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*Exempt from Filing Fees  
 Pursuant to Gov. Code, § 6103*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF SAN BERNARDINO

Coordination Proceeding Special Title (Rule 1550(b))

Coordinated Case No. JCCP4720

**SUCTION DREDGE MINING CASES**

**NOTICE OF RULING RE:  
 PETITIONERS' WRITS OF MANDATE  
 IN KIMBLE, PUBLIC LANDS FOR THE  
 PEOPLE AND NEW 49'ERS,  
 PLAINTIFFS' MOTION FOR  
 SUMMARY JUDGMENT IN EIMER  
 AND DEFENDANTS' MOTION FOR  
 JUDGMENT ON THE PLEADINGS IN  
 EIMER**

**Included Actions:**

Kimble, et al. v. Kamala Harris, Attorney General of California, et al.

CIVDS 1012922 - San Bernardino County

Public Lands for the People, et al. v. California Department of Fish and Game

CIVDS 1203849 - San Bernardino County

The New 49er's, et al. v. State of California, California Department of Fish and Game, et al.

SCCVCV120048 - Siskiyou County

Walker v. Harris, et al.

34-2013-80001439 - Sacramento County

Foley et al. v. California Department of Fish and Wildlife, et al.

SCCVCV1300804 - Siskiyou County

Eimer, et al. v. State of California, California Department of Fish and Game, et al.

CIVDS 1509427 San Bernardino County

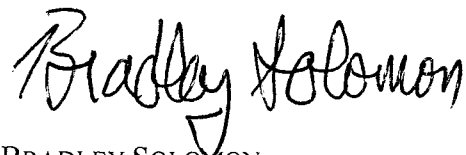
1 NOTICE IS HEREBY GIVEN that, on January 20, 2016 at approximately 8:30 a.m.,  
2 Petitioners' Petitions for Writ of Mandate in *Kimble, et al. v. Harris, et al., Public Lands for the*  
3 *People, et al. v. State of California et al.*, and *The New 49'ers, Inc., et al. v. California*  
4 *Department of Fish and Game, et al.*. Plaintiffs' Motion for Summary Judgment in *Eimer, et al. v.*  
5 *California Department of Fish and Wildlife, et al.* and Defendants' Motion for Judgment on the  
6 Pleadings in *Eimer, et al. v. California Department of Fish and Wildlife, et al.* came on for  
7 regular hearing in Department S33 of the above-entitled Court with the Honorable Gilbert Ochoa  
8 presiding. Appearances were made by James Buchal on behalf of the Miner Petitioners/Plaintiffs;  
9 Bradley Solomon, Marc Melnick and John Mattox on behalf of Defendants California  
10 Department of Fish and Wildlife, et al; Keith Walker in pro per; and Lynn Saxton on behalf of the  
11 Karuk Tribe.

12 The Court issued a tentative ruling prior to the hearing. After consideration of the parties'  
13 briefing and oral argument of counsel, the Court adopted its tentative ruling as attached hereto.

14  
15 Dated: January 22, 2016

Respectfully Submitted,

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18 ROBERT W. BYRNE  
19 Senior Assistant Attorney General

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21 BRADLEY SOLOMON  
22 Deputy Attorney General  
23 *Attorneys for Defendants*  
24 *Department of Fish & Wildlife*

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**ATTACHMENT**

## IN RE SUCTION DREDGE MINING CASES

- *Kimble, et al. v. Harris, et al.*, Case No. CIVDS1012922, San Bernardino County, Filed September 15, 2010 (“*Kimble*”);
- *Karuk Tribe, et al. v. Calif. Dept. of Fish & Game,<sup>1</sup> et al.*, Case No. RG12623796, Alameda County, filed April 2, 2012 (“*Karuk II*”);
- *Public Lands for the People, et al. v. State of Calif., et al.*, Case No. CIVDS1203849, San Bernardino County, filed April 12, 2012 (“*PLP*”)
- *The New 49’ers, Inc., et al. v. Calif. Dept. of Fish & Game, et al.*, Case No. SCCVCV1200482, Siskiyou County, filed April 13, 2012 (“*New 49’ers*”);
- *Walker v. Kamala Harris, et al.*, Case No. 34-2013-80001439, Sacramento County, filed March 14, 2013 (“*Walker*”);
- *Foley v. Calif. Dept. of Fish & Wildlife, et al.*, Case No. SCCVCV1300804, Siskiyou County, filed July 1, 2013 (“*Foley*”); and
- *Eimer, et al. v. Calif. Dept. of Fish & Wildlife, et al.*, Case No. CIVDS1509427, San Bernardino County, filed July 6, 2015 (“*Eimer*”)

Motion:        **Writ of Mandate/MSJ (Eimer)**

Movant:        Plaintiffs The New 49’ers, Inc., et al. / Eimer

Respondent:    Defendants California Dept. of Fish & Game, et al.

### **Procedural Issues**

In light of this Court’s MSA/MSJ rulings, the California Supreme Court’s grant of review in the *Rinehart* case, and the recent amendments to F & G Code section 5653 (SB 637), the remaining CEQA and APA issues should not be adjudicated in this litigation until the Supreme Court issues its ruling. Indeed, the issue that this Court ruled on – i.e., whether Sections 5653 and 5653.1, and the 2012 regulations are federally preempted – is the very issue that is now before the California Supreme Court.

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Although oral argument has not yet been scheduled, the case has been fully briefed according to the most recent information. Most notably, the United States Department of Justice has filed an amicus brief on behalf of the United States Departments of Agriculture and Interior, as well as the Bureau of Land Management and the Forest Service, wherein the United States essentially argues that federal mining laws and regulations do not preempt Sections 5653 and 5653.1, and the 2012 regulations.

While the briefing in *Rinehart* is not part of the administrative record in this litigation, this Court's MSA/MSJ ruling rested largely on the appellate court's then-published opinion in that case. It is undisputed that the Supreme Court's ruling – whenever it is issued – will have a direct and tremendous impact on the current litigation. If the Supreme Court overturns the appellate court's ruling on the federal preemption issue, then this Court's MSA/MSJ ruling must similarly be vacated – thus changing the current procedural posture of this case. In addition, if the Supreme Court considers the impact – if any – of the recently-enacted amendment to Section 5653 on the federal preemption question, then that examination may also be pertinent to the CEQA and APA issues that remain in this litigation.

In light of these procedural issues, it would be a waste of judicial resources to rule on the CEQA and APA issues. Due to the pendency of the *Rinehart* decision, any further action by this Court would be akin to an advisory opinion. This Court does not issue advisory opinions. If the *Rinehart* decision is upheld by the Supreme Court, then – depending on the holdings in the case – it may be found that the accompanying CEQA and APA issues are moot. However, if the *Rinehart* decision is overturned, Sections 5653 and 5653.1, as well as the 2012 regulations, will essentially be found to be constitutionally valid.

For the foregoing reasons, the Court will stay the current action until the California Supreme Court issues its opinion in *Rinehart*.

CDFW to give notice.