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 9 **SUPERIOR COURT OF CALIFORNIA**
 10 **COUNTY OF ALAMEDA**

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<p>12 KARUK TRIBE OF CALIFORNIA and LEAF HILLMAN,</p> <p>13 14 Plaintiff,</p> <p>15 v.</p> <p>16 CALIFORNIA DEPARTMENT OF FISH AND GAME; and RYAN BRODDRICK, Director, California Department of Fish and Game,</p> <p>17 18 Defendants.</p>
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Case No. 05211597

**DECLARATION OF NEIL
 MANJI IN SUPPORT OF
 OPPOSITION TO THE
 OBJECTIONS OF THE NEW
 49'ERS, INC., AND
 RAYMOND W. KOONS TO
 THE PROPOSED
 STIPULATED JUDGMENT**

Date: January 26, 2006
 Time: 9:00 a.m.
 Dept: 512 (Hayward)

The Honorable Bonnie Sabraw
 Trial Date:
 Action Filed: May 6, 2005

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DECLARATION OF NEIL MANJI IN SUPPORT OF ENTRY OF STIPULATED JUDGMENT

I, Neil Manji, declare as follows:

1. I am currently employed by the California Department of Fish and Game ("Department") as a Supervising Biologist and I participated in settlement negotiations in the above captioned matter in that capacity. The matters set forth in this declaration are within my personal knowledge and if called on to testify to these matters I would and could so testify.

2. In my current job at the Department, I serve as the Fisheries Program Manager for the eight counties that comprise the Northern California-North Coast Region ("Region") of the Department. I oversee all fisheries programs within the Region, including programs involving: 1) fisheries habitat restoration; 2) inland and anadromous fisheries resource assessment and monitoring; 3) watershed assessment; and 4) salmon, steelhead and trout hatcheries. I hold a Bachelor of Science (1986) with a major in Fisheries from Humboldt State University and have worked as a fishery biologist since 1989. I worked on the Klamath River specifically in that capacity from 1984-1986, and from 1999 through present. Among other work during that time, I conducted spawning ground surveys and monitored adult and juvenile salmonids on the mainstem and tributaries to the Klamath River. I have also reviewed and edited several manuscripts documenting research and monitoring within the Klamath River Basin. Finally, I am a member of the Klamath Basin Fishery Task Force, Klamath Fishery Management Council and Trinity River Management Council.

3. Based on my experience with the Department, and in my professional opinion as a fishery biologist, the existing regulations governing suction dredging, which are found in sections 228 and 228.5 of Title 14 of the California Code of Regulations, serve to permit suction dredging activities while, at the same time, providing protection for spawning adult salmonids, including chinook salmon, and the developing eggs and larvae of such species, which remain in the gravel following spawning. The existing regulations provide this protection by establishing watercourse-specific closures and seasonal restrictions on suction dredging activities. For example, under the existing regulations, suction dredging on the mainstem of the Klamath River is allowed from the mouth of the mainstem to the Salmon River from the fourth Saturday in May through September 30

1 (Class G); from the Salmon River upstream to 500 feet downstream of the Scott River throughout
2 the year (Class H); from 500 feet downstream of the Scott River upstream to Iron Gate Dam from
3 the fourth Saturday in May through September 30 (Class G). From Iron Gate Dam to the Oregon
4 Border, no suction dredging is permitted at any time (Class A). (See Cal. Code Regs., tit. 14, §
5 228.5, subd. (d)(49).)

6 4. The additional restrictions agreed to by the Department in the Stipulated Judgment
7 at issue in this proceeding are structured in the same manner as the existing regulations. Those
8 restrictions are detailed in Exhibit 1 to the Proposed Stipulated Judgment, and the information
9 document the Department is including with all 2006 suction dredge permit applications. A true and
10 correct copy of that document is attached hereto as Exhibit A.

11 5. From a biological standpoint, the additional restrictions were designed to substantially
12 lessen the potential for significant impacts on various fish species that suction dredging could cause
13 in the Klamath, Scott, and Salmon River watersheds. In particular, the additional restrictions will
14 protect and benefit coho salmon, steelhead, green sturgeon, and lamprey.

15 Spawning

16 6. Chinook and coho salmon and steelhead are anadromous salmonids that spawn in
17 gravel substrates throughout the Klamath Basin at various times of the year. Surveys conducted by
18 the Department and other public agencies indicate that, in the Klamath Basin, chinook salmon spawn
19 from September through December, and coho spawn from November through January. Steelhead
20 can spawn over a longer temporal period from December through June. It is critical during those
21 periods that spawning adults and redds are not disturbed by instream activities, such as suction
22 dredging. Physical disturbance of adults and redds during pre- and post-spawning activities can
23 reduce the spawning success and subsequent survival of progeny.

24 7. Based on existing evidence regarding the distribution and abundance of coho salmon
25 and steelhead in the Klamath River Basin, the additional restrictions will reduce direct conflict
26 between suction dredging activity and spawning adult coho salmon and steelhead. Further, redds
27 created on dredge tailings have been shown to scour following high flow events moreso than redds
28 created on undisturbed substrates. Redd scouring will negatively affect the survival of incubating

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1 eggs. The additional restrictions are also expected to limit suction dredge-related disturbance to
2 spawning substrates immediately prior to spawning activity. This, the Department expects that the
3 additional restrictions will reduce the potential for such related incidental impacts.

4 Emergence

5 8. It can take several months for salmonid eggs to develop and for the sac fry to emerge
6 from the gravel. Emergence of chinook fry occurs from November through March. Coho fry
7 emergence can occur from February through June. Steelhead emergence generally occurs from April
8 through July. As mentioned above, it is critical that the developing eggs and sac fry are not disturbed
9 during those emergence periods. The additional restrictions are intended to reduce those potential
10 impacts.

11 9. Summer steelhead migrate to freshwater in late spring and oversummer in cool
12 tributaries until they spawn in early to mid-winter. Tributaries important to summer steelhead were
13 identified and prioritized and classified accordingly based on summer steelhead abundance from
14 several years of surveys.

15 Juvenile Salmonids and Rearing Habitat

16 10. Unlike chinook salmon, juvenile coho reside in tributaries for a year or more before
17 migrating to the ocean. Due to a flexible life history, steelhead can reside for numerous years
18 without migrating to the ocean. Oversummering habitat is thus critical to the survival of juvenile
19 coho and steelhead. Through reports, survey data, and other information available to Department
20 biologists and other fisheries scientists from other public agencies and Native American tribes,
21 tributaries in which juvenile coho rear were identified. Many of the tributaries in the Klamath basin
22 either run dry by late summer or have temperatures that exceed the lethal threshold for salmonids.
23 Prioritization of tributaries containing critical rearing habitat was based on professional judgment
24 and the presence of juvenile coho or steelhead and the quality of the habitat (e.g., a stream that
25 maintains connectivity with the mainstem is of a higher quality than a stream that loses connectivity
26 or has high temperatures). The Department agreed to close to suction dredging (Class A) high
27 priority tributaries and habitats as part of the Stipulated Judgment to protect those habitats, as well
28 as to eliminate direct conflict between suction dredging activity and juvenile coho or steelhead.

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Sturgeon

11. Sturgeon are long-lived anadromous fish that reportedly reach reproductive maturity at approximately 10-15 years of age. Like salmon, sturgeon spawn in fresh water streams and rivers. Green sturgeon have been documented to occur and spawn successfully in the Salmon River, a tributary to the Klamath River. Spawning occurs from April through July while emergence occurs from April through August. Again, it is critical that spawning adults and the developing eggs are not disturbed. The additional closures and seasonal restrictions will protect the peak spawning period of adult sturgeon in areas where spawning activity has been reported by Department biologists and other agency biologists and scientific literature. Recently emerged juveniles are reportedly poor swimmers that remain close to cover while undergoing a downstream migration to rearing habitats. The additional restrictions will reduce direct conflict of the early-emerged juveniles with suction dredging activity and, where tributaries are now closed to suction dredging year round, protect spawning, incubation, early life history stages, and juvenile rearing habitat.

Lamprey

12. Lamprey are also anadromous fish that spawn in the gravel of streams and rivers. Lamprey spawning occurs from April through July. It is critical that spawning adults are not disturbed. The additional restrictions will reduce or eliminate conflict between spawning lamprey and suction dredging activity, as well as provide protection for the developing eggs. The ammocetes (i.e., lamprey larvae) can remain in the gravel for several years which makes them extremely vulnerable to impacts caused by suction dredging. The additional restrictions will provide greater protection for all freshwater life history stages for lamprey.

Thermal Refugia

13. It has been documented that juvenile salmonids use cold water thermal refugia around the mouths of numerous tributaries to the Klamath, Shasta, Scott, and Salmon Rivers from about May 15 through late September. As water temperature in the mainstem of the rivers reaches critically high levels, these cold water refugia become extremely important to salmonid survival. Information from Department biologists identified thermal refugia areas during field investigations that include fish kill investigations and juvenile fish surveys. In addition, there have been several

1 studies and observations conducted by other state, federal, and tribal biologists that have identified
 2 and quantified thermal refugia within the Klamath River Basin. These summer rearing areas were
 3 prioritized based on a review of current thermal refugia data and information from other agency
 4 biologists, as well as professional judgment from direct observations. Designated thermal refugia
 5 are closed to suction dredging year round under the additional restrictions to avoid potential
 6 displacement or disturbance of juvenile coho or steelhead that may result from suction dredging
 7 activities.

8 I declare under penalty of perjury that the foregoing is true and correct.

9 Executed in Redding, California on January 20, 2006.

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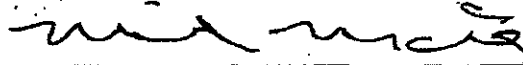

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