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18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 SAN FRANCISCO DIVISION

21 **DRAKES BAY OYSTER COMPANY,**
22 17171 Sir Francis Drake Blvd
23 Inverness, CA 94937, and

24 **KEVIN LUNNY,**
25 17171 Sir Francis Drake Blvd
26 Inverness, CA 94937

27 Plaintiffs,

28 v.

KENNETH L. SALAZAR,
in his official capacity as Secretary, U.S.
Department of the Interior,
1849 C Street, NW, Washington, D.C., 20240;
U.S. DEPARTMENT OF THE INTERIOR
1849 C Street, NW, Washington, D.C., 20240;
U.S. NATIONAL PARK SERVICE
1849 C Street, NW, Washington, D.C. 20240;
JONATHAN JARVIS,
in his official capacity as Director, U.S. National
Park Service,
1849 C Street, NW, Washington, D.C. 20240;
and **DOES 1-100.**

Defendants.

Case No. 12-cv-06134-YGR

**[PROPOSED] TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE**

Date: TBD

Time: TBD

Court: Oakland Courthouse 5 – 2nd Floor

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1 To Defendants Kenneth L. Salazar, U.S. Department of the Interior, U.S. National Park
2 Service, and Jonathan Jarvis:

3 Plaintiffs' application for a Temporary Restraining Order came before this Court for
4 consideration on December ____, 2012. Upon consideration of the application, and for good
5 cause shown,

6 IT IS HEREBY ORDERED as follows:

7 Temporary Restraining Order

8 The Court finds that Plaintiffs have demonstrated a likelihood of success on the merits of
9 their claims that Defendants violated the provisions of Pub. L. No. 111-88, § 124, 123 Stat. 2932
10 (Section 124), the Administrative Procedure Act (APA), the National Environmental Policy Act
11 of 1969 (NEPA), the Data Quality Act (DQA), and the United States Constitution's substantive
12 and procedural due process provisions. The Court further finds that Plaintiffs have demonstrated
13 that without an order from this Court they will suffer grave and irreparable harm from
14 Defendants' immediate implementation of Defendant Salazar's November 29, 2012,
15 Memorandum of Decision denying Plaintiffs a renewal of their Special Use Permit and requiring
16 that all commercial activities cease, and all personal property and physical structures be removed,
17 by February 28, 2013. An order prohibiting Defendants and their agents from violating Plaintiffs'
18 rights will maintain the status quo—which has existed for approximately eighty years—and will
19 not interfere with Defendants' ability to achieve their legitimate interests. Furthermore, it is in
20 the public interest to avoid the loss of thirty-one full-time jobs during the Holiday season, the loss
21 of affordable housing for fifteen people, immediate environmental impacts to the environment in
22 Drakes Estero, to preserve the interpretative and educational value provided by Plaintiffs, and to
23 avoid impacts to the State of California. The Court therefore finds that the balance of equities
24 tips in favor of granting the temporary restraining order, that doing so is in the public interest, and
25 that the balance of hardships tips sharply in the Plaintiffs' favor.

26 Accordingly, IT IS HEREBY ORDERED that Defendants Kenneth L. Salazar, U.S.
27 Department of the Interior, U.S. National Park Service, and Jonathan Jarvis, and their respective
28 officers, agents, servants, employees, and attorneys, and upon those persons in active concert or

1 participation with them, are HEREBY ENJOINED AND RESTRAINED from implementing and
2 enforcing Defendant Salazar’s November 29, 2012 memorandum of decision, or from otherwise
3 interfering with Plaintiffs’ continuing operation in Drakes Estero, including by publishing any
4 notice in the Federal Register relating to the cessation of commercial uses in Drakes Estero.

5 No bond is required in this case because Plaintiffs allege infringements of fundamental
6 rights and the relief they seek serves to protect the public interest. *See Pharm. Soc. v. New York*
7 *State Dept. of Soc. Services*, 50 F.3d 1168, 1175 (2d Cir. 1995); *Complete Angler, LLC v. City of*
8 *Clearwater*, 607 F. Supp. 2d 1326, 1335 (M.D. Fla. 2009). There is no realistic likelihood of
9 harm to Defendants resulting from issuance of the injunction, which merely prohibits it from
10 enforcing an order the illegality and unconstitutionality of which Plaintiffs are likely to
11 demonstrate on the merits. *See Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 1997).
12 Finally, a bond is unnecessary because the TRO merely requires Defendants to maintain the status
13 quo—which has been in place for 80 years—and so there is no realistic risk of harm to
14 Defendants from enjoining their conduct. *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir.
15 2009).

16 Order to Show Cause

17 Defendants are ordered to show cause before this Court why a preliminary injunction
18 should not issue enjoining Defendants and their agents from implementing and Defendant
19 Salazar’s November 29, 2012, Memorandum of Decision.

20 The hearing on the order to show cause will be held on _____ at
21 _____.

22 Plaintiffs’ moving papers must be filed on or before _____.

23 Defendants’ opposition papers must be filed on or before _____.

24 Plaintiffs’ reply papers shall be filed and served on or before _____.

25 Issued this ____ day of _____, 2012.

26
27 _____
28 United States District Judge