB 670, have deprived the Plaintiffs of their
7 property rights without procedural due process of law in at least the following ways:

- 8 a. Failing to give the Plaintiffs notice and an opportunity for a hearing prior to
9 the deprivations; and
10
11 b. Failing to provide a mechanism for the Plaintiffs to contest the deprivations of
12 their property rights once they occurred.

13 99. Defendants, through the passage of SB 670, have deprived the Plaintiffs of
14 substantive due process under the 5th and 14th Amendments of the *Constitution of the United*
15 *States* and Article I § 7(a) and Article I §§ 7(a) and 19 of the *Constitution of California* in at
16 least the following ways:
17

- 18 a. Defendants' deprivations of Plaintiffs' property rights are arbitrary and
19 capricious;
20
21 b. SB 670 has no rational relationship to any legitimate public purpose; rather it
22 was motivated solely by the improper political purpose of totally prohibiting
23 vacuum or suction dredge mining in the rivers, streams, lakes, and waterways
24 of California;
25
26 c. SB 670 singles out Plaintiffs for extraordinary treatment different from that
27 accorded to all other potential mineral developers that utilize different
28 methods of mining, or use suction dredge equipment for extensive non-mining

1 purposes. These extensive non-mining purposes have the same effect as
2 suction dredge mining for minerals, and in many cases, far exceed any
3 disturbance to the rivers, streams, lakes, and waterways of California, and the
4 biota therein, allegedly caused by suction dredge mining;
5

6 d. SB 670 is in direct conflict with the laws of the United States, which state that
7 the mining of minerals on and within Federal lands is necessary for the
8 economic development and security of the United States.

9 e. SB 670 is in direct conflict with the laws of the State of California, which
10 assert that mining of minerals within the State is necessary for the economic
11 development of the State and Nation;
12

13 f. SB 670 contains no standards to apply in that it affects every river, stream,
14 lake, and waterway in California whether or not there are any fish, aquatic
15 life, or biota therein, or any living organism that could possibly be affected in
16 any way whatsoever by vacuum or suction dredge mining; and
17

18 g. SB 670 is in direct conflict with the encouragement of mining, including
19 vacuum or suction dredge mining by and in the State of California, as being
20 essential to the economic well-being of California, its people, and the needs of
21 society. Thus, Defendants deprivation of Plaintiffs' property is manifestly
22 unfair, given that the Plaintiffs, with the State of California's encouragement,
23 have made a substantial investment for the exploration and development of
24 minerals through suction dredge mining.
25

26 ///

27 ///

1 compensated, nor offered to compensate, Plaintiffs for such deprivation. Defendants have made
2 clear that they do not intend to offer any such compensation.

3 107. Plaintiffs are entitled to just compensation for their property taken.

4
5 108. The Defendants' actions in preparing, adopting, and implementing SB 670 and
6 other rules and policies that interfere with, and prohibit, the Plaintiffs' rights to prospect, and to
7 access their mining claims and mineral estates in the rivers, streams, lakes, and waterways of
8 California, were without public purpose, and in direct conflict with the laws of the United States.
9 Such actions have caused and will continue to cause immediate, direct, adverse and irreversible
10 harm to Plaintiffs and other miners and prospectors.
11

12
13 **COUNT V: Violation of Civil Rights**

14 109. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
15 through 108 of this Complaint.
16

17 110. Defendants, through the passage of SB 670, have deprived Plaintiffs of their
18 mineral rights, estates, and property within the rivers, streams, lakes, and waterways of
19 California, as well as depriving Plaintiffs of rights, privileges, and immunities secured by the
20 *Constitution and laws of the United States*, as well as the *Constitution and laws of the State of*
21 *California*, pursuant to 42 U.S.C. § 1983. Plaintiffs are entitled to attorneys' and experts' fees
22 and costs pursuant to 42 U.S.C. § 1988.
23

24 ///

25 ///

26 ///

1 **COUNT VIII: Violation of Plaintiffs' Implied Rights to Use Public Lands**

2 120. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
3 through 119 of this Complaint.

4 121. The mining laws, and other statutes enacted by Congress, granting the right to
5 prospect and mine on the public lands throughout the Western United States, including
6 California, as well as the granting of mining claims and mineral estates to Plaintiffs, and other
7 miners and prospectors, implies a right of access to the minerals therein accompanying the grant,
8 arising out of the rules and customs of prospectors and miners to use such methods as are
9 available for prospecting and mining on Federal lands, and to access their mining claims and
10 mineral estates in an unimpeded manner. Closure by SB 670 to vacuum and suction dredge
11 mining on the rivers, streams, lakes, and waterways of California within Federal lands adversely
12 and unlawfully interferes with their implied right, causing them harm and damages.

13 122. The actions of SB 670, as set forth above, in closing and prohibiting vacuum and
14 suction dredge mining or prospecting and developing of mining claims in the rivers, streams,
15 lakes, and waterways of California within Federal lands violates the aforesaid implied right of
16 Plaintiffs. Therefore, Plaintiffs are entitled to an order quieting title to their mining claims and
17 mineral estates, including their right to use vacuum and suction dredge mining in prospecting on
18 Federal lands, and developing their aforesaid mining claims and mineral estates. 28 U.S.C. §
19 2409 (a).

20 123. The Defendants' actions in preparing, adopting and implementing the proposed
21 closure and prohibition, and other rules and policies that interfere with the Plaintiffs' implied
22 right were in unlawful derogation of Plaintiffs' rights. Such actions have caused and will
23

1 continue to cause immediate, direct, adverse and irreversible harm to Plaintiffs, and other miners
2 and prospectors.

3
4
5 **COUNT IX: Unlawful Interference with Commerce**

6 124. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
7 through 123 of this Complaint.

8 125. Plaintiffs are small business entities that engage in interstate and foreign
9 commerce. The Federal government encourages and favors small business entities. It has
10 established the Small Business Administration to assist such entities, and has passed special
11 laws, rules, and regulations favoring and protecting small business entities. Regulatory
12 Flexibility Act (5 *U.S.C.* § 603(b) as amended by The Small Business Regulatory Enforcement
13 Fairness Act Of 1996) 5 *U.S.C.* §§ 801-808.

14
15 126. The Plaintiffs sell or buy valuable minerals obtained through vacuum or suction
16 dredge mining in California on federal lands. Plaintiffs sell such minerals throughout the United
17 States and in foreign commerce. Plaintiffs also use such minerals obtained from federal lands in
18 the manufacture of valuable products that are sold throughout the United States and in foreign
19 commerce.

20
21 127. Many citizens of other States and foreign countries come to California in order to
22 engage in vacuum and suction dredge mining for valuable minerals. These non-California
23 citizens purchase permits from DF&G in order to engage in vacuum or suction dredge mining.

24
25 128. The total amount of money spent and invested by these mining claim owners,
26 prospectors and miners in suction dredge mining amounts to many millions of dollars each year.
27 The Plaintiffs, and other prospectors and miners, including non-citizens of California, as set forth
28

1 above, engage in these activities that are specifically authorized, protected, and encouraged by
2 Congress. The Plaintiffs, and other prospectors and miners, including non-citizens of California,
3 engage in interstate and foreign commerce, as set forth above, such interstate and foreign
4 commerce being specifically authorized, protected, and encouraged by Congress.
5

6 129. Plaintiffs, and other persons, as set forth above, spend many millions of dollars
7 each year on goods, services, equipment, food, and other supplies both in and out of the State of
8 California in order to engage in suction dredge mining within the State of California.
9

10 130. SB 670, by imposing a total prohibition on suction dredge mining in the State of
11 California constitutes an impermissible burden on interstate and foreign commerce in direct
12 violation of the *Constitution of the United States*, Article I, § 8, and in direct conflict and in
13 direct violation of the intent and purpose of Congress.
14

15 131. Defendants' actions constituting an undue burden on domestic and foreign
16 commerce are in violation of the *Constitution of the United States*, Article I, § 8, and are in
17 violation of Congressional intent and purpose as set forth above, and an unlawful derogation and
18 prohibition of Plaintiffs' rights. These actions have caused, and will continue to cause,
19 immediate, direct, adverse, and irreversible harm to Plaintiffs, non-citizens of California, other
20 miners and prospectors, and citizens of the United States who wish to become prospectors and
21 miners.
22

23
24 **COUNT X: Injunctive Relief**

25 132. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
26 through 131 of this Complaint.
27
28

1 133. Plaintiffs request injunctive relief, since the harm to them from the actions of the
2 Defendants in enacting and implementing SB 670 prohibits them from prospecting and accessing
3 their mining claims and mineral estates in the rivers, streams, lakes, and waterways in California
4 within Federal lands. This causes damage to them which is immediate and irreparable, because
5 they must be able to use vacuum and suction dredge methods of mining and prospecting in order
6 to feasibly and economically prospect and mine on their mining claims and mineral estates.
7

8 134. The actions of the Defendants as set forth above in closing and prohibiting
9 vacuum and suction dredge mining and prospecting and developing of their mining claims and
10 mineral estates causes Plaintiffs irreparable harm and entitles them to immediate injunctive
11 relief.
12

13 135. The Defendants' actions in preparing, adopting and implementing the closure,
14 prohibition, and other rules and policies that interfere with the Plaintiffs' rights to prospect, and
15 to access their mining claims and mineral estates as set forth above, are in derogation of
16 Plaintiffs' rights. Such actions by Defendants have caused, and will continue to cause,
17 immediate, direct, adverse and irreversible harm to Plaintiffs and other miners and prospectors.
18

19 136. Plaintiffs are entitled to an immediate injunction, including, without limitation, a
20 temporary restraining order, preliminary injunction, and permanent injunction, enjoining and
21 restraining Defendants from the implementation and enforcement of SB 670, and enjoining and
22 restraining Defendants from interfering with Plaintiffs' rights to prospect, to access and develop
23 their mining claims and mineral estates, as set forth above, through all lawful means, including,
24 without limitation, motorized mining methods such as vacuum and suction dredging, or by other
25 lawful means.
26

27
28 ///

1 **COUNT XI: Damages**

2 137. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1
3 through 136 of this Complaint.

4
5 138. As a direct and proximate result of the aforesaid violations by Defendants as set
6 forth in Counts I – X of this Complaint, Plaintiffs have suffered present and future damages in an
7 amount not presently ascertainable, the exact amount to be proven at trial.
8

9
10 **DEMAND FOR JURY TRIAL**

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs respectfully pray that this Court:

- 13
14 1. Adjudge and declare that the challenged prohibition and closure of the rivers, streams,
15 lakes, and waterways in California is unlawful pursuant to all the acts, laws, and
16 regulations as set forth in Counts I – XI of this Complaint, and that Defendants have
17 acted beyond the scope of their legal authority in adopting those actions, and that such
18 actions violate the *Constitution of the United States, and the State of California* as set
19 forth above;
- 20
21 2. Enjoin and restrain Defendants, their agents, employees, successors, and all persons
22 acting in concert or participating with them, from enforcing or implementing, and
23 requiring others to enforce or implement, the aforesaid prohibition and closure and
24 related rules, regulations, and polices; and issue a temporary, preliminary and/or
25 permanent injunction against Defendants pursuant to Rule 65, *Federal Rules of Civil*
26 *Procedure*;
27
28

- 1 3. Declare unlawful and set aside SB 670, as being in violation of the *Constitution of the*
2 *United States*, and the laws of the United States, as well as the *Constitution of the*
3 *State of California*;
- 4 4. Issue and order quieting title to Plaintiffs' mining claims and mineral estates by
5 determining Plaintiffs' aforesaid property is benefited by an implied right to use
6 vacuum and suction dredge mining in order to prospect on Federal lands and develop
7 Plaintiffs' mining claims and mineral estates.
- 8 5. Grant such damages as are proven at trial, with interest on the damages at the
9 maximum annual rate as allowed by law, from such earliest date as allowed by law;
- 10 6. Award the Plaintiffs their reasonable attorneys fees and costs, including expert costs,
11 and expenses of litigation as allowed by law, including, without limitation, and as
12 applicable, the Equal Access to Justice Act, 28 *U.S.C.* § 241, *et seq.*; 42 *U.S.C.* §
13 1988, California *Code of Civil Procedure* § 1021.5, the common fund doctrine, and
14 other applicable laws, concepts or doctrines, whether legal or equitable, rules of Court,
15 or other rules and regulations; and
- 16 7. Grant such other and further relief as the Court deems just and proper, including an
17 award of attorney's fees, costs, and expenses.

18
19
20
21
22
23 Dated: September 14, 2009

LAW OFFICES OF DAVID YOUNG

24
25 By /s/ David Young
26 David Young
27 Attorneys for Plaintiffs
28