

PUBLIC LANDS FOR THE PEOPLE

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FOR 33 YEARS: *PLP exists to "Represent and assist outdoor user groups and individuals interested in keeping public and private lands open to prospecting, mining and outdoor recreation through education, scientific data and legal means."*

January 2024

New Challenge Cards from Public Lands for the People

Hello Friends!

In 2024, Public Lands for the People (PLP) has upgraded the orange challenge cards for the first time in 30 years to provide steps one can take to hold rogue agents accountable in small claims court that works in many states, as well as updating the CA dredge and Forest Service access cards. PLP leadership practices what we preach to hold bad government actors accountable whenever possible, here is one example from 2010.

Dredger Wins Claim Against Fish & Game Director

March 2010 by Walt Wegner

I was as angry as everyone else regarding Senate Bill 670 (SB 670) and the temporary prohibition on suction dredge mining in the State of California. I wanted to take action immediately, so on August 10, 2009, I wrote a letter to Donald Koch, Director of California Department of Fish & Game. I sent it certified, return receipt requested, as I do with all official correspondence, stating that I purchased a dredge permit on May 12, 2009 in the amount of \$47. I included a copy of my original application and credit card receipt and stated that due to the subsequent legislation my permit is now null and void and I demanded a refund of the \$47 permit fee. I stated that if I didn't receive a response within 14 days I would take legal action in small claims court to recover my permit fees, court costs and any other related expenses. I did not receive a response.

In early October I filed form SC-100, Plaintiff's Claim and Order to Go to Small Claims Court, listing myself as the plaintiff and Donald Koch, Director of Fish & Game, in his

official capacity, as defendant. My claim was for a refund of \$47 for my 2009 dredge permit fee and \$900 for a loss of gold due to my dredge season being cut short, figuring I had another week in my dredge season.

When I went in to file the small claims lawsuit, the clerk told me I could not file this in Van Nuys because the defendant was in Sacramento and I would have to file in Sacramento. I politely responded, "No, the Director of Fish & Game does business in all of California and I purchased the permit in Los Angeles County, so I am filing this in Los Angeles County court." They also told me I could not sue Donald Koch as an individual, but I could sue the department. I asked them to see the law stating this. They were unable to provide me with the law, so they accepted the filing of my claim.

Two days later, on October 10, I finally received a response from the Department of Fish & Game. The letter was not from Donald Koch, but it stated that they received my letter. The letter said that SB 670 did not authorize refunds and they were not going to refund my permit fee.

My court date was set for December 14, 2009. On October 30, I received Form SC-105, Request for Court Order and Answer. The person making the request was Bradley Solomon, Deputy Attorney General for the State of California, asking that the case be dismissed. He claimed that the plaintiff had failed to plead exhaustion of available administrative remedies, specifically that I had failed to comply with the California Tort Claims Act. He also stated that the legislation did not provide for a refund and there were procedural defects in the Complaint as I had marked that I am not suing a public entity. He claimed that Donald Koch in his official capacity is the same as a public entity.

I responded to the court on November 5, providing them with a copy of Mr. Solomon's letter. I advised the court that the defendant in this case is Donald Koch and not the Deputy Attorney General of California. I also noted that this was not a tort claim, which would have been a claim involving services paid for but not received. I politely demanded my day in court.

On 12/11/09, a few days prior to my court date, I received a Minute Order and Clerk's Notice of Ruling from the LA Superior Court informing me that court was convened at 8:30 am on 12/9/2009 in Department 108, with Honorable Judge Gregg Marcus presiding. The notice stated that my case had been dismissed without prejudice per court order giving no reason for dismissal. I had not been allowed to argue my case. Being very suspicious of this I showed up for my original court date on December 14 to find that my case was not on the docket.

I went to the clerk's office and they confirmed that my case was dismissed in closed chambers without anyone appearing. I asked the clerk's office for the law that allows a judge to dismiss a case without me being heard. She could not provide that. I told them at this time that I felt my right to due process had been violated, that they needed to show me the law.

I wrote a letter to Judge Marcus, who had dismissed my case, telling him the story from the beginning. I stated that I was never notified that my case was to be heard in chambers or that the date had changed and that I believed at the very least my right to due process had been violated and at the worst there was a conspiracy to prevent my case from being heard. I requested the specific law and reasoning that his dismissal was based upon and asked him to cite the specific law which stated that I could not sue Donald Koch as an individual in this matter. I also asked him if the case was dismissed due to a problem with the filing, and if so, to state the law upon which his decision was based. I requested a response within 30 days from the date of the letter and cc'd the letter to the original judge on the case, with additional copies to Senator Fran Pavley and Assemblyman Brad Blumenfeld.

On or around January 14, I received another Minute Order and Clerk's Notice of Ruling telling me that once again court had convened again in Department 108 without me being present. A motion was granted to vacate the earlier dismissal and the case was set for oral arguments. Both parties were ordered to be present on 2/3/2010 at 10:00 am in department 108, Van Nuys, California. I was listed as the plaintiff, with Fish & Game Director Donald Koch and Deputy Attorney General Bradley Solomon as defendants.

Once again I wrote a letter to Judge Gregg Marcus. I stated that I received the letter notifying me of my new court date. I noted that I did not sue the Deputy Attorney General and could only assume that he was going to be there to defend Donald Koch. I mentioned that as far as my knowledge goes, legal representation is not allowed in small claims court. I stated again that my right of due process had already been violated when the court previously dismissed my case without me being present, and I asked the court to deny legal representation to Mr. Koch.

I finally received my day in court on February 3, 2010. Donald Koch was not present. Instead, Terry Dickerson from the California Dept. of Fish and Game appeared in an attempt to represent the defendant.

At the beginning of the hearing I stated to the judge that the defendant Donald Koch was

not present, and I requested that the judge rule in my favor. He did not respond to my request. I also requested the judge ask Ms. Dickerson if she had a license to practice law. The judge stated that this was “irrelevant.” I replied, “Your Honor, on Form SC100, information handed out by this court, it clearly states you may talk to a lawyer before or after the case, but you may not have one represent you in court unless this is an appeal from a small claims case.”

The judge then asked Ms. Dickerson if she was an attorney. She replied that she was a biologist and not an attorney.

The judge asked if I was satisfied, and I said, “Yes.” However, I did not want to continue with the proceeding because she was not permitted to represent Donald Koch in this case.

The judge then asked me to plead my case, so I went through the order of events once again. I presented to the judge as evidence a letter from Fish and Game—a Notice of Refund 2009-2010 for Commercial Fishing Salmon Fees—that was issued upon closure of the salmon fishing season. The judge stated to me that salmon fishing and suction dredging are two separate things.

“You’re right, your Honor, they are. As a mineral estate owner I have been granted rights under federal law and salmon fishermen do not have the same rights as I do. Therefore, I’m even more entitled to my permit fees,” I said.

I also stated for the record that the State of California does not authorize mining, and they are only allowed to provide reasonable regulation.

The judge asked Ms. Dickerson if she had a sworn affidavit from Donald Koch giving her authority to represent him in court. She replied that she did not. He asked her if she had a copy of SB 670 stating that dredge permit fees were not approved for refunds. She did not. He asked her if she had studied the law and if she could cite any of it. She responded, “No.”

The judge asked me to produce records to prove my loss of revenue from the dredge season. I was unprepared and could not provide the court with that record. My bad, as they say these days.

The judge ruled in my favor for \$47 and dismissed the remainder of my claim. After leaving the court room and speaking with Jerry Hobbs, president of Public Lands for the People, I realized that I should have asked the judge to be reimbursed for my court costs and any

related fees. In the heat of the moment, I forgot.

I wonder what would happen if 50, 100, 300 or maybe 3,000 miners who purchased dredge permits asserted their rights and followed the same path I followed. Would courts honor the claims of those who were denied several thousand dollars of income in addition to permit fees? Would the DFG do what is right and just refund the fees, or would they spend more time and money defending multiple lawsuits in small claims court? I'd sure like to find out!

Walt Wegner is the vice president of Public Lands for the People.

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