

1 Superior Court of California
2 County of San Bernardino
3 303 West Third Street, Dept. S32
4 San Bernardino, CA 92415-0210



FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
OCT 02 2012

By *Monica L. Harris*
DEPUTY

5 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
6 IN AND FOR THE COUNTY OF SAN BERNARDINO
7 SAN BERNARDINO DISTRICT

9 BEN KIMBLE, et al

10 Plaintiffs

11 vs.

12 KAMALA HARRIS, et al

13 Defendants.

) Case No.: CIVDS 1012922

) **RULING ON PETITION FOR
COORDINATION**

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16 This matter came before the Court for a hearing on a Petition for Coordination.
17 The Court has reviewed and considered the briefs of the parties as well as the oral
18 arguments of counsel and issues its ruling as follows.

19 **Factual and/or Procedural Context**

20 At issue is a Petition for Coordination of Proceedings. Petitioners are all
21 defendants and plaintiffs in *Kimble, et al. v. Harris, et al.*, Case No. CIVDS1012922, San
22 Bernardino County, filed September 15, 2010.¹

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25 ¹ The petitioners seeking coordination include *Kimble* defendants: Kamala D. Harris, Attorney General of
26 California; Charlton H. Bonham, Director of Calif. Dept. of Fish & Game (in his official capacity); and Calif. Dept. of
27 Fish & Game ("DFG"). These defendants state that one or more of them are parties to every other action sought to
28 be coordinated. (Solomon Decl. ¶ 5.) Petitioners also include *Kimble* plaintiffs: Ben Kimble; Ronald Hansen; Ron
Kliwer; Eric Rasbold; Terry Stapp; Delores Stapp; Gary Goldberg; Gerald Hobbs; Public Lands for the People, Inc.
("PLP"); Patrick Keene; Keene Engineering Company, Inc.; and Walt Wegner. The petition for Coordination was
submitted on the declaration of Bradley Solomon, Deputy Attorney General and Petitioner's Request for Judicial
Notice.

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1 On June 15, 2012, the Judicial Council entered an Order Assigning Coordination
2 Motion Judge and authorizing the Presiding Judge of San Bernardino County Superior
3 Court to assign the matter to a coordination motion judge to determine whether the
4 following actions are complex pursuant to CRC 3.502 and if so, whether coordination of
5 the actions is appropriate. In the event of coordination, the Order also directed the
6 coordination motion judge to: (1) recommend a particular superior court for the site of
7 the coordination proceedings, pursuant to CRC 3.530; and (2) select the reviewing court
8 having appellate jurisdiction if the actions to be coordinated are within the jurisdiction of
9 more than one reviewing court, pursuant to CRC 3.505(a). On June 15, 2012, Presiding
10 Judge Hon. Ronald Christianson of San Bernardino County Superior Court appointed
11 this court as the coordination motion judge.

12 The six actions subject to this motion are:

- 13 • *Karuk Tribe of California, et al. v. Calif. Dept. of Fish & Game, et al.*, Case
14 No. RG5211597, Alameda County, filed May 6, 2005 ("*Karuk I*");
- 15 • *Hillman, et al. v. Calif. Dept. of Fish & Game, et al.*, Case No.
16 RG09434444, Alameda County, filed February 5, 2009 ("*Hillman*");
- 17 • *Kimble, et al. v. Harris, et al.*, Case No. CIVDS1012922, San Bernardino
18 County, filed September 15, 2010 ("*Kimble*");
- 19 • *Karuk Tribe, et al, v. Calif. Dept. of Fish & Game, et al.*, Case No.
20 RG12623796, Alameda County, filed April 2, 2012 ("*Karuk II*");
- 21 • *Public Lands for the People, et al. v. State of California, et al.*, Case No.
22 CIVDS1203849, San Bernardino County, filed April 12, 2012 ("*PLP*"); and

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26 In addition, dated May 7, 2012, plaintiffs in the *The New 49'ers, Inc., et al. v. Calif. Dept. of Fish & Game, et*
27 *al.*, Case No. SCCVCV1200482, Siskiyou County, filed April 13, 2012, submitted a response to the Petition for
28 Coordination, in which they stated that they did not oppose coordination, "as a general, abstract form of relief." They
wrote separately to raise two issues and asserted the cases should be coordinated in either San Bernardino County
or Siskiyou County.

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- 1 • *The New 49'ers, Inc., et al. v. Calif. Dept. of Fish & Game, et al.*, Case No.
2 SCCV1200482, Siskiyou County, filed April 13, 2012 ("*New 49'ers*").²

3 With respect to the Petition, on June 26, 2012, the court heard the *Kimble* and
4 *New 49'ers* plaintiffs' *ex parte* motion to stay all actions subject to the Petition for
5 Coordination. The court granted the motion. In addition, the court set the Petition for
6 Coordination for hearing, with a briefing schedule for opposition and reply.

7 On July 18, 2012, plaintiffs in *Karuk I, Hillman, and Karuk II*, filed opposition to
8 the Petition for Coordination.³

9 On July 27, 2012, "The *Kimble* and *CEQA Miners*" filed a reply.⁴ In addition, on
10 July 30, 2012, *New 49'ers* plaintiffs filed a reply in support of the Petition for
11 Coordination.

12 **History of Related Lawsuits, Legislation and Other Actions**

13 Because of the factors to be considered in deciding whether an action is complex
14 and standards set forth in CCP § 404.1 rests on the relationship between the various
15 actions at issue, enacted legislation, and other actions, a brief discussion of the actions
16 and other relevant events is required.

17 **A. *Karuk I* (May 2005)**

18 In 2005, the *Karuk* Indian Tribe and its vice-chairman, Leaf Hillman, filed a
19 lawsuit against DFG in Alameda County Superior Court, seeking a finding from the trial
20 court that DFG's practice of issuing dredge and suction mining permits for the Klamath,
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22 ² In its opposition, *Karuk* plaintiffs assert there is a seventh case, *Walker v. Harris, et al.*, Case No.
23 RG12630513, Alameda County, filed May 16, 2012. *Walker* (in pro per) sought a writ of Coram Nobis, Writ of Review
24 and Certiorari or Alternative Writ and Declaratory Relief re the constitutionality of SB 670 and AB 120 § 12. (Saxton
25 Decl. ¶ 9 & Ex. 7.) *Karuk* plaintiffs assert that with this case all but one of the suction dredge mining actions are
before the Hon. Judge Frank Roesch, Alameda County Superior Court, for all purposes. However, Petitioners point
out in their reply that the *Walker* matter was dismissed on July 18, 2012. (The court can take judicial notice of the
dismissal pursuant to Evid. Code § 452(d).) At this time, the *Walker* case is of no consequence to the Petition for
Coordination.

26 ³ The plaintiffs opposing the motion are: *Karuk* Tribe; Leaf Hillman; Leon Hillman; Craig Tucker; David Bitts;
27 Center for Biological Diversity; Friends of the River; Klamath Riverkeeper; Pacific Coast Federal of Fishermen's
Associations; Institute for Fisheries Resources; California Sportfishing Protection Alliance; Foothill Angler's Coalition;
28 North Fork American River Alliance; Upper American River Foundation; and Central Sierra Environmental Resource
Center. All are plaintiffs in *Karuk I, Hillman, or Karuk II*.

⁴ The Reply appears to have been filed on behalf of *Kimble* and *PLP* plaintiffs.

1 Scott and Salmon River watersheds was illegal, and ordering DFG to “close all rivers to
2 suction dredging that constitute habitat of the Coho [salmon] (and other species of
3 special concern)” until it had completed an Environmental Impact Report (EIR). (RJN
4 Ex. A.) In 2006, Gerald Hobbs, President of Public Lands for People (“PLP”), the New
5 49ers, and Raymond W. Koons were granted intervenor status. (Solomon Decl. ¶ 9.a.;
6 RJN Exs. L & M.)

7 Although DFG initially denied the allegations in the *Karuk I* complaint, it
8 subsequently admitted that suction and dredge mining in the specified areas was
9 harmful to Coho salmon. The *Karuk I* plaintiffs and DFG entered into an agreement to
10 allow judgment to be entered against DFG and to require DFG to conduct a new EIR of
11 its regulations and to implement mitigation measures, if necessary, to protect the Coho
12 salmon and other protected species in the watersheds of the Klamath, Scott and
13 Salmon Rivers. The EIR and rule revision was to be completed within 18 months (i.e.,
14 by June 2008). The order was signed by Hon. Judge Bonnie Sabraw on December 20,
15 2006, over the objections of the intervenors. The *Karuk I* order does *not* prohibit or limit
16 suction dredge mining in any watershed. The order specifies that the *Karuk I* plaintiffs’
17 request for injunctive relief [ordering DFG to close rivers to suction dredge mining] was
18 “withdrawn without prejudice.” (RJN Ex. N.) In addition, plaintiffs’ second cause of
19 action, alleging violation of Fish and Game Code § 5653 was dismissed without
20 prejudice. The court retained jurisdiction. (*Id.*) The case later was assigned to the
21 Hon. Judge Frank Roesch.

22 **B. Hillman (Feb. 2009)**

23 In February 2009, the Karuk Tribe, a number of other environmental and
24 fishermen organizations, and individuals filed an action for injunctive relief in Alameda
25 County Superior Court against DFG. On March 19, 2009, these plaintiffs filed a first
26 amended complaint. (RJN Ex. B.) *Hillman* plaintiffs allege DFG failed to conduct the
27 EIR mandated in *Karuk I*, and instead had continued issuing suction and dredge mining
28 permits in violation of the *Karuk I* judgment. The *Hillman* plaintiffs sought to enjoin DFG

1 from expending any public funds to process and issue mining permits until DFG
2 completed the EIR and otherwise complied with the judgment in *Karuk I*. (RJN Ex. B.)

3 In April 2009, New 49ers, Raymond Koons, Gerald Hobbs, and PLP intervened.
4 (RJN Ex. O; Solomon Decl. ¶ 9.b.) On July 9, 2009, Judge Roesch issued an order
5 granting the *Hillman* plaintiffs' petition for preliminary injunction, ordering DFG to cease
6 expending public funds to issue suction and dredge mining permits. Unlike the order in
7 *Karuk I*, the injunction in *Hillman* prohibited DFG from using state general funds to issue
8 any suction dredge mining permits at all, and was not limited to just the Klamath, Scott
9 and Salmon Rivers. It did not specifically prohibit suction dredge mining—only the
10 issuance of permits by DFG. The order also was silent as to the right of persons
11 already owning such permits to continue to use them. (RJN Ex. P.) The trial court
12 found that plaintiffs were likely to succeed on the merits of two out of three of their
13 claims that the DFG was violating the law by issuing suction dredge permits.

14 Intervenors Hobbs and PLP appealed from that order. (RJN Ex. I.) On
15 December 28, 2011, the Court of Appeal reversed the preliminary injunction. (RJN Ex.
16 Q.) The Court concluded Fish & Game Code § 5653.1, enacted as part of SB 670
17 (Stats. 2009, ch. 62, § 1) and as amended by AB 120 (Stats. 2011, ch. 133, § 6
18 (effective July 26, 2011)), provided for the prohibition of the issuance of permits to
19 operate suction dredge equipment until DFG certifies the CEQA review required under
20 the 2006 consent order and consent judgment. This code section also prohibited any
21 suction dredge mining in any river, stream or lake in California until the earlier of
22 June 30, 2016 or DFG certifies the CEQA review required under the 2006 consent
23 judgment, new regulations fully mitigating all identified significant environmental impacts
24 are adopted and become operative, and a fee structure is in place to cover all costs to
25 DFG related to administration of the program. (RJN Ex. Q, pp. 9-10.) The Court of
26 Appeal concluded that the statutory prohibition renders the preliminary injunction

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1 superfluous. The Court stated there was no reason to believe that a determination on
2 the merits could not be reached before 2016.⁵ (RJN Ex. Q, pp. 11-12.)

3 With respect to the current status of the case, Petitioners state that currently
4 pending is a motion by plaintiffs to lift the stay, which was set to be heard on May 3,
5 2012. (Solomon Decl. ¶ 9.b.) The opposition and reply does not discuss the current
6 status and it is unclear the scope of the “stay” at issue and status of this motion.

7 **C. Enactment of SB 670 (effective Aug. 6, 2009)**

8 On August 6, 2009, Governor Arnold Schwarzenegger signed SB 670. That
9 statute prohibited vacuum and suction dredge mining in “any river, stream, or lake of
10 this state” until (1) the Director of DFG certifies to the Secretary of State that DFG has
11 completed the EIR ordered in *Karuk I*; (2) DFG has filed a copy of its new regulations
12 with the Secretary of State; and (3) those new regulations are operative. (SB 670,
13 codified at Fish & Game Code, §5653.1). In essence, SB 670 prohibits DFG from
14 issuing vacuum or suction dredge mining permits anywhere in the state until it complies
15 with the judgment in *Karuk I*. Although the statute purports to be based on the
16 injunction in *Karuk I*, its scope is not limited to the watersheds of the three rivers
17 affected by the *Karuk I* injunction—the new law is substantially broader than the consent
18 order. Moreover, the statute also exceeded the scope of the then *Hillman* injunction to
19 the extent it not only prohibited DFG from issuing any new permits, but also actually
20 prohibits suction dredge mining by anyone—presumably even those already in
21 possession of a DFG permit.

22 **D. Kimble (Sept. 2010)**

23 On September 15, 2010, Ben Kimble, Ronald Hansen, Ron Kliever, Eric
24 Rasbold, Gerald Hobbs, PLP, Patrick Keene, Keene Engineering Company, Inc., and
25 Walt Wegner filed this action. Plaintiffs Kimble, Hansen, Kliever, Hobbs, Keane, and
26

27 ⁵ As will be discussed, on June 27, 2012, SB 1018 was enacted, effective June 27, 2012. It repealed the
28 June 30, 2016 date in Fish & Game Code § 5653.1, and imposed a moratorium on suction dredge mining until the
DFG completes the environmental review as described in the consent order, required regulations are adopted and
operative, and a fee structure is in place to cover the costs related to the administration of the program.

1 Wegner are miners who purchased permits from DFG to engage in vacuum and suction
2 dredge mining on federal mining claims in California. As alleged, those permits were
3 cancelled as a result of SB 670. Plaintiff Rasbold owns about 180 acres of federal
4 mining claims located on federal land in El Dorado County and leased that land to
5 suction dredge miners who mine the land for a fee. Plaintiff Hobbs is the President of
6 PLP, a non-profit that advocates for miners and prospectors. Plaintiff Keene is the
7 secretary/treasurer of a family-owned business, Keene Engineering Co., Inc., in
8 Chatsworth, California. The business sells dredging and mining equipment to miners
9 and prospectors throughout the United States.

10 On October 24, 2011, a first amended complaint was filed, adding as plaintiffs
11 Terry and Delores Stapp, suction dredge miners in Sierra County, California. In
12 addition, Ms. Stapp allegedly ran a gold prospecting store in San Bernardino, California
13 from August 1, 1978 to March 2010. (RJN Ex. C.) It also added Gary Goldberg as
14 plaintiff. He is a miner and prospector with mining claims on Federal lands in California
15 and resides in San Bernardino, California. (RJN Ex. C.)

16 The action challenges the constitutionality of AB 670 and AB 120 (enacted July
17 2011). It alleges the following causes of action: (1) federal preemption; (2) violation of
18 Calif. Constitution, art. X, §2; (3) violation of 16 U.S.C. §481 and 43 U.S.C. §661; (4)
19 violation of the California Statehood Act; (5) denial of due process under the 5th and
20 14th amendments to the U.S. Constitution;⁶ (6) denial of equal protection under the 14th
21 amendment to the U.S. Constitution and article I, §7(a) of the California Constitution; (7)
22 environmental justice; (8) injunctive relief; (9) declaratory relief; and (10) damages.

23 In October 2010, Defendant DFG had filed a motion to transfer pursuant to CCP
24 § 403 and CRC 3.500 in Alameda County, seeking to transfer the *Kimble* matter to
25 Alameda County. As part of that motion, DFG took the position that the matter was not
26 complex. (Saxton Decl. Ex. 14.) The motion to transfer was denied in December 2010.

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28 ⁶ This cause of action appears to be a takings claim.

1 At the time the Petition for Coordination was filed, pending before the Court was
2 defendants' demurrer to the first amended complaint and plaintiffs' application for a
3 preliminary injunction.

4 **E. AB 120 (Effective July 26, 2011)**

5 As discussed above, AB 120 (Stats. 2011, ch. 133, § 6), effective July 26, 2011,
6 further amended Fish & Game Code § 5653.1 to provide that the prohibition on suction
7 dredge mining would remain in place until the earlier of either June 30, 2016 or until the
8 DFG certified a CEQA review as required under the 2006 consent order and consent
9 judgment, new regulations that fully mitigate all identified significant environmental
10 impacts were adopted and operative, and a fee structure was put in place. The first
11 amended complaint filed in *Kimble*, added AB 120 to its challenge.

12 **F. DFG Regulations and Final CEQA Report (March 2012)**

13 On March 16, 2012, DFG released its final CEQA report and revised regulations.⁷
14 On April 27, 2012, the Office of Administrative Law approved the regulations and
15 submitted them to the Secretary of State. (Saxton Decl. ¶¶ 8 and Ex. 6.)

16 **G. Karuk II (April 2, 2012)**

17 On April 2, 2012, Karuk Tribe, Center for Biological Diversity, Pacific Coast
18 Federation of Fishermen's Associations, Institute for Fisheries Resources, Friends of
19 the River, California Sportfishing Protection Alliance, Foothill Anger's Coalition, North
20 Fork American River Alliance, Upper American River Foundation, and Central Sierra
21 Environmental Resource Center, filed a petition for writ of mandate and complaint for
22 declaratory and injunctive relief. Named respondents/defendants are DFG and Charlton
23 Bonham, Director of DFG. The petition was filed in Alameda County. (RJN Ex. D.)

24 These Petitioners/Plaintiffs assert the EIR did not comply with CEQA. They also
25 seek to set aside the adopted regulatory suction dredge program as not in compliance
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28 ⁷ In support of this statement the opposition cites to Saxton Decl. Ex. 3, p. 3, which is the DFG's Case
Status Report filed in the *Karuk I* matter and dated October 2, 2006. It is unclear why this document is being cited to.

1 with Fish & Game Code. They seek declaratory relief that the decision to approve the
2 suction dredge program constitutes a prejudicial abuse of discretion under the Fish &
3 Game Code and CEQA. (*Id.*)

4 **H. PLP (April 12, 2012)**

5 On April 12, 2012, PLP, Gerald Hobbs, Western Mining Alliance, Eric Maksymyk,
6 Gary Goldberg, Steve Tyler, Ron Kliewer, Patrick Keene, Keene Engineering Company,
7 Inc., Terry Stapp, Delores Stapp, Ronald Hansen, Eric Rasbold, Walt Wegner and Paul
8 Coombs filed a petition for writ of mandate and declaratory relief. Named
9 Respondents/Defendants are DFG and Charlton Bonham. The petition was filed in San
10 Bernardino County. (RJN Ex. E.)

11 Petitioners/Plaintiffs contend the new regulations are exempt from CEQA and
12 challenged the final supplemental EIR under CEQA. They also challenge the procedure
13 by which the regulations were adopted. In addition, they assert causes of action of
14 federal preemption, violation of laws applicable to federal mining claims on federal land,
15 violation of Federal and California Endangered Species Acts, denial of due process
16 under federal and state constitutions, denial of equal protection under federal and state
17 constitutions, injunctive relief, declaratory relief related to the new regulations, and
18 damages. (RJN Ex. E)

19 **I. New 49'ers (April 13, 2012)**

20 On April 13, 2012, The New 49'ers, Inc., Steve Kleszyk, Billy and Chad Stanford,
21 David Garey, David Ransom, Richard and Sue Burton, Elizabeth and Mark Cutler,
22 Edward Murphy, Martha Cronin, Raymond Phillips, Robert and Anna Sonnenburg, Ray
23 Derrick, Ronald Burnside, and Northwest Mining LLC, filed a complaint and petition for
24 writ of mandate in Siskiyou County. Named defendants are State of California, DFG,
25 and Charlton Bonham. All plaintiffs allegedly own mining claims in Siskiyou County.
26 (RJN Ex. F.)

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28 However, Petitioners assert the same fact in their petition. Given the allegations in the 2012 CEQA cases, it is
undisputed approval of a final supplemental EIR and regulations occurred in March 2012.

1 They too challenge the EIR as in violation of CEQA and the regulations as
2 exceeding statutory authority under the Fish & Game Code. They also make class
3 action allegations asserting the class is holders of federally-registered mining claims in
4 California located, in whole or in part, within "Closed Areas" under the new regulations.
5 An additional, potentially overlapping and conditional class is identified as those
6 plaintiffs who are unable to obtain dredging permits on account of the cap of 1,500
7 permits when and if such permits are ever issued. A cause of action for inverse
8 condemnation also is alleged. (RJN Ex. F.)

9 **J. Motions To Transfer/Consolidate**

10 On April 9, 2012 plaintiffs in *Karuk I* and *Karuk II* (Alameda County) filed a motion
11 to consolidate the two actions. On May 3, 2012, Judge Roesch, granted the motion.
12 On its own motion, the court also consolidated *Hillman* (Alameda County). (Saxton
13 Decl. Ex. 9.)

14 On April 18, 2012, *Karuk I* plaintiffs filed a motion to transfer to Alameda County
15 the *PLP* action (San Bernardino County) and *New 49'ers* action (Siskiyou County),
16 pursuant to CCP § 403. On May 17, 2012, Judge Roesch, granted the motion. The
17 court specifically found that that the opposition was incorrect in its position that the
18 individual cases are "complex" as defined in CRC 3.400. The court stated,
19 "Notwithstanding assertions that a court could determine the Siskiyou County action to
20 be a class action and that the class action could be determined to be 'complex,' and
21 notwithstanding the assertion that these cases are 'provisionally complex,' this court has
22 determined that the cases and each of them are not 'complex.' *This ruling does not*
23 *determine whether the coordinated package of cases might not be later determined*
24 *'complex' under provisions of CRC 3.400(b)(4).*" (Saxton Decl. Ex. 10, pp. 1-2
25 (emphasis added).)

26 The court's order included the findings required by CRC 3.500(d), including
27 finding common questions of fact and law are predominating and significant to the
28 litigation, in particular the EIR related to permits and regulations for the suction dredge

1 mining program. With respect to convenience of parties, witnesses and counsel, the
2 court noted that all four actions involve the same parties. PLP and New 49'ers had
3 intervened in *Karuk I* and *Hillman*. Therefore, the court found, the actions were not
4 likely to cause undue burden of parties who filed in San Bernardino and Siskiyou
5 Counties. The court did not discuss the specifics of the individual defendants.⁸

6 In the meantime, on May 7, 2012, the Petition for Coordination was filed.

7 After the transfer of the *PLP* case to Alameda County, PLP filed a CCP § 170.6
8 preemptory challenge, which Judge Roesch granted on May 22, 2012. (Saxton Decl.
9 Ex. 11.) All cases pending in Alameda were assigned to Hon. Evelio Grillo. With
10 respect to the preemptory challenge, *Karuk* plaintiffs sought to rescind the May 22, 2012
11 Order. On June 19, 2012, Hon. Wynne S. Carvill, rescinded the Order as to all actions
12 except *PLP*. (Saxton Decl. Ex. 13.) On June 21, 2012, *New 49'ers* plaintiffs filed their
13 preemptory challenge. (Saxton Decl. Ex. 8.) According to *Karuk* plaintiffs, this matter
14 was not ruled on because of the stay, this court issued as a result of the Petition for
15 Coordination.

16 On June 1, 2012, *Karuk* plaintiffs filed a motion to transfer and consolidate the
17 *Kimble* matter with previously consolidated matters pursuant to CCP § 403, 404.1 and
18 CRC 3.400 and 3.500. In support of the motion, *Karuk* plaintiffs asserted that the
19 matters were not complex, relying in part on Judge Roesch's Order transferring *PLP*
20 and *New 49'ers*. The motion was set for hearing on June 27, 2012. However, on June
21 26, 2012, this court stayed all matters pending a determination on the Petition for
22 Coordination.

23 On June 27, 2012, Judge Grillo issued an order continuing the motion to transfer
24 the *Kimble* matter to September 12, 2012, in light of the pending Petition for
25 Coordination. Judge Grillo noted that the parties to all six actions appear to agree that
26

27 ⁸ In a footnote in an order regarding a preemptory challenge, Hon. Wynne S. Carvill, Supervising Judge
28 Alameda County Superior Court, noted that there was some ambiguity as to whether these two cases were ordered
consolidated with *Karuk I* and the cases already consolidated with *Karuk I* (*Hillman* and *Karuk II*). Judge Carvill

1 all six CEQA cases should be managed in a single department, by a single judge. The
2 court also stated, "Although the decision is to be made by Judge Alvarez, this court
3 would be inclined to find that although a single CEQA case might not be 'complex,' a
4 proceeding comprised of six CEQA cases appears to be complex under CRC
5 3.400(c)(4) ('Environmental ... claims involving many parties.')." (Reply, Ex. D.)⁹

6 Therefore, *Karuk I*, *Hillman*, and *Karuk II* (collectively "*Karuk cases*"), are
7 consolidated and pending before Judge Roesch in Alameda County, with *Karuk I*
8 (RG05211597) listed as the lead case. *The New 49'ers* case is pending in Alameda
9 County before Judge Roesch with a CCP § 170.6 motion pending. *PLP* is pending
10 before Judge Grillo in Alameda County. *Kimble* is pending before this court, with a
11 pending motion to transfer it to Alameda County and consolidate it with the consolidated
12 *Karuk* cases pursuant to CCP § 403.

13 K. July 2012 Legislation

14 As previously discussed in Footnote 5, on June 27, 2012, SB 1018 was enacted,
15 effective June 27, 2012. It repealed the June 30, 2016 date in Fish & Game Code §
16 5653.1, and imposed a moratorium on suction dredge mining until DFG completes the
17 environmental review as described in the consent order and consent judgment, required
18 regulations are adopted and operative, and a fee structure is in place to cover the costs
19 related to the administration of the program.

20 Section 5653.1 now also provides that to facilitate compliance, DFG is to consult
21 with other agencies as necessary on or before April 1, 2013, and prepare and submit to
22 the Legislature a report with recommendations on statutory changes or authorizations
23 that, in DFG's determination, are necessary to develop suction dredge regulations,
24

25 concluded that no such consolidation was ordered as part of the transfer and that the motion did not refer to
26 consolidation. (Saxton Decl. Ex. 13, p. 3, fn2.)

27 ⁹ The Court notes several exhibits are attached to the *Kimble* plaintiffs' Reply. A separate request for
28 judicial notice or declaration in support was not filed in support. *Karuk* plaintiffs' opposition admits that the *Kimble*
transfer motion was continued because of the stay. (Opp. p. 7:26.) The order also was attached to a request for
judicial notice submitted with DFG's reply, Ex. B. The court can take judicial notice of the order pursuant to Evidence
Code § 452(d).

1 including recommendations relating to mitigation of all identified significant
2 environmental impacts and a fee structure that will fully cover all program costs.

3 In their opposition, *Karuk* plaintiffs contend that as a result of the most recent
4 amendments, the Department cannot simply “sit on the regulations” until 2016. It
5 asserts the 2012 regulations and Final SEIR are not in compliance with Fish & Game
6 Code § 5653.1, because they fail to mitigate identified significant environmental harms.

7 In the reply, *Kimble* and *PLP* plaintiffs assert that SB 1018 is extreme in its
8 indefinite ban on all suction dredge mining. They assert that they and *Karuk* plaintiffs
9 both agree the newly promulgated regulations regarding suction dredge mining are now
10 invalid and must be withdrawn by the DFG. The reply states, “This is at least one issue
11 upon which both the Karuk Tribe and the *Kimble* miners can agree.” (*Kimble* Pls.’
12 Reply, p. 4.) *Kimble* plaintiffs also assert that they will be seeking leave to amend their
13 complaint given the recent amendment to Fish & Game Code § 5653.1.

14 15 DISCUSSION

16 Legal Standard

17 Under CCP § 404, “[w]hen civil actions sharing a common question of fact or law
18 are pending in different courts, a petition for coordination may be submitted to the
19 Chairperson of the Judicial Council ... by all of the parties plaintiff or defendant in any
20 such action.” “A petition for coordination ... shall be supported by a declaration stating
21 facts showing that the actions are complex, as defined by the Judicial Council and that
22 the actions meet the standards specified in Section 404.1.” (CCP § 404.)

23 “A ‘complex case’ is an action that requires exceptional judicial management to
24 avoid placing unnecessary burdens on the court or the litigants and to expedite the
25 case, keep costs reasonable, and promote effective decision making by the court, the
26 parties, and counsel.” (CRC 3.400(a).)

27 In deciding whether a case is complex, the court should consider whether the
28 action is likely to involve (1) numerous pretrial motions raising difficult or novel legal

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1 issues that will be time-consuming to resolve, (2) management of a large number of
2 witnesses or substantial amount of documentary evidence, (3) management of a large
3 number of separately represented parties, (4) coordination with related actions pending
4 in one or more courts in other counties, or (5) substantial postjudgment judicial
5 supervision. (CRC 3.400(b).) In addition, claims involving environmental claims
6 involving many parties are provisionally complex. (CRC 3.400(c)(4).) Under CRC
7 3.502, the court must consider rule 3.400 *et seq.* in determining whether a case is a
8 complex case within the meaning of CCP § 404.

9 The standards set forth in CCP § 404.1 are as follows: (1) whether the common
10 question of fact or law is predominating and significant to the litigation; (2) the
11 convenience of parties, witnesses, and counsel; (3) the relative development of the
12 actions and the work product of counsel; (4) the efficient utilization of judicial facilities
13 and manpower; (5) the calendar of the courts; (6) the disadvantages of duplicative and
14 inconsistent rulings, orders, or judgment; and (7) the likelihood of settlement of the
15 actions without further litigation should coordination be denied.¹⁰

16 **Request for Judicial Notice**

17 With its petition, Petitioners request the court take judicial notice of 18 different
18 documents, all of which are court records, court filings, or court orders from other
19 related cases in state or federal court. Under Evidence Code §452(d), the court may
20 take judicial notice of the records of any court of this state or of any other state or
21 federal court. The court may take judicial notice of the existence of each document in a
22 court file, but can only take judicial notice of the truth of facts asserted in documents
23 such as orders, findings of fact and conclusions of law, and judgments.” (*Day v. Sharp*
24

25 ¹⁰ If actions are not complex, CCP § 403 allows for a court hearing of the actions to transfer other actions to
26 that court and once transferred, without any further motion or hearing, order the cases consolidated for trial pursuant
27 to CCP § 1048. Under CRC 3.500(d), if a court orders cases or cases to be transferred pursuant to CCP § 403, the
28 court order must specify the reasons supporting a finding that the transfer will promote the ends of justice, with
reference to the following standards: (1) the actions are not complex; (2) whether the common question of fact or law
is predominating and significant to the litigation; (3) the convenience of the parties, witnesses, and counsel; (4) the
relative development of the actions and the work product of counsel; (5) the efficient utilization of judicial facilities and

1 (1975) 50 Cal. App. 3d 904, 914 (quoting Jefferson, Cal. Evidence Benchbook (1972)
2 Judicial Notice, §47.3, p. 840).)

3 The documents included in the RJN are:

- 4 (1) The *Karuk I* complaint (filed May 6, 2005) (Exhibit A);
- 5 (2) First Amended Complaint in *Hillman* (filed March 20, 2009) (Exhibit B);
- 6 (3) First Amended Complaint in *Kimble* (filed October 24, 2011) (Exhibit C);
- 7 (4) Complaint in *Karuk II* (filed April 2, 2012) (Exhibit D);
- 8 (5) Complaint in *PLP* (filed April 12, 2012) (Exhibit E);
- 9 (6) Complaint in *New 49'ers* (filed April 13, 2012) (Exhibit F);
- 10 (7) Objections of New 49ers and Koons to stipulated judgment in *Karuk I* (filed
11 January 10, 2006) (Exhibit G);
- 12 (8) Miners' Memorandum in Opposition to Preliminary Injunction filed in *Hillman*
13 (filed May 21, 2009) (Exhibit H);
- 14 (9) Brief of Appellants PLP and Gerald E. Hobbs filed in *Hillman* appeal (filed
15 February 18, 2010) (Exhibit I);
- 16 (10) Memorandum of PLP and Gerald E. Hobbs in Opposition to Plaintiffs' Motion
17 for Preliminary Injunction (filed May 18, 2009) (Exhibit J);(11) Complaint in *PLP*
18 filed in U.S. District Court, Eastern District of California (filed September 14,
19 2009) (Exhibit K);
- 20 (12) Order in *Karuk I* granting motion to intervene by New 49ers and Raymond
21 Koons (dated February 9, 2006) (Exhibit L);
- 22 (13) Order in *Karuk I* granting motion to intervene by Gerald Hobbs (dated March
23 26, 2006) (Exhibit M);
- 24 (14) Order and Consent Judgment in *Karuk I* (filed December 20, 2006) (Exhibit
25 N);

26
27
28 staff resources; (6) the calendar of the courts; (7) the disadvantages of duplicative and inconsistent rulings, orders, or judgments; and (8) the likelihood of settlement of the actions without further litigation should coordination be denied.

RULING ON PETITION FOR COORDINATION

1 (15) Order in *Hillman* granting application to intervene by New 49'ers, Raymond
2 Koons, Gerald Hobbs, and PLP (filed April 27, 2009) (Exhibit O);
3 (16) Order in *Hillman* granting plaintiffs' motion for preliminary injunction (filed
4 July 10, 2009) (Exhibit P);
5 (17) Court of Appeal Decision re: Preliminary Injunction in *Hillman* (filed
6 December 28, 2011) (Exhibit Q); and (18) Memorandum and Order dismissing
7 federal *PLP* action (filed March 16, 2010) (Exhibit R).

8 These documents are proper subjects for judicial notice under §452(d), and the
9 RJN is GRANTED in its entirety.

10 **Analysis**

11 **A. Actions Are Complex**

12 When considered as a whole, the matters qualify as complex because they
13 involve the coordination of related actions pending in more than one court in other
14 counties. (CRC 3.400(b)(4).) Within Alameda County, these matters are now pending
15 in several different courts with another CCP § 170.6 peremptory challenge pending.
16 These cases also appear to be the types of cases that will involve numerous pretrial
17 motions raising difficult and novel legal questions, including federal preemption and
18 CEQA issues. (CRC 3.400(b)(1).) Many of these issues will come before the courts
19 and be decided through briefing procedures for writ petitions with reference to the
20 administrative record or through motions for summary judgment. As pointed out in the
21 Petition, given the common issues and pretrial motions in the form of requests for
22 injunctions, the matters should be coordinated.

23 The cases are likely to involve the management of potential for discovery on
24 common issues related to suction dredge mining throughout the state. They also are
25 likely to involve the management of a substantial amount of documentary evidence such
26 as the administrative record related to the CEQA issues. (CRC 3.400(b)(2). Finally,
27 given that requests for writs and injunctive and declaratory relief are at issue, the cases
28

1 are likely to require substantial post-judgment supervision and that consistency in
2 orders is important with respect to future post judgment enforcement issues. (CRC
3 3.400(b)(5).

4 The court also considers that these matters involve environmental claims
5 involving many parties. As such, the cases are provisionally complex pursuant to CRC
6 3.400(c)(4).

7 When the opposition is considered, *Karuk* plaintiffs do not provide any specific
8 argument that the cases are not complex. Instead, their argument is directed toward
9 attacking the Petition for Coordination as “judge shopping,” and discussing the
10 peremptory challenges that occurred in Alameda County. However, the peremptory
11 challenges were the result of the *PLP* and *New 49’ers* cases being transferred to
12 Alameda County at the request of *Karuk* plaintiffs. The *PLP* challenge was reviewed by
13 Judge Carvill and resulted in cases now proceeding before different judges in Alameda
14 County.

15 *Karuk* plaintiffs also complain that coordination will allow for further mischief
16 asserting that California Rule of Court 3.516 allows a peremptory challenge after
17 assignment of a coordination trial judge and that “add-on” cases will raise the potential
18 for additional § 170.6 motions by miners. However, coordination actually militates
19 against successive § 170.6 challenges. CRC 3.516, applicable only upon the granting
20 of a petition for coordination and after an order assigning a coordination trial judge,
21 provides for a 20-day time period for making a peremptory challenge after service of the
22 order assigning the judge to the coordination proceeding. It also provides that all
23 plaintiffs or similar parties in the coordinated actions constitute a side and all defendants
24 or similar parties in such actions constitute a side for purposes of applying CCP § 170.6.
25 In addition, a party in a case “added on” to the coordinated proceedings cannot file a
26 peremptory challenge once the 20-day time period has passed following the initial
27
28

1 the initial assignment of the coordination judge. (*Industrial Indem. Co. v. Superior Court*
2 (1989) 214 Cal. App. 3d 259, 263-265.)¹¹

3 When considered, *Karuk* plaintiffs' argument supports a finding of complexity, to
4 ensure consistency in rulings in the cases sharing common questions of fact and law
5 that are currently pending in different courts.

6 **B. Common Questions of Fact and Law**

7 There is no dispute among the parties that the cases involve common question of
8 fact and law. As previously discussed above, at issue in the cases is the propriety of
9 dredge mining and issuance of new permits. In addition, *Kimble* and the new 2012
10 CEQA cases involve issues regarding Fish & Game Code § 5653.1. In *Hillman*,
11 intervenors raised the issue of federal preemption of a prohibition on suction mine
12 dredging and Fish & Game Code § 5653.1 also is implicated. Given the reference to
13 *Karuk I* in Fish & Game Code § 5653.1, *Karuk I* also is related. *Karuk I*, *Hillman*, and
14 *Karuk II* are now consolidated. *Kimble* and the 2012 CEQA cases also will involve
15 issues regarding the propriety of the recent final supplemental EIR and recently adopted
16 regulations. It is demonstrated that a sufficient number of common questions of fact
17 and law predominate as set forth in the memorandum and declaration submitted in
18 support of the Petition. To the extent that individual cases involve unique questions,
19 such claims can be bifurcated to the extent necessary and later remanded or
20 transferred as necessary.¹²

21 **C. Convenience of parties, witnesses, and counsel**

22 These actions involve similar parties and counsel. However, many of the issues
23 involving Fish & Game Code § 5653.1 and CEQA issues involve legal questions in
24 which the convenience of the parties and counsel are served by resolution in a single
25

26 ¹¹ Not cited by the parties.

27 ¹² For example, the *New 49'ers* involves a potential class action with respect to an inverse condemnation
28 claim that is not raised in the other actions. However, as the *New 49'ers* reply brief points out, once the suction
dredge mining moratorium issue is decided, in the event it is upheld, the taking claims can be the subject to a motion
to remand the claims to Siskiyou County.

1 forum. As the parties discuss, many of the principal parties have been litigating related
2 actions in Alameda County, including New 49'ers, PLP, Karuk Tribe, Hobbs, and DFG.
3 In addition, PLP, Hobbs, and DFG have been litigating in San Bernardino County.
4 Allowing the matters to proceed as a coordinated proceeding in one forum will serve the
5 convenience of the parties and counsel because common issues will be adjudicated in a
6 single forum.

7 With respect to witnesses, given the legal underpinnings of the common issues,
8 witness testimony is not expected to resolve the common legal issues. In addition, to
9 the extent there are claims specific to plaintiffs, such as takings and inverse
10 condemnation claims, such issues can be bifurcated and later, to the extent such claims
11 become relevant depending on the resolution of the common legal/factual issues,
12 remanded or transferred back to the original courts for resolution. Witnesses are not
13 demonstrated to be severely impacted by coordination.

14 **D. Relative Development of the Actions and Work Product of Counsel**

15 *Karuk I* was resolved through an Order and Consent Judgment as described
16 above, with the court retaining jurisdiction. The 2012 CEQA cases are newly filed
17 cases. Three of the cases, *Karuk I*, *Hillman*, and *Karuk II*, were consolidated at the
18 beginning of May 2012. In light of the recent amendments to Fish & Game Code §
19 5653.1, consolidated *Karuk* cases, *Kimble*, *PLP*, and *New 49'ers* are in a similar
20 procedural position. Coordination of the consolidated *Karuk* cases with the other three
21 related cases will not implicate the development and work product of counsel.

22 **E. Efficient Utilization of Judicial Facilities and Manpower; Calendar of**
23 **the Court; and Disadvantages of Duplicative and Inconsistent**
24 **Rulings, Order, or Judgments.**

25 These factors should be considered together because they implicate similar
26 concerns. Judicial facilities and resources will be used more efficiently if the cases are
27 coordinated. Coordination also will avoid duplicative review of common questions of
28 fact and law by separate courts. After the issue regarding the peremptory writs in

1 Alameda County, cases are now pending in two separate courts in Alameda County.
2 Given the common issues, concern over duplicative and inconsistent rulings is at issue,
3 especially considering that even in Alameda County the matters are not pending in the
4 same tribunal. In addition, as discussed, similar legal issues are pending in San
5 Bernardino County. The calendar of the courts supports coordination of these actions,
6 because coordination promotes judicial economy and conservation of limited judicial
7 resources. Coordination will facilitate consistency in rulings, order and judgments.
8 Inconsistent rulings with respect to dredge mining and DFG permit issues also could
9 make compliance with court orders difficult, if not impossible, for DFG. Coordination
10 also is timely in light of the issues concerning the recently approved EIR, regulations,
11 and amendments to Fish & Game Code § 5653.1.

12 These factors tend in favor of coordination before one judge.

13 **F. Likelihood of Settlement of the Actions without Further Litigation**
14 **Should Coordination Be Denied**

15 Given the evidence and arguments presented, coordination will increase the
16 likelihood of settlement. *Karuk* plaintiffs complain that the miners have repeatedly
17 demonstrated an ability and willingness to litigate in multiple venues. Coordination will
18 preclude this and bring similarly interested parties on common issues of law and fact
19 into the same forum. With coordination, likelihood of settlement increases because it
20 will preclude the continuation of actions in other forums in a parties' effort to obtain
21 favorable rulings.

22 **G. Conclusion**

23 Weighing the factors, the court finds that the actions at issue are complex and
24 that the standards set forth in CCP § 404.1 support coordination. Therefore, the
25 Petition for Coordination is granted.

26 **Site of Coordination Proceedings**

27 Under CRC 3.530(a), if a petition for coordination is granted, the coordination
28 motion judge must, in the order granting coordination, recommend to the Chair of the

1 Judicial Council a particular superior court for the site of the coordination proceedings.
2 The following factors are to be considered: (1) The number of included actions in a
3 particular location; (2) Whether the litigation is at an advanced stage in a particular
4 court; (3) The efficient use of court facilities and judicial resources; (4) The locations of
5 witnesses and evidence; (5) The convenience of the parties and witnesses; (6) The
6 parties' principal places of business; (7) The office locations of counsel for the parties,
7 and (8) The ease of travel to and availability of accommodations in particular locations.
8 (CRC 3.530(b).) The court also has to recommend an appropriate appellate court
9 pursuant to CRC 3.505(a).

10 This is where the primary dispute regarding coordination exists. All parties
11 except *Karuk* plaintiffs argue in favor of San Bernardino County as the site of
12 coordination proceedings.¹³ Petitioners DFG and *Kimble* plaintiffs argue in support of
13 coordination of the matters in San Bernardino County. They assert that such actions
14 are properly venued here, because a large number of the miners reside in this county.
15 They contend that San Bernardino County has the highest number of Federal mining
16 claims in California with 11,333 total Federal Mining Claims and 6,235 placer claims
17 within that total number. (Solomon Decl. ¶ 25.) They also contend that this court
18 invited the petition for coordination and intimated that San Bernardino might be the
19 appropriate site for the coordinated action. (Solomon Decl. ¶ 3.)

20 The opposition argues that the matter should be located in Alameda County.
21 They contend that six of the seven actions at issue are currently in Alameda County,
22 including one action that is not subject to the Petition. However, that one action,
23 *Walker*, was dismissed. They also argue that the Coalition, environmentalists and
24 small-scale fishermen would suffer an extreme hardship if San Bernardino County was
25

26
27
28 ¹³ In its reply Petitioner DFG also contended that Sacramento County is an appropriate location. At the hearing, Sacramento County was largely rejected by other parties. Because Sacramento was not offered as a site until the reply and all other parties appear to reject it, the Court will not consider Sacramento County any further.

1 chosen. However, there is no particular argument or evidence offered as to why this is
2 the case.

3 *Karuk* plaintiffs also assert they are represented by the Environmental Law
4 Foundation, a small non-profit, located in Oakland, California. Their counsel states
5 Environmental Law Foundation has represented the Karuk Tribe since 2005, and Lynn
6 Saxton is lead counsel in *Karuk I*, *Hillman*, and *Karuk II*. Saxton asserts these three
7 actions were brought on a pure contingency basis and if the actions were moved to San
8 Bernardino for litigation, it would pose a severe financial hardship on counsel. (Saxton
9 Decl. ¶ 18.)

10 In reply, *Kimble* plaintiffs and DFG again assert that the 3.530(b) factors favor
11 San Bernardino. They argue that none of the parties reside in Alameda County. (See
12 Solomon Reply Decl. ¶ 6.) They again assert that two of the six actions were initiated in
13 San Bernardino County. *Kimble* plaintiffs also assert that its action is comprised of men
14 and a woman of modest means and it would be a hardship economically and physically
15 to travel to Alameda County and asserts that as a practical matter, for most of them it
16 would be an impossibility. However, no specific evidence in support is provided. This
17 assertion also is mitigated by the fact that many of these plaintiffs allegedly hold federal
18 mining claims in counties located outside San Bernardino County and many are in
19 Northern California. The argument in favor of San Bernardino County is based primarily
20 on the fact that many of the *Kimble* plaintiffs reside here.

21 *New 49'ers* plaintiffs' reply also argues that the *Kimble* issues predominate.
22 Therefore, the coordinated actions should be heard in this court. They contend that
23 *Karuk I* and *Hillman* should be dismissed and that they have no continuing vitality. They
24 assert that DFG has fashioned new administrative rules on a new administrative record
25 and has fully complied with the consent decree and the Tribe and the miners have
26 commenced new cases that put a new record at issue. They argue that an order
27 granting a Petition for Coordination would, under CRC 3.516, restart the clock for any
28 peremptory challenge and past filings are of little significance. They also assert that in

1 light of recent legislative amendments, the issue with respect to Fish & Game Code §
2 5653.1 and its enforceability is susceptible to resolution by summary judgment and the
3 issue of Federal Supremacy has the potential to moot all other issues. In addition, the
4 CEQA challenge could wait until resolution of such issue and if it needs to go forward it
5 will be resolved on an administrative record.

6 As the discussion below outlines, when the specific factors of CRC 3.530(b) are
7 considered in light of the parties' arguments in the briefing and at the hearing, they favor
8 coordination in San Bernardino County.

9 **A. Number and Location of Actions**

10 The parties argue in favor of site coordination in either Alameda or San
11 Bernardino County. Even if the court accepts *New 49'ers* plaintiffs' argument that *Karuk*
12 *I* and *Hillman* should be dismissed in light of subsequent legislation, the final
13 supplemental EIR, and recently enacted regulations, these two cases and *Karuk II* were
14 consolidated for all purposes and pending with *Karuk I* as the lead case. (Saxton Decl.
15 Ex. 9.) Therefore, given transfers and consolidation of matters, there currently are three
16 cases pending in Alameda County: consolidated *Karuk I*, *PLP* (originally filed in San
17 Bernardino County), and *New 49ers* (originally filed in Siskiyou County). However, the
18 transfers of two of the Alameda County cases *PLP* and *New 49ers* occurred on May 17,
19 2012, after the Petition for Coordination at issue had been filed. Therefore, the
20 numbers and location of actions are skewed in favor of Alameda County, given these
21 recent transfers. *Kimble* is pending in San Bernardino. An attempt in Fall 2010 to
22 transfer that action to Alameda County was denied in December 2010. Another motion
23 to transfer currently is pending.

24 Under the circumstances, the number and location of cases do not favor either
25 County.

26 **B. Whether Litigation is at an Advanced State in a Particular Court**

27 Given that recently approved EIR and regulations and given the recent
28 amendments to Fish & Game Code § 5653.1, litigation is not in an advanced state in

1 any particular court. At this time, it appears the primary issue is the federal preemption
2 argument with respect to Fish & Game Code § 5653.1, which has been raised in
3 *Kimble, PLP*, and *New 49ers*. Until the transfers of cases to Alameda County in May
4 2012, two of these cases were pending in San Bernardino County and one was pending
5 in Siskiyou County. Plaintiffs in these actions argue in favor of San Bernardino County
6 for the site of coordination proceedings.

7 At the time of the Petition, this court in *Kimble* already had held a hearing on
8 defendant's demurrer to the first amended complaint and plaintiffs' application for a
9 preliminary injunction. The hearing was continued for additional briefing and, ultimately,
10 continued due to the Petition for Coordination.

11 As for the other cases, the consent order and consent judgment was issued in
12 *Karuk I*. In *Hillman*, a preliminary injunction issued by the trial court prohibiting DFG
13 from using state general funds to issue any suction dredge mining permits was reversed
14 in light of Fish & Game Code § 5653.1. The appellate court did not decide any
15 substantive issues that intervenors raised regarding the federal preemption issue. (RJN
16 Ex. O.) *Hillman* is not in an advanced state in light of § 5653.1.

17 When the arguments are considered, this factor leans in favor of San Bernardino
18 County. The primary issue is federal preemption, which is raised by the *Kimble, PLP*,
19 and *New 49ers* plaintiffs, all of whom argue in favor of San Bernardino County as the
20 site of the coordination proceedings.

21 **C. Efficient Use of Court Facilities and Judicial Resources**

22 When considered, this factor does not favor any of the counties the parties seek.
23 Regardless of the location of site coordination, files will have to be transferred and the
24 use of judicial resources for such endeavor will occur.

25 **D. Location of Parties and Witnesses; Locations of Witnesses and 26 Evidence; and Parties' Principal Places of Business**

27 It appears common legal issues can be resolved without the aid of witnesses,
28 given the issues regarding federal preemption and CEQA. In addition, when the parties'

1 residences and principal places of business are considered, the parties are all through
2 California, both north and south, and in other states, such as Nevada, Florida, North
3 Carolina (*New 49'ers*), and Oregon (*New 49'ers*), Texas (*New 49'ers*).

4 *New 49'ers* plaintiffs assert that the primary common legal issues involving Fish
5 & Game Code § 5653.1 can be resolved through summary judgment proceedings. In
6 addition, CEQA petition issues are resolved through filings with the court, and reference
7 to the administrative record, and counsel's oral argument at a hearing.

8 To the extent issues unique to particular plaintiffs are at issue, such as questions
9 of damages or inverse condemnation claims, procedures exist for bifurcation of issues
10 and remand or transfer back to court in which the actions were originally filed for
11 resolution should it become necessary.

12 However, it is not demonstrated that any parties or potential witnesses are
13 located in Alameda County. San Bernardino County is demonstrated to be the
14 residence of many of the *Kimble* plaintiffs and to have a connection to the issues
15 presented in the cases. This issue favors San Bernardino County.

16 **E. Office Locations of Counsel for Parties and Ease of Travel to and**
17 **Availability of Accommodations in Particular Locations**

18 Counsel in favor of Petition for Coordination has been litigating various issues in
19 Alameda County for some time, which includes counsel representing DFG defendants
20 and counsel for plaintiffs/intervenors PLP, Hobbs, New 49ers, and Koons. Therefore,
21 office location, travel, and availability of accommodations in Alameda County are not at
22 issue. As for *Karuk* plaintiffs, although they complain about travel to and
23 accommodations in San Bernardino County, their argument is directed toward financial
24 considerations of counsel. The *Karuk* cases were taken on a contingency fee. In this
25 respect, this argument does favor Alameda County.

26 **F. Conclusion**

27 When the CRC 3.530(b) factors are considered as a whole, they weigh in favor of
28 San Bernardino County. It appears the only reason for the venue of cases in Alameda

1 County was defendant DFG is a state agency and the Attorney General has an office in
2 Oakland, California. However, DFG argues in favor of San Bernardino County. The
3 fact *Karuk I* and *Hillman* were pending before the other cases does not necessitate that
4 Alameda County be the site of the coordination proceedings. It is not demonstrated that
5 in either of these cases the issues which are now ripe for review, such as federal
6 preemption, have been considered or decided. When this court considers the
7 circumstances of the cases, the location of parties to the actions, and the federal
8 preemption issue, which is the heart of the *Kimble* matter, the factors to be considered
9 weigh in favor of San Bernardino County. Therefore, the court recommends San
10 Bernardino County as the site for the coordination proceedings.

11 Finally, given that the actions subject to coordination are within the jurisdiction of
12 more than one reviewing court, pursuant to CRC. 3.505(a), the court recommends the
13 appellate court having jurisdiction with respect to matters filed in San Bernardino
14 County, which is the Fourth Appellate District, Division Two.

15 **DISPOSITION**

16 GRANT the Petition to Coordinate. When the evidence and arguments are
17 considered, the actions are complex and meet the standards of CCP § 404.1 in favor of
18 coordination. In addition, after consideration of CRC 3.530, San Bernardino County is
19 recommended as the site of the coordination proceedings. The Fourth Appellate
20 District, Division Two, is recommended as the court of appellate jurisdiction of the
21 coordinated action.

22
23 Dated this 28 day of September, 2012.

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25
26 

27 DONALD R. ALVAREZ
28 Judge of the Superior Court

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT, CIVIL DIVISION

TITLE OF CASE (ABBREVIATED): **KIMBLE, et al v HARRIS, ET AL**
CASE NUMBER: **CIVDS 1012922**

DECLARATION OF SERVICE BY MAIL

My business address is: San Bernardino Superior Court, 303 West Third Street, San Bernardino, California 92415.

I hereby declare that I am a citizen of the United States, over the age of 18, employed in the above-named county, and not a party to nor interested in this proceeding. On October 3, 2012, I deposited in the United States mail at San Bernardino, California, a sealed envelope (postage prepaid) which contained a true copy of the attached:

NAME OF DOCUMENT:

RULING ON PETITION FOR COORDINATION

which was addressed as follows:

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At the time of mailing this notice there was regular communication between the place of mailing and the place(s) to which this notice was addressed.

I declare under penalty of perjury the foregoing to be true and correct.

DATED: 10-3-12 by 
ALVINA J. HOLLENSBE
Administrative Assistant II