

1 LAW OFFICES OF DAVID YOUNG  
2 David Young, SBN 55341  
3 11845 W. Olympic Boulevard, Suite 1110  
4 Los Angeles, CA 90064  
5 Telephone: (310) 575-0308  
6 Facsimile No.: (310) 575-0311  
7 Email: dyounglaw@verizon.net

8 Attorney for Petitioners/Plaintiffs

**FILED**  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

APR 12 2012

By Charles Johnson Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF SAN BERNADINO

11 PUBLIC LANDS FOR THE PEOPLE, INC. a )  
12 501 C-3 non-profit corporation, GERALD )  
13 HOBBS, WESTERN MINING ALLIANCE, a )  
14 Nevada limited liability corporation, ERIC )  
15 MAKSYMUK, GARY GOLDBERG, STEVE )  
16 TYLER, RON KLIEWER, PATRICK )  
17 KEENE, KEENE ENGINEERING )  
18 COMPANY, INC., a California corporation, )  
19 TERRY STAPP, DELORES STAPP, )  
20 RONALD HANSEN, ERIC RASBOLD, )  
21 WALT WEGNER, and PAUL COAMBS. )

Petitioners/Plaintiffs,

v.

22 CALIFORNIA DEPARTMENT OF FISH & )  
23 GAME, CHARLTON H. BONHAM, Director )  
24 of the California Department of Fish and )  
25 Game; and DOES 1-20, inclusive. )

26 Respondents/Defendants

CASE NO. CIVDS1203849  
**PETITION FOR WRIT OF MANDATE  
AND COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF.**  
[Code Civ. Proc. §§ 1085 and 1094.5; Pub. Res.  
Code § 21000, *et seq.* (California Environmental  
Quality Act); Administrative Procedures Act  
Gov. Code §§11340, *et seq.*; Civ. Proc. § 1060;  
Federal and State Endangered Species Acts, 16  
U.S.C. § 1531, *et seq.* and CF&GC § 2025 *et  
seq.*; Federal Preemption; 16 U.S.C. §481; 43  
U.S.C. § 661; State and Federal Constitutions;  
Damages]

**Unlimited Civil Case**

1 Petitioners/Plaintiffs Public Lands for the People, Inc., Gerald Hobbs, Western Mining  
2 Alliance, Craig Lindsay, Eric Maksymyk, Gary Goldberg, Steve Tyler, Ron Kliewer, Patrick  
3 Keene, Keene Engineering Company, Inc., Terry Stapp, Delores Stapp, Ben Kimble, Ronald  
4 Hansen, Eric Rasbold, Walt Wegner, and Paul Coombs allege as follows:

### 5 INTRODUCTION

6 1. There is presently pending in this Court before the Hon. Donald R. Alvarez an  
7 action brought by fifteen (15) of the above-listed Petitioners/Plaintiffs challenging the complete  
8 prohibition of suction dredge mining in the rivers, streams, and waterways of the State of  
9 California, pursuant to Senate Bill 670 (“SB 670”) and Assembly Bill 120 (“AB 120”), both as  
10 recently codified in California Fish and Game Code (“CF&GC”) § 5653.1.

11 2. On or about August 6, 2009, the California State Senate passed and Governor  
12 Arnold Schwarzenegger signed Senate Bill 670 into law. (California Fish and Game Code  
13 §5653.1)

14 3. SB 670 prohibits vacuum and suction dredge mining, in the rivers, streams, and  
15 waterways of California, including waterways located on federal land. Pursuant to SB 670, the  
16 California Department of Fish and Game (“DF&G”) is prohibited from issuing suction dredge  
17 permits to miners until the Director of the DF&G certifies to the Secretary of State that: 1) The  
18 DF&G has completed the environmental review of its existing vacuum or suction dredging  
19 regulations as ordered by the Court in *Karuk Tribe of California et al. v. California Department*  
20 *of Fish and Game et al.*, Alameda County Superior Court Case No. RG 05211597 (The Court in  
21 the *Karuk Tribe* Case [Judge Bonnie Sabraw] did not close vacuum and suction dredge mining,  
22 or permitting pending the environmental review.); 2) DF&G has transmitted for filing with the  
23 Secretary of State, a certified copy of new regulations as necessary; and 3) the new regulations  
24 are operative.

25 4. On July 26, 2011 Governor Edmund G. Brown signed into effect AB 120, which  
26 amended newly enacted Fish and Game Code § 5653.1, imposing further stringent limitations on  
27 suction dredge mining in the waterways of the state of California. AB 120 extends the  
28 prohibition on suction dredge mining until June 30, 2016. In addition, AB 120 requires that “any

1 new regulations fully mitigate all identified significant environmental impacts,” which the  
2 DF&G has stated is impossible for the Department to comply with; and further requires that “a  
3 fee structure is in place that will fully recover all costs to the Department related to the  
4 administration of the program.” This will require further legislative approval and enactment of  
5 the new fee structure, since DF&G cannot set or enact fees. The Governor will also have to  
6 approve the new fee structure, which is subject to his veto. SB 670, as amended by AB 120, is  
7 now set forth in the newly enacted California Fish and Game Code § 5653.1.

8 5. Despite the fact that no permits under California law can presently be issued prior  
9 to July 1, 2016, DF&G has undertaken to conduct a suction dredge permit program, wherein as  
10 of March 16, 2012, they have adopted newly amended suction dredging regulations pursuant to  
11 CF&GC § 5653, *et seq.*, and the California Environmental Quality Act (“CEQA”), Pub. Res.  
12 Code § 21000, *et seq.*, and on March 7, 2012 previously issued a Final Subsequent  
13 Environmental Impact Report (“FSEIR”).

14 6. On February 17, 2012, DF&G posted for public comments its revised “proposed  
15 regulations governing suction dredge mining in California under the Fish and Game Code.” The  
16 revised regulations contained numerous radical changes from the initially proposed regulations.  
17 Despite the numerous and substantial radical changes made in the revised regulations, the  
18 comment period ended Monday, March 5, 2012. This truncated comment period violated the  
19 Administrative Procedures Act, Gov. Code §§ 11346.2, 11346.4, 11346.8.

20 7. In addition, DF&G had not at the time it posted its radically revised regulations,  
21 issued its FSEIR. It had also not issued its Final Statement of Reasons, or its Findings of Fact,  
22 which were not issued until March 20, 2012. Since the FSEIR was not issued until March 7,  
23 2012, without any opportunity provided for a public comment period on the document, this  
24 improperly segregated environmental review from program approval. This made it impossible to  
25 have meaningful and informed comments by the public on the proposed regulations. Without  
26 such meaningful and informed comments by the public, DF&G was unable to promulgate final  
27 regulations regarding suction dredge mining. Any such regulations adopted by DF&G are  
28 therefore null, void, and contrary to law. In addition, since DF&G did not issue its FSEIR until

1 March 7, 2012, only two days after all comments were due on the radically revised proposed  
2 regulations, there is no way that DF&G could have considered the comments on the revised  
3 proposed regulations, as it may have impacted the FSEIR. Nor is there anyway that the FSEIR  
4 could have been reviewed by the public, prior to the deadline for comments on March 5, 2012,  
5 for the radically revised proposed regulations.

6 8. DF&G has submitted the adopted suction dredging regulations, and various other  
7 documents required under the Administrative Procedures Act (“APA”), Gov. Code § 11340, *et*  
8 *seq.* to the Office of Administrative Law (“OAL”) for final approval.

9 9. On March 16, 2012, DF&G filed with the Office of Planning and Research its  
10 Notice of Determination (“NOD”) “for the Suction Dredge Permit Program Subsequent  
11 Environmental Impact Report (SEIR).”

12 10. DF&G admits, however, that it is unable with its newly adopted regulations to  
13 comply with AB 120, and that it will not be able to issue any permits until, at the earliest, July 1,  
14 2016. DF&G states:

15  
16 “One remaining condition involves certification that  
17 updated regulations adopted by DFG fully mitigate all  
18 identified significant impacts associated with authorized  
19 suction dredging. The Final Subsequent Environmental  
20 Impact Report (FSEIR) does identify significant and  
21 unavoidable impacts for purposes of CEQA, which are not  
22 mitigated to less than significant level by the adopted  
23 regulations. [*sic*] As a result, based upon the information  
24 currently available, DFG will not be able to determine that  
25 the final regulations fully mitigate all identified significant  
26 impacts. The reasons are described in the CEQA Findings  
27 of Fact.

28 “The second remaining condition involves DFG  
certification that a fee structure is in place that will fully  
recover all costs to DFG related to the administration of it  
permitting program. The permitting fees DFG collects for  
its suction dredge permitting program are set by statute.  
(See Fish & G. Code, § 5653, subd. (c).) (*sic*) Any changes  
to the fee structure will require action by the California  
Legislature and related approval by the Governor. As of  
this time, DFG is not aware of any proposed legislation to

1 address either the fee structure or any other aspect of the  
2 moratorium.

3 “In short, DFG is currently prohibited by law from  
4 issuing suction dredge permits until either all of the above  
5 requirements are met, or July 1, 2016, whichever comes  
6 first.” [www.dfg.ca.gov/suctiondredge](http://www.dfg.ca.gov/suctiondredge), updated 3/20/2012.

7 11. DF&G has adopted, by its own admission, a set of regulations that under present  
8 California law can not go into effect for over four (4) years. Since these regulations are  
9 completely divorced from any realistic permitting program, they are not only void and invalid,  
10 they are completely hypothetical. They constitute phantom regulations, having no nexus to  
11 reality, especially since there is no realistic way of predicting what the actual circumstances will  
12 be over four (4) years from now, the earliest that suction dredge permitting can presently resume.

13 12. The regulations in-and-of themselves are prohibitory. They deprive prospectors and  
14 miners of the opportunity to economically, and in an environmentally sound manner, search for  
15 precious metals, and to economically extract precious metals from their mining claims. The  
16 regulations prohibit miners from obtaining any economic benefit from their mining claims,  
17 which are property in the highest sense of the term.

18 13. The regulations are prohibitory as above-stated in that they, as an example, and  
19 without limitation:

- 20 a. Limit the number of permits that will be issued by DF&G in any calendar year to  
21 1,500. This is in direct violation of CF&GC §§ 5653(b) and 5653.1 which  
22 mandates the issuance of permits for suction dredge mining when the condition  
23 stated in § 5653.1 have been met, or after June 30, 2016. DF&G recognizes this  
24 when it states:

25 “Although the Fish and Game Code includes a general  
26 prohibition on the use of vacuum or suction dredge  
27 equipment in any river, stream, or lake, the same provision  
28 directs the Department to issue related permits in  
mandatory terms if suction dredging consistent with  
regulations adopted by the Department will not be  
deleterious to fish. (Id., §§ 5653, subs. (a)-(b), 5653.9).”

In addition, the regulations unlawfully deprive literally many thousands of mining  
claim holders, on private and Federal land, of the economic and beneficial use of

1 their property, in violation of both the United States and California Constitutions,  
2 and Federal and State mining laws. Since permits are issued annually, there is no  
3 guarantee that a miner who has a permit in one year will receive a permit the next  
4 year in order to work his mining claim. There is no requirement that any recipient  
5 of one of the 1,500 permits actually be or engage in good faith prospecting and/or  
6 mining. Individuals opposed to any and all suction dredge mining could be the  
7 only ones to whom any of the 1,500 permits are actually issued.

- 8 b. Require permittees to submit to DF&G a “report card” that becomes a public  
9 document setting forth the most intimate details of their mining operations and  
10 mining locations. This is in violation of a miner’s right to privacy and is highly  
11 detrimental, not only for the safety of his operations, but in the unwarranted  
12 disclosure of valuable proprietary information to competitors, claim jumpers,  
13 criminals, and predators.
- 14 c. Impose “a density restriction prohibiting the operation of any vacuum or suction  
15 dredge equipment within 500’ of another operating suction dredge.” Without any  
16 environmental benefits whatsoever, this would prohibit adjoining claimants from  
17 working their claims, and areas of choice, and/or being able to economically  
18 extract precious metals from their claims. This limits economic success in mining  
19 their claims. This also constitutes a safety hazard, in that miners cannot work  
20 together, or assist each other in dangerous situations which often arise underwater  
21 while suction dredging.
- 22 d. The regulations “reduce the permissible hours to operate vacuum or suction  
23 dredge equipment from one half hour before sunrise to sunset, to 10:00 a.m.  
24 through 4:00 p.m.” This severely hinders a mining claim holder in the  
25 economical operation of his mining claim, while there are no similar restrictions  
26 on hours of operations of other water uses such as, high-powered motor boats,  
27 fishermen, day users, and/or rafters. DF&G justifies this restriction in order “to  
28 give fish a time of rest.”

- 1 e. The new regulations, as a practical matter, now limit suction dredging to a four  
2 (4) inch nozzle, or less, where previously, six (6) inch nozzles on all rivers and  
3 streams, and eight (8) inch nozzles on some, were allowed. A four (4) inch  
4 nozzle, in most instances, makes the economic working of a mining claim  
5 infeasible.
- 6 f. The regulations make, as a practical matter, the use of motorized winching  
7 prohibitory, which is a serious safety matter, since large rocks can kill, pin, or  
8 severely injure a miner if the rock cannot be quickly removed, or readily moved  
9 out of harm's way.
- 10 g. The regulations prohibit suction dredge mining within three (3) feet from the edge  
11 of the bank of the stream. Many streams are six (6) feet, or less, in width. This  
12 restriction creates a total prohibition on suction dredge mining. In addition, the  
13 three foot prohibition from the banks makes for an infeasible alternative for huge  
14 numbers of rivers and streams containing gold, for which suction dredging is the  
15 most environmentally friendly means of production.
- 16 h. The regulations have totally closed from suction dredge mining over 600 rivers  
17 and streams in California, most of which have mining claims on them. Other  
18 rivers and streams have only a 1 to 3 month suction dredge season. In addition,  
19 the regulations have set seasons for other rivers and streams, at high elevations,  
20 that make it totally impractical or impossible to engage in suction dredge mining  
21 at any time of year. For instance, class-E rivers are open to suction dredging from  
22 September 1 through January 31. Most of the class-E rivers are at high elevation.  
23 The weather makes suction dredge mining on most of these class-E rivers  
24 prohibitive. A September through January suction dredge season is a practical  
25 impossibility in any case. The reality is that the regulations have closed most of  
26 these rivers from any form of suction dredge mining for the whole year. The  
27 regulations, in far too many cases, constitute an unconstitutional and unlawful  
28 prohibition of mining, and taking of private property.

1 i. Although the regulations deal with disturbance of redds, spawning fish,  
2 amphibian egg masses, or tadpoles, this is totally unnecessary, since suction  
3 dredge miners are already, by regulation, prohibited from engaging in any suction  
4 dredge activities during those reproductive seasons, in order to prevent any  
5 deleterious impact.

6 14. The above-listing of prohibitory regulations is not intended to be exclusive, but are  
7 illustrative of the unlawful burdens placed on suction dredge miners, impacting their ability to  
8 use their property and work their mining claims.

9 15. As to all Federal mining claims, the regulations are preempted by the Constitution  
10 of the United States, and the Federal Mining Laws. As to all mining claims on private property,  
11 the regulations are in violation of both the Constitutions of the United States and the State of  
12 California, and all state laws permitting mining in California.

13 16. In addition, DF&G violated the CEQA process in adopting the regulations and  
14 issuing its FSEIR. Petitioners/Plaintiffs accordingly request that this Court issued a writ of  
15 mandate under the California Code of Civil Procedure sections 1085 and 1094.5 directing  
16 Respondents/Defendants to vacate and set aside their approval of the suction dredge program and  
17 regulations issued thereunder, and their certification of the FSEIR, since  
18 Respondents/Defendants have abused their discretion, and failed to act as required by and in  
19 accordance with law.

20 17. Petitioners/Plaintiffs have exhausted all administrative remedies by submitting  
21 written comments to the Department prior to the program's approval and appearing at the public  
22 hearings on the program to request compliance with CEQA and the completion of full and  
23 adequate environmental review. All issues raised in this petition were raised before  
24 Defendants/Respondents by Petitioners/Plaintiffs, other members of the public or public agencies  
25 prior to approval of the program.

26 18. Petitioners/Plaintiffs have complied with Public Resources Code section 21167.5 by  
27 prior service of a notice upon the Department indicating its intention to file this Petition. Proof of  
28 Service of this notification, with the notification, is attached as Exhibit A.



1 19. Petitioners/Plaintiffs will comply with Public Resources Code §21167.7 and Code  
2 of Civil Procedure §388, in that they will serve on the Attorney General a copy of this Petition  
3 and Complaint within ten (10) days after the filing of this action.

4 20. The Petitioners have elected to prepare the record of proceedings in the above-  
5 captioned proceeding or to pursue an alternative method of record preparation pursuant to Public  
6 Resources Code Section 21167.7(b) (2). Notification of the Election to Prepare the  
7 Administrative Record is attached as Exhibit B.

8 21. This Petition is timely filed in accordance with Public Resources Code section  
9 21167 and CEQA Guidelines section 15112.

10 22. Respondents/Defendants have abused their discretion and failed to act as required  
11 by law.

12 **PARTIES**

13 23. Plaintiff Public Lands for the People, Inc. is a California 501 c-3 non-profit  
14 corporation (“PLP”). PLP is a nationwide organization of miners, who are mineral estate  
15 grantees, Federal mining claim owners, and prospectors. With its constituent members, PLP  
16 constitutes approximately 40,000 small to medium sized miners and prospectors. Its founder and  
17 President is Gerald Hobbs of San Bernardino County, San Bernardino, California, from where he  
18 leads PLP. PLP, has among its membership, miners and prospectors with Federal mining claims  
19 and estates in National Forests in California, Federal lands administered by the Bureau of Land  
20 Management in California, National Parks in California, and other Federal lands in California,  
21 and throughout the United States. Large numbers of the membership of PLP received yearly  
22 permits from DF&G to engage in vacuum or suction dredge mining on Federal lands in  
23 California, and did so engage in such mining in California. These PLP members are directly  
24 affected in their mining, prospecting and associated operations by the passage of SB 670 that  
25 prohibits the issuance of permits for vacuum and suction dredge mining, the passage of AB 120,  
26 and the cancellation by DF&G of permits already issued, for vacuum and suction dredge mining  
27 in California, as well as the adoption by DF&G of the new suction dredge mining regulations  
28 and FSEIR. PLP, and its members, are directly and immediately adversely affected; both

1 financially and operationally, by the new suction dredge mining regulations and the FSEIR  
2 adopted by DF&G.

3 24. Plaintiff Gerald Hobbs owns Federal mining claims on Federal land in California.  
4 Mr. Hobbs has mining claims and mineral estates in three (3) National Forests, all of which are  
5 in California. They are the Angeles National Forest, Tahoe National Forest, and Six Rivers  
6 National Forest. Mr. Hobbs has been a miner and prospector for over thirty years. Mr. Hobbs  
7 had permits from DF&G to engage in vacuum and suction dredge mining on his Federal mining  
8 claims on Federal land in California. Mr. Hobbs has paid DF&G for these permits. These  
9 permits have been cancelled by DF&G pursuant to SB 670, as amended by AB 120. Mr. Hobbs  
10 has spent substantial sums in order to engage in suction dredge mining on his Federal mining  
11 claims on Federal land in California. Mr. Hobbs earned income from suction dredge mining in  
12 California which was necessary to maintain his economic viability. Mr. Hobbs is directly and  
13 substantially harmed by the passage of SB 670 and AB 120, and the adoption by DF&G of the  
14 new suction dredge mining regulations and FSEIR. Mr. Hobbs is also the President and founder  
15 of Public Lands for the People, Inc., a California 501 c-3 non-profit corporation that advocates  
16 for miners and prospectors. Mr. Hobbs is a resident of San Bernardino, California.

17 25. Mr. Hobbs also runs a gold prospecting store in San Bernardino, California, which  
18 has been in existence since August 1, 1978. The store sold suction dredges and dredge  
19 accessories to miners which represented about 60% of the store's income. The passage of SB  
20 670 was a devastating economic blow to the store's business income. The prior owners went out  
21 of business because of the passage of SB 670, and Mr. Hobbs took over the store in March, 2010,  
22 with the expectation of suction dredging again being permitted by the end of 2011. SB 670 and  
23 AB 120, as well as the adoption of the new suction dredge mining regulations and FSEIR by  
24 DF&G, have placed in question the economic viability of the store's business, and the ability of  
25 the store to remain open under Mr. Hobbs.

26 26. Western Mining Alliance ("WMA") is a limited liability corporation. WMA is a  
27 mining advocacy group that represents the rights of miners to conduct legal mining on Federal  
28 Mining Claims throughout the western states. Many members of the WMA are residents of

1 California, where the new DF&G suction dredge mining regulations closed many rivers and  
2 streams to mining that were previously open, and in many other respects adversely affect  
3 WMA's members' ability to mine and take advantage of their Federal mineral estates.

4 27. Eric Maksymyk is a resident of Florida and a miner with mining claims on Federal  
5 lands in Sierra County and Yuba County California on which he pays property taxes. Mr.  
6 Maksymyk is a disabled veteran with prior service in Iraq. Mr. Maksymyk has paid property  
7 taxes on claims that under the new regulations are not open to suction dredging due to the CDFG  
8 adopted regulations. This causes economic harm in Mr. Maksymyk's ability to create income,  
9 and additionally reduces the value of his mining claims by eliminating the only economically  
10 viable and environmentally sound method of recovering gold.

11 28. Gary Goldberg is a miner and prospector, with mining claims on Federal lands in  
12 California, who resides in San Bernardino County. Mr. Goldberg is a disabled military veteran.  
13 He has engaged in suction dredge mining in order to supplement his V.A. disability pension,  
14 small retirement benefit from private industry, and support his family. Mr. Goldberg is currently  
15 self-employed, but in the current economic situation, he earns only about \$12,000.00 per year.  
16 Because of the passage of SB 670 and AB 120, and the prohibition on suction dredge mining, he  
17 is suffering severe economic harm. The new regulations on suction dredge mining adopted by  
18 DF&G, and the FSEIR, will only add to that economic harm in that they will prevent him from  
19 engaging in suction dredge mining on his Federal mining claims.

20 29. Steve Tyler is a California resident and miner holding mining claims on private land  
21 in California. He is adversely affected by the new regulations on suction dredge mining  
22 promulgated by DF&G and the FSEIR. He will not be able to make economic and viable use of  
23 his mining claims on private property.

24 30. Ron Kliewer has engaged in vacuum and suction dredge mining for approximately  
25 twenty years. Mr. Kliewer has engaged in vacuum and suction dredge mining in order to  
26 supplement his income. Mr. Kliewer had permits from DF&G to engage in vacuum and suction  
27 dredge mining in California. Mr. Kliewer had paid DF&G for these permits. These permits  
28 have been cancelled by DF&G pursuant to SB 670, as amended by AB 120. Mr. Kliewer has

1 spent substantial sums in order to engage in suction dredge mining. Mr. Kliewer is directly and  
2 substantially harmed by the passage of SB 670 and AB 120 because he can no longer engage in  
3 suction dredge mining on his Federal mining claims on Federal land in California. Mr. Kliewer  
4 was laid off from his job on July 23, 2010, and can no longer engage in suction dredge mining to  
5 supplement his income. The new regulations on suction dredge mining adopted by DF&G, and  
6 the FSEIR, will only add to that economic harm in that they will prevent him from engaging in  
7 suction dredge mining on his Federal claims. Mr. Kliewer is a resident of San Bernardino  
8 County, California.

9 31. Patrick Keene is part of a third generation family-owned business that has been  
10 serving the mining community in California, the United States, and throughout the world for the  
11 past 60 years. Mr. Keene is Secretary/Treasurer of Keene Engineering Co., Inc. (“Keene  
12 Engineering”) of Chatsworth, California in Los Angeles County. Keene Engineering is the  
13 largest supplier of small scale dredging and mining equipment in the world. The Company, as  
14 well as many other manufacturers, sells to small businesses and dealers who provide equipment  
15 to prospectors and miners throughout California and the United States. Many of the people who  
16 operate suction dredges come to visit California to dredge for gold and work their mining claims.  
17 While doing so, they support local businesses in the process of filling their other needs. Mr.  
18 Keene has been working for Keene Engineering for over 30 years. Mr. Keene and Keene  
19 Engineering are directly and substantially financially harmed by the passage of SB 670 and AB  
20 120. The new regulations on suction dredge mining adopted by DF&G, and the FSEIR, will  
21 only add to that economic harm in that they will directly affect the sales of equipment by Keene  
22 Engineering and suction dredge prospectors and miners.

23 32. The economic impact of the prohibition of suction dredge mining in California is  
24 devastating to Keene Engineering. Since the majority of Keene Engineering’s business is in  
25 California, it seriously calls into question whether Keene Engineering, and many other small  
26 businesses who also sell prospecting and mining equipment or supplies, can economically  
27 survive. Much of Keene Engineering’s business relied on California suction dredge miners. The  
28 losses involved with Keene Engineering’s business is in the many millions of dollars.

1           33.           Since the introduction of SB 670, suction dredge sales by Keene Engineering and  
2 its California dealers have stopped. The fear of this activity becoming illegal, and it being a  
3 misdemeanor, carrying up to \$1,000.00 in fines, and/or six months in jail, has been devastating to  
4 Keene Engineering's business, as well as its dealers. The passage of AB 120 only exacerbates  
5 the harms caused by SB 670. The new regulations on suction dredge mining adopted by DF&G,  
6 and the FSEIR, will only add to that economic harm in that they will prevent prospectors and  
7 miners from engaging in suction dredge mining and prospecting, and directly affect the sales of  
8 equipment by Keene Engineering.

9           34.           Most of Keene Engineering's suppliers, who provided it with components to build  
10 suction dredges, are profoundly impacted as well. These suppliers also have had a substantial  
11 drop in their business, and some have gone out of business. The passage of SB 670 has created a  
12 ripple effect on many other industries both in and out of the State of California adversely  
13 affecting interstate commerce. SB 670's prohibition on vacuum and suction dredge mining has  
14 cost, or will cost, California economic damage in an amount of approximately 60-65 million  
15 dollars a year, and possibly much more. The passage of AB 120 only exacerbates the harms  
16 caused by SB 670. The new regulations on suction dredge mining adopted by DF&G, and the  
17 FSEIR, will only add to that economic harm in that they will prevent the sale of suction dredge  
18 equipment to prospectors and miners, all to their economic loss, and direct and immediate  
19 financial harm.

20           35.           Mr. Keene is also a small scale independent miner who owns mining claims and  
21 estates throughout California. Mr. Keene's mining claims are on Federal land in National  
22 Forests in California and on Bureau of Land Management land in California. Mr. Keene engages  
23 in vacuum and suction dredge mining in California, and had permits from DF&G allowing him  
24 to engage in such mining. Mr. Keene has paid DF&G for these permits. Mr. Keene has spent  
25 substantial sums in order to engage in suction dredge mining. By not being able to engage in  
26 suction dredge mining on Federal land in California, Mr. Keene, in his individual capacity, is  
27 directly and substantially financially harmed by the passage of SB 670 and AB 120, since his  
28 economic investments in his mining claims and in suction dredge mining equipment are now

1 near worthless. The new regulations on suction dredge mining and the FSEIR, will only add to  
2 that economic harm in that they will prevent him from engaging in suction dredge mining on his  
3 Federal mining claims. Mr. Keene is a resident of Los Angeles County.

4 36. Terry Stapp, a resident of San Bernardino County, is a 60% disabled Vietnam  
5 veteran who retired in 1991 after 25 years in the United States Air Force. Mr. Stapp is a suction  
6 dredge miner and has so mined on Federal land in the Downieville area in Sierra County,  
7 California for over 30 years. His mining claims and estates in Sierra Country are worthless  
8 without the ability to engage in suction dredge mining. The economic loss to Mr. Stapp and his  
9 wife, Delores (Dee), is devastating. Mr. Stapp supplemented his income by suction dredge  
10 mining while he was on active duty in the United States Air Force. Since Mr. Stapp retired from  
11 the Air Force, suction dredge mining in California is his sole source of income, other than his  
12 military retirement pension. Mr. Stapp is directly and substantially financially harmed by the  
13 passage of SB 670 and AB 120. The new regulations on suction dredge mining adopted by  
14 DF&G, and the FSEIR will only add to that economic harm in that they will prevent him from  
15 engaging in suction dredge mining on his Federal mining claims.

16 37. Delores (Dee) Stapp, a resident of San Bernardino County, is the wife of Terry  
17 Stapp. Mrs. Stapp has mining claims and estates on Federal land in California. Mrs. Stapp  
18 engages in suction dredge mining on her claims in California, and had permits from DF&G to  
19 engage in such mining. Mrs. Stapp had paid DF&G for these permits. Mrs. Stapp had spent  
20 substantial sums in order to engage in suction dredge mining. Mrs. Stapp supplements her and  
21 her husband's income through suction dredge mining in California. Mrs. Stapp is directly and  
22 substantially financially harmed by the passage of SB 670 and AB 120. The new regulations on  
23 suction dredge mining adopted by DF&G, and the FSEIR, will only add to that economic harm  
24 in that they will prevent her from engaging in suction dredge mining on her Federal mining  
25 claims.

26 38. Ronald Hansen has engaged in vacuum and suction dredge mining since 1980. Mr.  
27 Hansen had permits from DF&G which enabled him to engage in vacuum and suction dredge  
28 mining on Federal mining claims on Federal land in California. Mr. Hansen had paid DF&G for

1 these permits. Mr. Hansen had previously earned money because of his involvement with  
2 suction dredge mining operations in California. He wishes to engage in suction dredge mining  
3 on Federal lands in the immediate future as a means of supplementing his income in these hard  
4 and difficult economic times. Mr. Hansen is directly and substantially harmed by the passage of  
5 SB 670 and AB 120 because he can no longer engage in suction dredge mining on Federal land  
6 in California. The new regulations on suction dredge mining adopted by DF&G, and the FSEIR,  
7 will only add to that economic harm in that they will prevent him from engaging in suction  
8 dredge mining on his Federal mining claims. Mr. Hansen is a resident of San Bernardino  
9 County, California.

10 39. Eric Rasbold owns approximately 180 acres of Federal mining claims, located on  
11 Federal land along the Steeley Fork of the Cosumnes River in El Dorado County, California. He  
12 has engaged in suction dredge mining for over six years, and also operated a land lease for  
13 suction dredge miners who would come and work the land for a fee. He has spent approximately  
14 \$10,000 on machinery directly related to suction dredge mining operations. Mr. Rasbold is  
15 directly and substantially harmed by the passage of SB 670 and AB 120 because he can no  
16 longer engage in suction dredge mining on his Federal mining claims on Federal land. The new  
17 regulations on suction dredge mining adopted by DF&G, and the FSEIR, will only add to that  
18 economic harm in that they will prevent him from engaging in suction dredge mining on his  
19 Federal mining claims. Mr. Rasbold is a resident of El Dorado County, California.

20 40. Walt Wegner owns approximately 60 acres of Federal mining claims, located on  
21 Federal land in California. He has engaged in suction dredge mining for twelve years. He has  
22 spent approximately \$10,000 on equipment directly related to suction dredge mining operations.  
23 Mr. Wegner has supplemented his and his family's income by being able to engage in suction  
24 dredge mining. Mr. Wegner is directly and substantially harmed by the passage of SB 670 and  
25 the passage of AB 120 because he can no longer engage in suction dredge mining on his Federal  
26 mining claims on Federal land. The new regulations on suction dredge mining adopted by  
27 DF&G, and the FSEIR, will only add to that economic harm in that they will prevent him from  
28

1 engaging in suction dredge mining on his Federal mining claims. Mr. Wegner is a resident of  
2 Los Angeles County, California.

3 41. Paul Coombs is a resident of California and a prospector who is adversely affected  
4 by the new suction dredge regulations and the FSEIR, promulgated by DF&G. Mr. Coombs had  
5 used suction dredges in order to engage in his prospecting activities on Federal lands, and the  
6 new regulations adopted by DF&G will severely injure him in his ability to do so.

7 42. Since the passage of SB 670, and the passage of AB 120, many mining claims and  
8 mineral estates have lost considerable value because their claim owners cannot mine them  
9 effectively, and the counties where they are situated will be compelled to reassess the value of  
10 their claims. This will create a large loss to County and State tax basis, and will ultimately  
11 curtail governmental services. The new regulations on suction dredge mining adopted by  
12 DF&G, and the FSEIR, will only add to these losses.

13 43. The California DF&G is a department of the Executive Branch of the State of  
14 California, and among its other duties, is responsible for the issuing of permits for vacuum and  
15 suction dredge mining in the rivers, streams, lakes, and waterways within California, and has  
16 supervision over, and enforcement powers for, SB 670 and AB 120 and the new regulation on  
17 suction dredge mining adopted by DF&G and FEIS.

18 44. Respondent/Defendant Charlton H. Bonham is sued in his official capacity as the  
19 Director of the California DF&G. Respondent/Defendant Bonham has supervisory powers over  
20 the California DF&G and its implementation and enforcement of SB 670 and AB 120 and the  
21 new regulation on suction dredge mining adopted by DF&G and FEIS.

22 45. DOE Petitioners/Defendants 1 through 20 are unknown to Petitioners/Plaintiffs at  
23 this time, but each is to be identified in this case as a resident of the State of California and acting  
24 in all particulars material to this case in his or her official capacity and under color of state law.  
25 At All times herein, all named Respondents/Defendants and Respondents/Defendants Does 1  
26 through 20, inclusive, and each of them, were the agents and employees of each of the remaining  
27 Respondents/Defendants and were at all times acting within the purpose and scope of said  
28 agency and employment, and each Respondents/Defendant ratified and approved the acts of its



1 agent and of the other Respondents/Defendants. Petitioners/Plaintiffs are informed and believe,  
2 and thereon allege, that each and every Respondent/Defendant, including Does 1-20, conspired  
3 with each other to commit the wrongful acts set forth in this Complaint to the harm and  
4 detriment of Petitioners/Plaintiffs.

5 **JURISDICTION AND VENUE**

6 46. This Court has jurisdiction over this action pursuant to the California Constitution,  
7 Article VI, Section 10; and CCP §410.10. In addition, this Court has further jurisdiction pursuant  
8 to sections 1085, 1094.5, 187, and 526 of the California Code of Civil Procedure, and sections  
9 21168 and 21168.5 of the Public Resources Code.

10 47. Venue is proper in this Court pursuant to Code of Civil Procedure §§ 393 and 395  
11 and because many of the Petitioners/Plaintiffs and Respondents/Defendants reside in or are  
12 situated in San Bernardino County. San Bernardino County has the highest number of Federal  
13 mining claims in the State of California with 11,333 total Federal Mining Claims and 6,235  
14 placer claims within that total number. This represents the highest density of mining claims in  
15 the State. (Source: U.S. Bureau of Land Management Claims Database, LR2000, as of  
16 September 2011.)

17 **FIRST CAUSE OF ACTION**

18 **AGAINST ALL DEFENDANTS**

19 **(Violation of Cal.Pub.Res.Code § 21169)**

20 48. Petitioners/Plaintiffs incorporate by reference the allegations set forth in the  
21 previous paragraphs 1 through 47.

22 49. DF&G has been regulating suction dredge mining pursuant to CF&GC § 5653, *et*  
23 *seq.* since 1961 as an ongoing project. CEQA, Pub.Res.Code § 21000 *et seq.* did not become  
24 effective until 1970. Pub.Res.Code § 21169 and 14 Cal Code Regs § 15261 exempts from the  
25 operations of CEQA any project (Pub.Res.Code § 21065(c)) carried out or approved before the  
26 effective date of CEQA. The regulation of suction dredge mining and the issuance of permits of  
27 suction dredge mining under CF&GC § 5653, *et seq.* is an ongoing project, effective before the  
28 implementation of CEQA in 1970.

1 50. DF&G adopted new regulations governing suction dredge mining pursuant to  
2 CEQA, and issued an FSEIR pursuant to CEQA. The regulations adopted by DF&G are exempt  
3 from any requirements of CEQA, pursuant to Pub.Res.Code § 21169. Therefore the new  
4 regulations adopted by DF&G regarding suction dredge mining are fatally flawed, null and void,  
5 and without effect. The FSEIR was a totally unnecessary and unlawful expenditure of taxpayer's  
6 money, having no affect whatsoever upon the newly adopted suction dredge mining regulations,  
7 which also are of no effect *ab initio*.

8 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth below:

9 **SECOND CAUSE OF ACTION**  
10 **AGAINST ALL DEFENDANTS**

11 **(Violation of Administrative Procedures Act, Gov. Code §§ 11346.2, 11346.4, 11346.8)**

12 51. Petitioners/Plaintiffs incorporate by reference the allegations set forth in the  
13 previous paragraphs 1 through 50.

14 52. On February 17, 2012, DF&G posted for public comments its revised "proposed  
15 regulations governing suction dredge mining in California under the Fish and Game Code." The  
16 revised regulations contained numerous radical changes from the initially proposed regulations.  
17 Despite the numerous and substantial radical changes made in the revised regulations, the  
18 comment period ended Monday, March 5, 2012. This seventeen (17) day truncated comment  
19 period violated the Administrative Procedures Act, Gov.Code §§ 11346.2, 11346.4, and 11346.8.  
20 The radically revised regulations were in no way sufficiently related to the initially proposed  
21 regulations, and therefore required a full forty-five (45) day comment period.

22 53. Among other matters, the radically revised regulations reduced the number of  
23 permits allowed for suction dredge mining from 4,000 to 1,500. That in itself is a major,  
24 substantial, and material change in the initially proposed regulations. In addition to the drastic  
25 reduction in annual permits, there were, for example, changes that included the effective  
26 confiscation of 2009 permit fees; the new recordkeeping and reporting requirements for  
27 permittees; new requirements for substantial containment systems; two-week quarantine periods  
28 when moving equipment between different water bodies; a five hundred (500) foot limitation on

1 the proximity of multiple dredge operations; and an approximately fifty percent (50%) reduction  
2 in each day's allowable time for operation. DF&G, by issuing these radically new requirements  
3 and regulations with a truncated comment period, all in violation of the Administrative  
4 Procedures Act, as set forth above adopted an "underground regulation" (Cal.Code Regs., tit. 1, §  
5 250) *Modesto City Schools v. Education Audits Appeal Panel* (2004), 123 Cal.App.4th 1365,  
6 1381, 20 Cal.Rptr.3d 831, *Naturist Action Committee, et al., v. California State Department of*  
7 *Parks & Recreation, et al.* (2009), 175 Cal.App.4<sup>th</sup> 1244, 1250, 96 Cal.Rptr.3d 620. This makes  
8 all of the suction dredge mining regulations adopted by DF&G null and void and unenforceable.

9 54. In addition, DF&G had not at the time it posted its radically revised regulations,  
10 issued its FSEIR, its Final Statement of Reasons, or its Findings of Fact. This made it impossible  
11 to have meaningful and informed comments by the public on the proposed regulations. Without  
12 such meaningful and informed comments by the public, DF&G was unable to make an informed  
13 decision necessary to promulgate final regulations regarding suction dredge mining, and issue an  
14 FSEIR. Any such regulations adopted by DF&G are therefore null, void, and contrary to law. In  
15 addition, DF&G issued its FSEIR on March 7, 2012. This is only two (2) days after all  
16 comments were due on the radically revised proposed regulations. There is no way that DF&G  
17 could have considered the comments on the revised proposed regulations as it may have  
18 impacted the FSEIR, nor is there anyway that the FSEIR could have been reviewed by the public  
19 prior to the deadline for comments on March 5, 2012, for the radically revised proposed  
20 regulations.

21 55. The new suction dredge mining regulations adopted by DF&G are also in violation  
22 of Gov.Code § 11346.2(b)(1)(2)&(3) in that among other matters, they failed to provide a  
23 statement of the specific purpose of each adoption, amendment, or repeal for each regulation; an  
24 identification of each technical, theoretical, and empirical study, report, or similar document  
25 relied upon for each regulation; and a description of the reasonable alternatives to the regulation  
26 and DF&G's reasons for rejecting those alternatives. Further, DF&G through its regulations,  
27 mandates the use of specific technologies, equipment, actions, or procedures without providing a  
28

1 statement of the reasons why DF&G believes these mandates or prescriptive standards are  
2 required.

3 56. DF&G arbitrarily closes entire portions of counties above certain elevations to  
4 protect speculative Mountain Yellow Legged Frog habitat, without providing the specific  
5 population information to justify the existence of the frogs, or the necessity of any specific, or  
6 wide-ranging, habitat. Through the adoption of the regulations, DF&G, in violation of Gov.Code  
7 § 11346.2(b)(1)(2)&(3), is mandating the use of certain technologies, or the forbearance of the  
8 use of those technologies, without considering alternative performance-based technologies and  
9 regulations that may have been selected. Under the guise of protecting a specific habitat, DF&G  
10 has closed vast areas to suction dredge mining that are outside of any possible protected habitat,  
11 all in violation of Gov.Code § 11346.2(b)(1)(2)&(3).

12 WHEREFORE, Petitioners/Plaintiffs pray for relief as hereinafter set forth below:

13 **THIRD CAUSE OF ACTION**

14 **AGAINST ALL DEFENDANTS**

15 **(Violation of CEQA, Pub.Res.Code § 21000, *et seq.*;**

16 **And CEQA Guidelines 14 CCR § 15000 *et seq.*)**

17 **A. Choice of Improper Baseline**

18 57. Petitioners/Plaintiffs incorporate by reference the allegations set forth in the  
19 previous paragraphs 1 through 56.

20 58. The FSEIR must include a description of existing physical and environmental  
21 conditions in the project vicinity. 14 Cal Code Reg. § 15152(c). This baseline determines the  
22 environmental setting by which DF&G determines whether an impact is significant.

23 59. Inexplicably, DF&G chose as its baseline a “No Dredging” condition, imposed by  
24 SB 670, rather than the realistic and active suction dredging program administered by the  
25 department, pursuant to the 1994 suction dredging regulations. DF&G thus analyzed suction  
26 dredging activity against a backdrop where that activity does not occur, rather than measuring  
27 suction dredging impacts against a realistic program where suction dredging takes place. DF&G  
28 has chosen as a baseline a condition that has not existed in California since prior to 1847.

1           60.           DF&G ignores over 50 years of continuous suction dredge mining, without one (1)  
2 case of reported harm to fish. Under any circumstances, suction dredge mining will resume. The  
3 choice of a “no-dredge baseline” represents a “Prejudicial Abuse of Discretionary Authority,” as  
4 defined by Public Resources Code § 21167, and causes harm to Petitioners/Plaintiffs by  
5 preventing the economic use and purpose of their Federal and private mining claims.

6           61.           This distorts the reality of the newly adopted regulations where it rates the access to  
7 placer gold deposits resulting from the new regulations as “beneficial” relative to the baseline  
8 because it “...would lift an existing ban on suction dredge and would increase the potential  
9 access to placer gold deposits using this mining method (DSEIR, p. 4.10-9, lines 10-13).”

10           62.           Had the “1994 regulations” baseline been used, the proposed regulations would  
11 severely decrease access and thus would have had a negative effect. An entirely different  
12 analysis and outcome would have resulted using a “1994 regulations” baseline.

13           63.           The selection of a “No Dredging” baseline for purposes of the CEQA analysis is an  
14 abuse of a discretion to which the DF&G is not entitled in this matter. (See: *Communities for a*  
15 *Better Environment vs. South Coast Air Quality Management District* (2010) 48 Cal 4th 310,  
16 328; “A temporary lull or spike in operations that happens to occur at the time environmental  
17 review for a new project begins [in the FSEIR’s case, the new regulations] should not depress or  
18 elevate the baseline.”)

19           64.           The selection of such a grossly improper baseline makes the FSEIR and the new  
20 regulations regarding suction dredging adopted by DF&G fatally flawed and null and void *ab*  
21 *initio* in that

- 22           a) DF&G has violated CEQA through the use of an environmental baseline that  
23           was hypothetical and represented a condition that had not existed in California  
24           since prior to 1947.
- 25           b) The choice of this baseline represents “Prejudicial Abuse of Discretionary  
26           Authority” as defined by Public Resource Code §21167 and causes harm to the  
27           Petitioners/Plaintiffs by preventing the best economic use and intended purpose  
28           of owning Federal mining claims.

- 1 c) DF&G have violated CEQA by not considering the whole record in the  
2 establishment of a baseline and failed to appropriately justify their decision  
3 upon challenge by the plaintiffs in the public comment process.
- 4 d) The FSEIR and the new suction dredge mining regulations adopted by DF&G,  
5 are a sudden change in course, brought about by litigation, not facts on the  
6 ground. While DF&G in their Initial Statement of Reasons found that the use  
7 of a “no-dredging baseline” would unfairly influence findings, they never-the-  
8 less adopted this baseline for the evaluation. The “no-dredging baseline” is  
9 totally hypothetical, totally improper, and a violation of CEQA. *Sunnyvale*  
10 *West v. City of Sunnyvale* (Sixth Dist, 2010) 190 Cal.App.4th 2351, 119 Cal.  
11 Cal.Rptr.3d 481

12 **B. LACK OF FEASIBILITY OF PREFERRED ALTERNATIVE**

13 65. Public Resources Code §21001(e) states:

14 “[It is the policy of the state to creat]e and maintain  
15 conditions under which man and nature can exist in  
16 productive harmony to fulfill the social and  
17 economic requirements of present and future  
generations.”

18 66. Pubic Resources Code §21081 states:

19 “...no public agency shall approve or carry out a  
20 project...(a) [when T]he public agency makes a one  
21 or more of the following findings with respect to  
22 each significant effect: ... (3) Specific economic,  
23 legal, social, technological, or other considerations,  
24 including considerations for the provision of  
25 employment opportunities for highly trained  
26 workers, make infeasible the mitigation measures or  
27 alternatives identified in the environmental impact  
28 report.” (sic)

67. Pubic Resources Code §21061.1 defines feasibility as:

“...capable of being accomplished in a successful  
manner within a reasonable period of time, taking  
into account economic, environmental, social, and  
technological factors.”

1  
2 68. The preferred alternative of DF&G, and the newly adopted suction dredge mining  
3 regulations, and the FSEIR, are in substantive and fundamental aspects speculative, and rely on  
4 overly optimistic undocumented assumptions. This makes critical components of the preferred  
5 alternative of DF&G, and the newly adopted suction dredge mining regulations, infeasible as it  
6 affects suction dredge prospectors and miners, so that they are unable to economically work  
7 their mining claims, both Federal and private, to their substantial harm and detriment. This  
8 constitutes an unlawful and unconstitutional taking of their mining claims and mineral estates,  
9 which is property in the highest sense of the term.  
10

### 11 **C. FAILURE OF ECONOMIC ANALYSIS**

12  
13 69. The preferred alternative of DF&G, as well as the newly adopted suction dredge  
14 mining regulations, and the FSEIR, failed to adequately take into consideration the economic  
15 viability to these suction dredge prospectors and miners pursuant to the regulations, as well as  
16 the economic viability of the business and service providers that support these prospectors and  
17 miners.  
18

### 19 **D. REQUIRING PERMITS PURSUANT TO CF&GC § 1602**

20 70. The requirement for notification and permits pursuant to CF&GC § 1602, as  
21 required by the newly adopted suction dredge mining regulations (§ 228(f)), CF&GC and the  
22 FSEIR, irrespective of whether or not there is any substantial streambed diversions, constitutes a  
23 totally unlawful and unconstitutional prohibition of suction dredge prospecting and mining.  
24

### 25 **E. FOUR INCH NOZZLE RESTRICTION**

26 71. The restriction of suction dredge nozzles to four inches or less pursuant to the new  
27 suction dredge mining regulations adopted by DF&G (§ 228(k)), makes such suction dredge  
28 prospecting and mining not economically feasible, and constitutes a totally unlawful and  
unconstitutional prohibition of suction dredge prospecting and mining.

1 **F. INSTREAM WINCHING**

2 72. The requirement, as required by the DF&G newly adopted suction dredge mining  
3 regulations (§ 228(l)), for a permit pursuant to CF&GC § 1602, makes such suction dredge  
4 prospecting and mining not economically feasible, and constitutes a totally unlawful and  
5 unconstitutional prohibition of suction dredge prospecting and mining

6 **G. LIMITATION ON STATEWIDE SUCTION DREDGE MINING PERMITS**

7 73. As set forth above, the limitation by DF&G on suction dredged mining permits to  
8 1500 permits per year, pursuant to the newly adopted suction dredge mining regulations (§  
9 228(g)), makes such suction dredge prospecting and mining not economically feasible, and  
10 constitutes a totally unlawful and unconstitutional prohibition of suction dredge prospecting and  
11 mining. This also constitutes an unlawful and unconstitutional taking of mining claims and  
12 mineral estates, which is property in the highest sense of the term.

13 **H. RETURNING DREDGING SITE TO PRE-MINING GRADE.**

14 74. The requirement, as required by the DF&G newly adopted suction dredge mining  
15 regulations (§ 228(l)(15)), that all suction dredging sites be returned to a pre-mining grade makes  
16 such suction dredge prospecting and mining not economically feasible, and constitutes a totally  
17 unlawful and unconstitutional prohibition of suction dredge prospecting and mining.

18 **I. SHORTENING OF MINING SEASONS AND RESTRICTION ON LOCATIONS**

19 75. There is no rational reason for the shortening of the mining season, and the  
20 locations in which suction dredge mining can take place, over that which the 1994 DF&G mining  
21 regulations prescribed, as now set forth in the DF&G newly adopted suction dredge mining  
22 regulations (§ 228.5). These closures and restrictions constitute an unreasonable and  
23 unsupported action. It is an arbitrary abuse of discretion on the part of DF&G, and without any  
24 substantial justification in the record. This is a totally unlawful and unconstitutional prohibition  
25 of suction dredge prospecting and mining. This also constitutes an unlawful and unconstitutional  
26 taking of mining claims and mineral estates, which is property in the highest sense of the term.

27 **J. LIMITATION ON MINING WITHIN 3 FEET FROM BANK OF STREAM**





1                   **L.       FAILURE TO CONSIDER ADVERSE EFFECTS ON HUMAN BEINGS**

2           79.       Public Resources Code § 21083 requires that DF&G determine if one or more of  
3 the following conditions exist:

- 4                   a. Whether a proposed project has the potential to degrade the quality of the  
5 environment.
- 6                   b. Whether the “possible effects of a project are individually limited, but  
7 cumulatively considerable.”
- 8                   c. Whether “the environmental effects of a project will cause substantial adverse  
9 effects on human beings, either directly or indirectly.”

10       80.       DF&G, in adopting the new suction dredge mining regulations, and certifying the  
11 FSEIR, have violated CEQA in that they have in no way considered the “substantial adverse  
12 effects” that the new regulations will have on suction dredge miners, and their ability to sustain  
13 themselves, as well as their families, economically, or in other multiple ways. In addition,  
14 DF&G, in adopting the new suction dredge mining regulations, and certifying the FSEIR, have  
15 failed to consider the devastating effects they will have on suppliers of goods and services to  
16 suction dredge mining, and local communities that service suction dredge miners.

17                   **M.       FAILURE TO RESPOND TO COMMENTS**

18       81.       DF&G failed to adequately respond to comments submitted by the public and  
19 government agencies during review of the FSEIR.

20                   **N.       FAILURE TO RECIRCULATE FSEIR**

21       82.       DF&G failed to recirculate the FSEIR, or any portion of the FSEIR, despite the  
22 viability of significant information within the meaning of Public Resources Code § 21092.1 and  
23 CEQ guidelines section 15088.5.

24                   **O.       FAILURE TO PROVIDE ADEQUATE PUBLIC REVIEW AND COMMENT**

25       83.       DF&G failed to provide adequate public review and comment of the newly adopted  
26 suction dredge mining regulations and the FSEIR, containing substantial changes.

27                   **P.       FAILURE TO REACH THRESHOLD OF SIGNIFICANCE**

1 84. CEQA establishes criteria for levels of significance (impact) that would cause  
2 significant environmental harm in several areas. Further, DF&G has established levels of impact  
3 in other areas to determine if an effect would cause significant harm to the environment. The  
4 FSEIR and DF&G speculate on hypothetical levels of significant impacts which have no basis in  
5 suction dredging-specific-science or reality. The FSEIR & DF&G have failed to prove that  
6 suction dredging effects actually rise to the level of significant harm to the environment. DF&G  
7 violated CEQA standards, and their own standards, in making any determination of significant  
8 impacts from suction dredging. DF&G violated CCR Title 14 Section 15064 *et seq.*

9 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth below:

10 **FOURTH CAUSE OF ACTION**  
11 **AGAINST ALL DEFENDANTS**  
12 **(Federal Preemption)**

13 85. Petitioners/Plaintiffs incorporate by reference the allegations set forth in the  
14 previous paragraphs 1 through 84.

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

24 87. Miners and prospectors have a statutory right, not a mere privilege, to go upon open  
25 Federal public domain lands for mineral prospecting, exploration, and development.  
26 Administrators may not unreasonably restrict or prohibit, temporarily or permanently, the  
27 exercise of that right. The Federal Mining Law of 1872, as amended (30 *U.S.C.* § 22 *et seq.*),  
28 provides that all valuable mineral deposits in lands belonging to the United States shall be free

1 and open to exploration and development. The Supremacy Clause of the *United States*  
2 *Constitution*, Article VI, Clause 2, further provides that “the laws of the United States . . . shall  
3 be the supreme law of the land . . . with anything in the laws of any state to the contrary  
4 notwithstanding”. Article IV, § 3, of the *United States Constitution*, provides that “Congress  
5 shall have the power to dispose of and make all needful rules and regulations respecting the  
6 territory or other property belonging to the United States.” The absolute prohibition of SB 670  
7 and AB 120 of vacuum or suction dredge mining in the rivers, streams, lakes, and waterways for  
8 Federal mining claims within Federal lands in the State of California, directly conflicts with  
9 those Federal mining laws, and violates the Supremacy Clause and Article IV, § 3, of the *United*  
10 *States Constitution*.

11 88. Without limitation, such preemption is manifested in whole or in part by the  
12 following laws of the United States:

- 13 (a) The Mining Acts of 1866 (14 Stat. 251).
- 14 (b) The Federal Mining Law of 1872, as amended (30 *U.S.C.* § 22 *et seq.*);
- 15 (c) The Mining and Minerals Policy Act of 1970, 30 *U.S.C.* § 21a.;
- 16 (d) 16 *U.S.C.* § 481 (Use of Waters); 43 *U.S.C.* § 661 (Appropriation of waters on public  
17 lands)
- 18 (e) The Federal Land Policy and Management Act of 1976 (“FLPMA”) 43 *U.S.C.* § 1701  
19 *et seq.*, including without limitation §§ 1732(b);
- 20 (f) Multiple Surface Use Act, 30 *U.S.C.* §§ 612(b), 613, 615; and
- 21 (g) Numerous sections of the *Code of Federal Regulations* (“CFR”), including without  
22 limitation, 36 *CFR* 228 *et seq.*; 43 *CFR* § 3800; 43 *CFR* § 3809.1 *et seq.*

23 89. Miners and prospectors have a federally granted right to use such waters in order to  
24 develop their Federal mining claims and mineral estates, as well as a right to use such waters  
25 pursuant to the California Constitution. 16 *U.S.C.* § 481 (Use of Waters). Miners and  
26 prospectors have a statutory right to go upon open Federal public domain lands for mineral  
27 prospecting, exploration, and development. The issuance of a permit for vacuum or suction  
28

1 dredge mining to a mining claim owner, miner and/or prospector on Federal lands by DF&G is a  
2 non-discretionary act, and not a discretionary act.

3 90. The mining laws, as set forth above, give to the miner and/or prospector an absolute  
4 and 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:

7 “That the mineral lands of the public domain, both  
8 surveyed and unsurveyed, are hereby declared to be free  
9 and open to exploration and occupation by all citizens of  
10 the United States, and those who have declared their  
11 intention to become citizens, subject to such regulations as  
12 may be prescribed by law, and subject also to the local  
13 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  
15 United States.” (14 Stat 251)

16 91. The Federal Mining Law of 1872 states:

17 “Except as otherwise provided, all valuable mineral  
18 deposits in lands belonging to the United States, both  
19 surveyed and unsurveyed, shall be free and open to  
20 exploration and purchase, and the lands in which they are  
21 found to occupation and purchase, by citizens of the United  
22 States and those who have declared their intention to  
23 become such, under regulations prescribed by law, and  
24 according to the local customs or rules of miners in the  
25 several mining districts, so far as the same are applicable  
26 and not inconsistent with the laws of the United States.”  
27 (30 U.S.C. §22)

28 92. The Mining and Minerals Policy Act of 1970 states:

“The Congress declares that it is the continuing policy of  
the Federal Government in the national interest to foster  
and encourage private enterprise in (1) the development of  
economically sound and stable domestic mining, minerals,  
metal and mineral reclamation industries, (2) the orderly  
and economic development of domestic mineral resources,  
reserves, and reclamation of metals and minerals to help  
assure satisfaction of industrial, security and environmental  
needs, (3) mining, mineral, and metallurgical research,  
including the use and recycling of scrap to promote the  
wise and efficient use of our natural and reclaimable

1 mineral resources, and (4) the study and development of  
2 methods for the disposal, control, and reclamation of  
3 mineral waste products, and the reclamation of mined land,  
4 so as to lessen any adverse impact of mineral extraction and  
5 processing upon the physical environment that may result  
6 from mining or mineral activities.” (30 U.S.C. §21a)

7 93. The owner of Federal mineral rights is entitled to take from the land and use that  
8 amount of water which is reasonably necessary for the exploitation of the mineral rights. *Russell*  
9 *v. Texas Co.*, 238 F. 2d 3.3 (9<sup>th</sup> Cir. 1956), cert. denied, 354 U.S. 938 (1957). In addition, “. . . so  
10 long as they comply with laws of the United States . . . [miners] shall have the exclusive right of  
11 possession and enjoyment of all the surface included within the lines of their locations”. 30  
12 U.S.C. § 26. The waters included within the boundaries of a Federal mining claim constitute part  
13 of the surface of that claim.

14 94. The new suction dredge mining regulations adopted by DF&G are prohibitory, not  
15 regulatory, in their fundamental character. They strike at the central purpose and objectives of  
16 the applicable Federal laws regarding mining. Through the new suction dredge mining  
17 regulations adopted by DF&G, the State of California attempts to substitute its political judgment  
18 for that of Congress. The Federal government has authorized a specific use of Federal lands for  
19 mining, and California cannot prohibit that use either temporarily or permanently. *Ventura*  
20 *County v. Gulf Oil Corp.*, 601 F.2d 1080, 1084 (9<sup>th</sup> Circ. 1979). A state cannot prohibit on  
21 Federal land those activities specifically permitted by the United States. *Brubaker v. El Paso*  
22 *County*, 652 P.2d 1050 (Colo. 1982). The new suction dredge mining regulations adopted by  
23 DF&G are a de facto prohibition on all such suction dredge mining. Suction dredge mining is  
24 the only practical, economic, and environmentally sound method of extracting the gold from the  
25 waterways on Federal mining claims. It makes mining Plaintiffs’ Federal mining claims  
26 commercially impracticable and worthless, and therefore is preempted by Federal Mining Law.  
27 *California Coastal Commission v. Granite Rock Co.*, (1987) 480 U.S. 572, 587. *South Dakota*  
28 *Mining Association v. Lawrence County*, 155 F.3d 1005, 1011 (8<sup>th</sup> Cir.1998).

95. The United States Supreme Court has held that:

“States statutes in reference to mining rights upon the public domain must, therefore, be construed in subordination to the

1 laws of Congress, as they are more in the nature of  
2 regulations under these laws than independent legislation.

3 State and territorial legislation, therefore, must be entirely  
4 consistent with the Federal laws, otherwise it is of no effect.  
5 The right to supplement Federal legislation, conceded to the  
6 state, may not be arbitrarily exercised; nor has the state the  
7 privilege of imposing conditions so onerous as to be  
8 repugnant to the liberal spirit of the congressional laws.”  
9 *Butte County Water Co. v. Baker*, 196 U.S. 119, 125, 49  
10 L.Ed. 412, 25 S.Ct. 211 (1905)

11 96. To the extent DF&G may issue permits, Petitioners/Plaintiffs are entitled to secure  
12 the necessary permits to conduct vacuum and suction dredge mining operations on Federal and  
13 non-Federal lands within the State of California pursuant to, and including without limitation, the  
14 above-stated statutes and regulations.

15 97. The new suction dredge regulations adopted by DF&G interfere with the operation  
16 of a pervasive scheme of Federal laws and regulations, which are intended to, and does, preempt  
17 the operation, control, and regulation of mining on Federal lands by any State law or regulation.  
18 Any State law or regulation, which prohibits or interferes with, either permanently or  
19 temporarily, such mining on Federal lands is prohibited.

20 98. All matters dealt with by the new suction dredge mining regulations adopted by  
21 DF&G are preempted and fully occupied by the laws of the United States, including without  
22 limitation, its mining laws, its environmental laws, its laws relating to clean water, 33 *U.S.C.* §  
23 1151, *et seq.* (2004), and its laws relating to endangered species, 16 *U.S.C.* §§ 1531, *et seq.*  
24 (2004). The new suction dredge mining regulations adopted by DF&G cannot prohibit,  
25 temporarily or permanently, what Federal mining law allows.

26 99. The new suction dredge mining regulations adopted by DF&G stand as obstacles to  
27 the accomplishment of the full purposes and objectives of Congress in enacting not only the  
28 Federal mining laws but all other laws stated above. Plaintiffs are entitled under Federal law to  
secure the necessary permits to conduct vacuum and suction dredge mining operations on  
Federal lands within the State of California pursuant to, and including without limitation, the

1 above-stated statutes and regulations, or for a declaration that such permits are not required for  
2 Federal mining claims on Federal lands.

3 WHEREFORE, Petitioners/Plaintiffs pray for relief as hereinafter set forth below:

4 **FIFTH CAUSE OF ACTION**  
5 **AGAINST ALL DEFENDANTS**  
6 **(Violation of 16 U.S.C. § 481; 43 U.S.C. § 661)**

7 100. Petitioners/Plaintiffs incorporate by reference all of the previous allegations set  
8 forth in paragraphs 1 through 99.

9 101. A Federal mining claim on Federal land gives to the holder of such claim a  
10 proprietary and possessory interest in the mineral estate associated with such claim. The claim  
11 holder, as the owner of the mineral estate has traditionally been held to have dominance over the  
12 surface estate. Waters in and upon the Federal mining claim constitute part of the surface estate.  
13 *American Law of Mining*, 2d Ed. § 200.02 [1][b][i].

14 102. The owner of the mineral estate and mineral rights is entitled to take and use from  
15 the land constituting his Federal mining claim that amount of water which is reasonably  
16 necessary for the exploitation of the mineral rights upon the aforesaid claim. *Russell v. Texas*  
17 *Co.*, 238 F.2d 636 (9<sup>th</sup> Cir. 1956), *cert. denied*, 354 U.S. 938 (1957); *Maley, Mineral Law*, 6th  
18 Ed., p. 266.

19 103. 30 U.S.C § 26 states:

20 “The locators of all mining locations made on any mineral  
21 vein, load, or ledge, situated on the public domain, . . . shall  
22 have the exclusive right of possession and enjoyment of all  
23 the surface included within the lines of their locations . . .”

24 All waters within the boundaries of a mining claim constitute part of the surface of which a  
25 mineral estate holder has the exclusive right of appropriation and enjoyment.

26 104. 16 U.S.C. § 481 and 43 U.S.C. § 661 gives to the owners of Federal mining claims  
27 on Federal land the exclusive use, possession, and appropriation of the waters on their Federal  
28 mining claims in order to develop and utilize the full potential of their mineral estates.



1        105.        Respondents/Defendants, through the adoption of the new suction dredge mining  
2 regulations by DF&G, have deprived Petitioners/Plaintiffs of their rights to the use of water on  
3 their Federal mining claims pursuant to 16 *U.S.C.* § 481 and 43 *U.S.C.* § 661 in order to develop  
4 and utilize the full potential of their mineral estates. Petitioners/Plaintiffs are entitled to the  
5 reasonable and beneficial use of these waters for mining purposes pursuant to Federal law and  
6 statutes as set forth above. The new suction dredge mining regulations adopted by DF&G are in  
7 conflict with and preempted by the aforesaid Federal laws and statutes. Accordingly, the new  
8 Federal mining regulations adopted by DF&G are void and of no effect, and in violation of the  
9 aforesaid Federal laws and statutes.

10                WHEREFORE, Petitioners/Plaintiffs pray for relief as hereinafter set forth below:

11                                **SIXTH CAUSE OF ACTION**

12                                **AGAINST ALL DEFENDANTS**

13                                **(Violation of Federal Endangered Species Act, 16 U.S.C. § 1531 *et seq.* and California**  
14                                **Endangered Species Act, CF&GC § 2025 *et seq.*)**

15        106.        Petitioners/Plaintiffs incorporate by reference the allegations set forth in the  
16 previous paragraphs 1 through 105.

17        107.        The new suction dredge mining regulations adopted by DF&G violate the  
18 provisions of the Federal Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, and more  
19 particularly §§ 1532 and 1533. The new regulations further violate the provisions of the  
20 California Endangered Species Act, CF&GC § 2025 *et seq.*, and more particularly §§ 2052.1,  
21 2054, and 2056.

22        108.        The adoption of the new suction dredging mining regulations violate the intent and  
23 mandate of the Federal and California Endangered Species Acts, which requires that mitigation  
24 measures be proportional in extent to any impact on species that is caused by a person or activity.

25        109.        DF&G has not proven any harm to species from suction dredge mining, but only  
26 postulated a series of speculative scenarios that have little or no basis in reality. Based on these  
27 hypothetical and speculative scenarios, DF&G has adopted extreme mitigation measures that  
28 deny miners the right to mine their claims. DF&G provides no proof of harm relative to any

1 specific mining claims, or mining areas, but rather a generalized, hypothetical approach, based  
2 on a statewide geographical area. This violates not only CEQA, but the Federal and State  
3 Endangered Species Acts.

4 110. DF&G, in the adoption of the new suction dredge mining regulations, closed broad,  
5 generalized areas to suction dredge mining based on an unproven possibility that a species may  
6 be present. Among other effects, this resulted in the total closure to suction dredge mining of  
7 large portions of counties above specific elevation levels. This violates not only CEQA, but the  
8 Federal and State Endangered Species Acts.

9 WHEREFORE, Petitioners/Plaintiffs pray for relief as hereinafter set forth below:

10 **SEVENTH CAUSE OF ACTION**  
11 **AGAINST ALL DEFENDANTS**

12 **(Denial of Due Process; U.S. Const. Amend 5 and 14 and Cal. Const. Article I, § 7(a))**

13 111. Petitioners/Plaintiffs incorporate by reference the allegations set forth in the  
14 previous paragraphs 1 through 110.

15 112. Prior to the adoption of the new suction dredge mining regulations by DF&G,  
16 Petitioners/Plaintiffs invested many thousands of dollars in order to be able to engage in vacuum  
17 and suction dredge mining. Petitioners/Plaintiffs obtained Federal mining claims, invested  
18 substantial sums in those claims, kept those claims current, paid taxes on those claims, bought  
19 and sold equipment, paid permit fees to DF&G, and otherwise spent substantial sums of money  
20 for the purpose of conducting mineral exploration and development pursuant to the laws of the  
21 United States and the State of California.

22 113. The due process clauses of the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the *United States*  
23 *Constitution*, and Article I § 7(a) of the *Constitution of California*, prohibit the deprivation of  
24 property without due process of law. The Plaintiffs have constitutionally protected property  
25 rights and mineral estates that they own or lease in California. The adoption of the new suction  
26 dredge mining regulations by DF&G make all such property and mineral estates commercially  
27 worthless. The State of California, by the adoption of the new suction dredge mining regulations  
28 by DF&G has wrongfully taken Petitioners/Plaintiffs' property without compensation in

1 violation of the Fifth and Fourteenth Amendments of the Constitution of the United States and  
2 Article I §§ 7(a) and 19 of the *Constitution of California*.

3 114. Respondents/Defendants, through the adoption of the new suction dredge mining  
4 regulations by DF&G, have deprived the Petitioners/Plaintiffs of substantive due process under  
5 the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the *Constitution of the United States* and Article I §§ 7(a) and 19  
6 of the *Constitution of California* in at least the following ways:

- 7 a. Respondents/Defendants' deprivations of Plaintiffs' property rights are  
8 arbitrary and capricious;
- 9 b. The adoption of the new suction dredge mining regulations by DF&G have no  
10 rational relationship to any legitimate public purpose; rather it was motivated  
11 solely by the improper political purpose of totally prohibiting vacuum or  
12 suction dredge mining in the rivers, streams, lakes, and waterways of  
13 California;
- 14 c. The adoption of the new suction dredge mining regulations by DF&G single  
15 out Petitioners/Plaintiffs for extraordinary treatment different from that  
16 accorded to all other potential mineral developers that utilize different methods  
17 of mining, or use suction dredge equipment for extensive non-mining  
18 purposes. These extensive non-mining purposes have the same effect as  
19 suction dredge mining for minerals, and in many cases, far exceed any  
20 disturbance to the rivers, streams, lakes, and waterways of California, and the  
21 biota therein, allegedly caused by suction dredge mining;
- 22 d. The adoption of the new suction dredge mining regulations by DF&G are in  
23 direct conflict with the laws of the United States, which state that the mining of  
24 minerals on and within Federal lands is necessary for the economic  
25 development and security of the United States.
- 26 e. The adoption of the new suction dredge mining regulations by DF&G are in  
27 direct conflict with the laws of the State of California, which assert that mining  
28

1 of minerals within the State is necessary for the economic development of the  
2 State and Nation;

3 f. The adoption of the new suction dredge mining regulations by DF&G contain  
4 no standards in that it affects and prohibitively restricts suction dredge mining  
5 in every river, stream, lake, and waterway in California whether or not there  
6 are any fish, aquatic life, or biota therein, or any living organism that could  
7 possibly be affected in any way whatsoever by vacuum or suction dredge  
8 mining; and

9 g. The adoption of the new suction dredge mining regulations by DF&G are in  
10 direct conflict with the encouragement of mining, including vacuum or suction  
11 dredge mining by and in the State of California, as being essential to the  
12 economic well-being of California, its people, and the needs of society. Thus,  
13 Respondents/Defendants deprivation of Petitioners/Plaintiffs' property is  
14 manifestly unfair, given that the Petitioners/Plaintiffs, with the State of  
15 California's encouragement, have made a substantial investment for the  
16 exploration and development of minerals through vacuum and suction dredge  
17 mining.

18 WHEREFORE, Petitioners/Plaintiffs pray for relief as hereinafter set forth below:

19 **EIGHTH CAUSE OF ACTION**

20 **AGAINST ALL DEFENDANTS**

21 **(Denial of Equal Protection; U.S. Const. Amend 14; Cal. Const.**

22 **Article I, § 7(a))**

23 115. Petitioners/Plaintiffs incorporate by reference the allegations set forth in the  
24 previous paragraphs 1 through 114.

25 116. The Petitioners/Plaintiffs are entitled to equal protection under the laws of  
26 California pursuant to the Fourteenth Amendment to the *Constitution of the United States*, and  
27 Article I § 7(a) of the *Constitution of the State of California*.

1 117. Respondents/Defendants, through the adoption of the new suction dredge mining  
2 regulations, specifically intended to deny, and have denied, Plaintiffs the same treatment,  
3 privileges, and immunities received by all other mine owners and operators, or potential mine  
4 owners or operators, that utilize methods other than vacuum or suction dredge mining; or users  
5 of vacuum and suction dredge equipment for purposes other than mining. This includes, without  
6 limitation, reclamation within the rivers, streams, lakes, and waterways of California by vacuum  
7 or suction dredges, which have the same effect on the rivers, streams, and waterways of  
8 California as suction dredge mining; said reclamation being just another form of mining.

9 118. There is no rational basis for this difference and treatment which has denied  
10 Petitioners/Plaintiffs equal protection under the laws and *Constitutions of the United States and*  
11 *State of California* as set forth above.

12 119. The adoption of the new suction dredge mining regulations by DF&G effects  
13 primarily lower income citizens, the unemployed, and retirees who have to supplement their  
14 income by suction dredge mining. Without any rational basis, this discriminates on an economic  
15 ground against the most vulnerable and least able politically and economically to oppose such  
16 economic discrimination. It is a blatant violation of the Constitutions of the United States and  
17 the State of California, as set forth above, and denies them equal protection under the law.

18 WHEREFORE, Petitioners/Plaintiffs pray for relief as hereinafter set forth below:

19 **NINTH CAUSE OF ACTION**  
20 **AGAINST ALL DEFENDANTS**  
21 **(Injunctive Relief)**

22 120. Petitioners/Plaintiffs incorporate by reference the allegations set forth in the  
23 previous paragraphs 1 through 119.

24 121. Petitioners/Plaintiffs request injunctive relief, since the harm to them from the  
25 actions of the Respondents/Defendants in enacting, implementing, and adopting the new suction  
26 dredge mining regulations prohibits Petitioners/Plaintiffs from prospecting and accessing their  
27 mining claims and mineral estates in the rivers, streams, lakes, and waterways in California  
28 within Federal lands. This causes damage to Petitioners/Plaintiffs which is immediate,

1 substantial, and irreparable, because they must be able to use vacuum and suction dredge  
2 methods of mining and prospecting in order to feasibly and economically prospect and mine on  
3 their mining claims and mineral estates. In addition, new suction dredge mining regulations  
4 adopted by DF&G cause Petitioners/Plaintiffs, as well as other California and non-California  
5 citizens, harm in in-state, interstate, and foreign commerce, as set forth above.

6 122. The actions of the Respondents/Defendants as set forth above in closing and  
7 prohibiting vacuum and suction dredge mining, and prospecting and developing their mining  
8 claims and mineral estates, causes Petitioners/Plaintiffs irreparable harm and entitles them to  
9 immediate injunctive relief.

10 123. The Respondents/Defendants' actions in preparing, adopting and implementing  
11 the closures, prohibitions, and other rules and policies that interfere with the  
12 Petitioners/Plaintiffs' rights to prospect, and to mine and develop their mining claims and  
13 mineral estates as set forth above, are in derogation of Petitioners/Plaintiffs' rights. Such actions  
14 by Respondents/Defendants have caused, and will continue to cause, immediate, direct, adverse  
15 and irreversible harm to Petitioners/Plaintiffs and other miners and prospectors.

16 124. Petitioners/Plaintiffs are entitled to an immediate injunction, including, without  
17 limitation, a temporary restraining order, preliminary injunction, and permanent injunction,  
18 enjoining and restraining Respondents/Defendants from the implementation and enforcement of  
19 the new suction dredge mining regulations by DF&G, and enjoining and restraining  
20 Respondents/Defendants from interfering with Petitioners/Plaintiffs' rights to prospect, to mine  
21 and develop their mining claims and mineral estates, as set forth above, through all lawful  
22 means, including, without limitation, motorized mining methods such as vacuum and suction  
23 dredging, or by other lawful means.

24 WHEREFORE, Petitioners/Plaintiffs pray for relief as hereinafter set forth below:

25 **TENTH CAUSE OF ACTION**  
26 **AGAINST ALL DEFENDANTS**  
27 **(Declaratory Relief)**  
28

1 125. Petitioners/Plaintiffs incorporate by reference the allegations set forth in the  
2 previous paragraphs 1 through 124.

3 126. An actual controversy has arisen and now exists between Petitioners/Plaintiffs and  
4 Respondents/Defendants regarding their respective rights and duties in that Petitioners/Plaintiff  
5 contends that the adoption of the new suction dredge mining regulations by DF&G, and the  
6 approval of the total suction dredge program, constitutes a prejudicial abuse of discretion under  
7 the California Fish and Game Code section 5650 *et seq.*, and CEQA, Pub.Res.Code 21000 *et*  
8 *seq.*, and violates Petitioners/Plaintiff's State and Federal rights under Federal and State law,  
9 including, without limitation, the California and United States Constitutions, and is, including  
10 and without limitation, pre-empted by Federal law. Respondents/Defendants dispute these  
11 contentions and contend that adoption of the new suction dredge mining regulations and program  
12 and the FSEIR, by DF&G are lawful and constitutional.

13 127. Petitioners/Plaintiffs desire a declaration as to the validity of adoption of the new  
14 suction dredge mining regulations by DF&G as described in this Complaint, both on their face  
15 and as applied to Petitioners/Plaintiffs' prospecting and mining activities, whether prohibiting  
16 Petitioners/Plaintiffs' prospecting and mining activities temporarily or permanently.  
17 Petitioners/Plaintiffs desire a declaration that adoption of the new suction dredge mining  
18 regulations by DF&G, for the reasons set forth in this Complaint, are illegal, void, and of no  
19 effect. Unless the court issues an appropriate declaration of rights, the parties will not know  
20 whether SB 670 and AB 120 comply with Federal and State statutory and constitutional law, and  
21 there will continue to be disputes and controversy surrounding the new suction dredge mining  
22 regulations adopted by DF&G.

23 WHEREFORE, Petitioners/Plaintiffs pray for relief as hereinafter set forth below:

24 **ELEVENTH CAUSE OF ACTION**

25 **AGAINST ALL DEFENDANTS**

26 **(Damages)**

27 128. Petitioners/Plaintiffs incorporate by reference the allegations set forth in the  
28 previous paragraphs 1 through 127.





1 (C) Respondents/Defendants violated CEQA in preparing the FSEIR and taking final  
2 action to adopt the new suction dredge mining regulations;

3 (D) Respondents'/Defendants' adoption of the new suction dredge mining regulations  
4 was contrary to law.

5 5. Adjudge and declare that the challenged prohibition and closure of the rivers,  
6 streams, lakes, and waterways in California as set forth in the newly adopted suction dredge  
7 mining regulations by DF&G are unlawful pursuant to all the acts, laws, constitutions, and  
8 regulations stated in Causes of Action I – X of this Complaint. Further adjudge and declare that  
9 Respondents/Defendants have acted beyond the scope of their legal authority in adopting those  
10 aforesaid actions, and that such actions, among other matters, violate the *Constitution of the*  
11 *United States, and the State of California* as set forth above, including without limitation,  
12 preemption pursuant to the laws of the United States, its mining laws, and all other laws and  
13 regulations as set forth above;

14 6. Enjoin and restrain Respondents/Defendants, their agents, employees, successors,  
15 and all persons acting in concert or participating with them, from enforcing or implementing and  
16 requiring others to enforce or implement the newly adopted suction dredge mining regulations,  
17 the aforesaid prohibition and closure and related rules, regulations, and polices; and issue a  
18 temporary, preliminary and/or permanent injunction against Respondents/Defendants, and  
19 others, from enforcing or implement the newly enacted suction dredge mining regulations  
20 adopted by DF&G.

21 7. Issue an order that Petitioners/Plaintiffs, and all other miners holding mining  
22 claims and mineral estates, have the right to use vacuum and suction dredge mining equipment,  
23 and related equipment, in order to prospect and mine on Federal and private lands and otherwise  
24 develop their Federal and private mining claims and mineral estates

25 8. Grant such damages as are proven at trial, with interest on the damages at the  
26 maximum annual rate as allowed by law, from such earliest date as allowed by law;

27 9. Because of the unwarranted delay by Respondents/Defendants in preparing the  
28 FSEIR and adopting new suction dredge mining regulations, award Petitioners/Plaintiffs their

1 costs in preparing the record for this action, and adjudge that Respondents/Defendants are to pay  
2 for such costs in preparing the record.

3 10. Award the Petitioners/Plaintiffs their reasonable attorneys fees and costs,  
4 including expert costs, and expenses of litigation as allowed by law, including, without  
5 limitation, and as applicable, California *Code of Civil Procedure* § 1021.5, the common fund  
6 doctrine, the Equal Access to Justice Act, 28 U.S.C. § 241 *et. seq.*, 42 U.S.C. § 1988, and other  
7 applicable laws, concepts or doctrines, whether legal or equitable, rules of court, or other rules  
8 and regulations; and

9 11. Grant such other and further relief as the Court deems just and proper, including  
10 an award of attorney's fees, costs, and expenses.

11  
12 DATED: April 11, 2012

LAW OFFICES OF DAVID YOUNG

13  
14 By: David Young  
15 David Young  
16 Attorney for Petitioners/Plaintiffs

# **EXHIBIT A**

1 LAW OFFICES OF DAVID YOUNG  
David Young, SBN 55341  
2 11845 W. Olympic Boulevard, Suite 1110  
Los Angeles, CA 90064  
3 Telephone: (310) 575-0308  
4 Facsimile No.: (310) 575-0311  
Email: dyounglaw@verizon.net

5 Attorney for Petitioners/Plaintiffs  
6  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN BERNADINO  
10

11 PUBLIC LANDS FOR THE PEOPLE, INC. a ) CASE NO.  
12 501 C-3 non-profit corporation, GERALD )  
13 HOBBS, WESTERN MINING ALLIANCE, a )  
Nevada limited liability corporation, ERIC )  
14 MAKSYMYK, GARY GOLDBERG, STEVE ) **NOTICE OF COMMENCEMENT OF**  
TYLER, RON KLIEWER, PATRICK ) **CEQA ACTION**  
15 KEENE, KEENE ENGINEERING )  
COMPANY, INC., a California corporation, ) [California Environmental Quality Act Pub.  
16 TERRY STAPP, DELORES STAPP, ) Res. Code § 21167.5]  
RONALD HANSEN, ERIC RASBOLD, )  
17 WALT WEGNER, and PAUL COAMBS. )

18 Petitioners/Plaintiffs, )

19 v. )

20 CALIFORNIA DEPARTMENT OF FISH & )  
GAME, CHARLTON H. BONHAM, Director )  
21 of the California Department of Fish and )  
Game; and DOES 1-20, inclusive. )  
22

23 Respondents/Defendants )  
24 )  
25 )  
26 )  
27 )  
28 )

1 TO RESPONDENTS/DEFENDANTS CALIFORNIA DEPARTMENT OF FISH AND GAME,  
2 and CHARLTON H. BONHAM, Director of the California Department of Fish and Game:  
3

4 Please take notice, pursuant to Pub. Res. Code § 21167.5, that on or before April 13,  
5 2012, Petitioners/Plaintiffs Public Lands for the People, Inc., Gerald Hobbs, Western Mining  
6 Alliance, Eric Maksymyk, Gary Goldberg, Steve Tyler, Ron Kliewer, Patrick Keene, Keene  
7 Engineering Company, Inc., Terry Stapp, Delores Stapp, Ronald Hansen, Eric Rasbold, Walt  
8 Wegner, and Paul Coombs, intend to commence an action for a writ of mandate to review,  
9 overturn, set aside, void, and annul the California Department of Fish and Game's decision  
10 approving the Suction Dredge Permitting Program and certifying a Final Supplemental  
11 Environmental Impact Report for the Project (SCH # 2009112005). This action is based on  
12 Respondents' failure to comply with the California Environmental Quality Act (Public  
13 Resources Code § 21000 *et seq.*), California Fish and Game Code § 2025 *et seq.*, and numerous  
14 other violations of law, in adopting the Supplemental Environmental Impact Report, the new  
15 suction dredge mining regulations, and approving the program, all as set forth in the Petition for  
16 Writ of Mandate and Complaint for Declaratory and Injunctive Relief.

17 A copy of the Petition and Complaint to be filed is attached hereto.  
18

19 David Young  
20

21 DATED: April 11, 2012  
22

LAW OFFICES OF DAVID YOUNG  
23

24 By: David Young  
25 David Young  
26 Attorney for Petitioners/~~Plaintiffs~~  
27  
28

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I, the undersigned, declare that I am, and was at the time of service of the papers herein  
4 referred to, over the age of 18 years and not a party to the action. I am employed in the County  
5 of Los Angeles, State of California, in which county the within-mentioned mailing occurred.  
6 My business address is Law Offices of David Young, 11845 W. Olympic Boulevard, Suite  
7 1110, Los Angeles, California 90064. I am familiar with the regular mail collection and  
8 processing practices of David Young for correspondence deposited for mailing with the United  
9 States Postal Service; or for depositing and delivery by Federal Express, I served the following  
10 documents:

9 **NOTICE OF COMMENCEMENT OF CEQA ACTION**

10        By placing a copy of the document in a separate envelope for the addressee named  
11 hereafter, addressed to such addressee as follows:

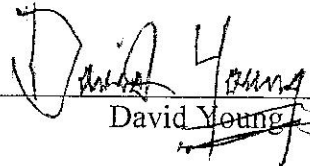
12  **BY FEDERAL EXPRESS.** I caused the above identified document(s) to be deposited  
13 for collection at a certified Federal Express delivery station following the regular practice for  
14 collection and processing of correspondence for mailing with Federal Express. I caused the  
15 document(s) to be delivered by overnight delivery and scheduled them to arrive the next  
16 morning to the following:

16 California Department of Fish and Game  
17 Director Charlton H. Bonham  
18 California Department of Fish and Game Headquarters  
19 1416 9<sup>th</sup> Street, 12<sup>th</sup> Floor,  
20 Sacramento, CA 95814

21 I then sealed the envelope and mailed the foregoing to the addressee on April 11, 2012.

22 I declare under penalty of perjury under the laws of the State of California that the  
23 foregoing is true and correct.

24 Executed on April 11, 2012, at Los Angeles, California.

25   
26 \_\_\_\_\_  
27 David Young  
28

# **EXHIBIT B**

1 LAW OFFICES OF DAVID YOUNG  
David Young, SBN 55341  
2 11845 W. Olympic Boulevard, Suite 1110  
Los Angeles, CA 90064  
3 Telephone: (310) 575-0308  
4 Facsimile No.: (310) 575-0311  
Email: dyounglaw@verizon.net

5 Attorney for Petitioners/Plaintiffs  
6  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN BERNADINO  
10

11 PUBLIC LANDS FOR THE PEOPLE, INC. a ) CASE NO.  
12 501 C-3 non-profit corporation, GERALD )  
13 HOBBS, WESTERN MINING ALLIANCE, a )  
Nevada limited liability corporation, ERIC )  
14 MAKSYMYK, GARY GOLDBERG, STEVE ) **NOTICE OF ELECTION TO PREPARE**  
TYLER, RON KLIEWER, PATRICK ) **ADMINISTRATIVE RECORD**  
15 KEENE, KEENE ENGINEERING )  
COMPANY, INC., a California corporation, ) [California Environmental Quality Act CEQA  
16 TERRY STAPP, DELORES STAPP, ) Pub. Res. Code § 21167.6]  
RONALD HANSEN, ERIC RASBOLD, )  
17 WALT WEGNER, and PAUL COAMBS. )

18 Petitioners/Plaintiffs, )

19 v. )

20 CALIFORNIA DEPARTMENT OF FISH & )  
GAME, CHARLTON H. BONHAM, Director )  
21 of the California Department of Fish and )  
Game; and DOES 1-20, inclusive. )  
22 )

23 Respondents/Defendants )  
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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, declare that I am, and was at the time of service of the papers herein referred to, over the age of 18 years and not a party to the action. I am employed in the County of Los Angeles, State of California, in which county the within-mentioned mailing occurred. My business address is Law Offices of David Young, 11845 W. Olympic Boulevard, Suite 1110, Los Angeles, California 90064. I am familiar with the regular mail collection and processing practices of David Young for correspondence deposited for mailing with the United States Postal Service; or for depositing and delivery by Federal Express, I served the following documents:

**NOTICE OF ELECTION TO PREPARE ADMINISTRATIVE RECORD**

By placing a copy of the document in a separate envelope for the addressee named hereafter, addressed to such addressee as follows:

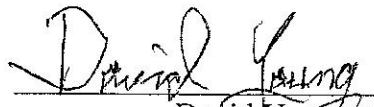
**BY FEDERAL EXPRESS.** I caused the above identified document(s) to be deposited for collection at a certified Federal Express delivery station following the regular practice for collection and processing of correspondence for mailing with Federal Express. I caused the document(s) to be delivered by overnight delivery and scheduled them to arrive the next morning to the following:

California Department of Fish and Game  
Director Charlton H. Bonham  
California Department of Fish and Game Headquarters  
1416 9<sup>th</sup> Street, 12<sup>th</sup> Floor,  
Sacramento, CA 95814

I then sealed the envelope and mailed the foregoing to the addressee on April 11, 2012.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 11, 2012, at Los Angeles, California.

  
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David Young

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**VERIFICATION**

I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents.

I am a party to this action and the President of Public Lands for the People, Inc., ("PLP") which is also a party to this action. I am authorized to make this Verification for and on PLP's behalf, and I make this Verification for that reason. I also make this verification in my individual capacity. I have read the foregoing document and know its contents. The matters stated in it are true of my own knowledge except as to those matters that are stated on information and belief, and as to those matters I believe them to be true.

Executed this 11<sup>th</sup> day of April, 2012 at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

PUBLIC LANDS FOR THE PEOPLE, INC.



GERALD HOBBS

Individually and as President of Public Lands for the People, Inc.