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16 Attorneys for Plaintiffs  
17 **DRAKES BAY OYSTER COMPANY and KEVIN LUNNY**

18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA

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

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

26 Plaintiffs,

27 v.

28 **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;  
and **JONATHAN JARVIS,**  
in his official capacity as Director, U.S.  
National Park Service,  
1849 C Street, NW, Washington, D.C. 20240.

Defendants.

Case No. 12-cv-06134-YGR

**REBUTTAL DECLARATION OF LAURA MORAN IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

Date: January 25, 2013

Time: 2:00 p.m.

Court: Oakland Courthouse 5 – 2nd Floor

1 **Counsel List Continued**

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1 I, Laura Moran, declare as follows:

2 1. I have over 26 years of experience dealing with coastal development projects in  
3 the United States; 18 years in California with an emphasis on the San Francisco Bay Area. I am a  
4 wetlands and permitting specialist and Senior Biologist with Environ International Corporation. I  
5 routinely direct, manage, and conduct a broad range of multi-agency permitting activities  
6 including, wetland delineation and resource studies, biological resource inventories, special-status  
7 species surveys, environmental impact assessments, and create environmental monitoring plans for  
8 mitigation and construction projects for a variety of public and private sector clients throughout  
9 California. Further details of my experience can be found in my CV provided in Exhibit 1. The  
10 following facts are based on my own personal knowledge and, if called as a witness, I could and  
11 would testify competently thereto.

12 2. I have reviewed the declaration Mr. Brannon Ketcham. I am providing the  
13 following response to those declarations based on my personal knowledge and professional  
14 expertise.

15 3. Mr. Ketcham does not dispute that there are work window restrictions that need to  
16 be adhered to in order to avoid impacts to special status species that are known to occur and/or  
17 have the potential to occur based on suitable habitat in the immediate vicinity of DBOC.  
18 Declaration of Brannon Ketcham (Ketcham Dec.) D. 64-2 ¶ 29.

19 4. Mr. Ketcham asserts that “activities associated with rack removal activities would  
20 not affect any bird nests as all racks are flooded completely on a daily basis.” Ketcham Dec. D.  
21 64-2 ¶ 30. Mr. Ketcham’s statement demonstrates his unfamiliarity with the Migratory Bird  
22 Treaty Act (MBTA) and the habits of nesting birds in Drakes Estero. Any activity (e.g. increased  
23 noise and vibration) that could cause nest abandonment by birds nesting in nearby saltmarsh and  
24 shoreline habitats is considered a “take” under the MBTA and is unlawful. Identification of  
25 nesting birds, nest locations and coordination of appropriate buffer zones with the California  
26 Department of Fish and Wildlife (CDFW – formerly CDFG) and/or the United States Fish and  
27 Wildlife Service (USFWS) is required for any work that would take place during the nesting  
28 period of February 1 through August 31. It appears that Mr. Ketcham misinterpreted the intent of

1 the MBTA and also the nature of land based disturbance that dismantling of the DBOC operation  
2 will cause and/or its impacts on nearby nesting habitat.

3 5. Mr. Ketcham does not dispute that significant the time, effort, or requirements for  
4 obtaining permits necessary to perform activities associated with the aquaculture facility removal.  
5 *Compare* Declaration of Laura Moran (Moran Dec.) D. 35 ¶¶ 4-17 with Ketcham Dec. D. 64-2 ¶  
6 32.

7 6. Mr. Ketcham implies that DBOC should have applied for permits to remove  
8 onshore and offshore aquaculture infrastructure *prior to* November 30, 2012. Ketcham Dec. D.  
9 64-2 ¶ 32. Considering the fact that the Secretary of the Interior did not issue his decision to deny  
10 DBOC's request for a Special Use Permit (SUP) until November 29, 2012, I do not consider  
11 DBOC's failure to submit permit applications the *very next day* to be a delay for at least four  
12 reasons. First, determining permitting requirements and preparing permit applications is a time-  
13 intensive process, which will take much longer than a single day for DBOC's operations, which  
14 may trigger permitting requirements with a multitude of federal, state, and local agencies. Moran  
15 Dec. D. 35 ¶¶ 5-15. Second, inter-agency coordination between federal, state, and local regulatory  
16 agencies—even prior to submission of formal permit applications—is very time intensive. Moran  
17 Dec. D. 35 ¶ 17. Third, in my experience, regulatory agencies do not engage in processing permit  
18 applications for hypothetical scenarios (i.e., prior to Secretary Salazar's decision of November 29,  
19 2012) due to their limited resources. Finally, in my opinion, it is unreasonable for Mr. Ketcham to  
20 expect DBOC to seek regulatory permits required for a removal action while they were waiting to  
21 see if they would be granted a 10 year SUP extension.

22 7. Mr. Ketcham does not dispute that DBOC may need to acquire permits to avoid  
23 impacts to special status species, that work window restrictions may apply, or the time and effort  
24 required to obtain permits. Ketcham Dec. D. 64-2 ¶ 32. Accordingly, Mr. Ketcham's declaration  
25 must be considered an admission that it would be impossible for DOBC to perform the removal  
26 activities required by the National Park Service by February 28, 2013.

27 8. Mr. Ketcham states that CDFG (now CDFW), NMFS, USACE, and USEPA were  
28 cooperating agencies listed in the FEIS and that these agencies are aware of and prepared to

1 address related permitting required for the dismantling of the DBOC operation. Ketcham Dec. D.  
2 64-2 ¶ 32. Mr. Ketcham admits that regulatory permitting and agency coordination is required for  
3 the DBOC operation removal, and that since DBOC could not have initiated permitting  
4 coordination prior to the Government's decision on November 29, 2013, it is impossible for  
5 DBOC to obtain the necessary permits within the timeframe mandated by the Government.

6 9. Mr. Ketcham admits that there are potential immediate impacts to special status  
7 species due to the DBOC removal activities. Ketcham Dec. D. 64-2 ¶ 33 (central California coast  
8 Coho salmon; central California coast steelhead). Therefore, any removal activities that may  
9 affect these special status species will require regulatory agency permitting and coordination, in  
10 addition to development of mitigation measures to be implemented during the removal process,  
11 including the CDFW, USFWS, and NMFS. Moran Dec. D. 35 ¶¶ 5-15.

12 10. The oyster rack removal process also will likely be limited by work window  
13 restrictions associated with these special status species, which occurs between June 15 and  
14 October 15 for central California coast steelhead and central California Coast Coho salmon.  
15 Accordingly, when combined with the harbor seal pupping season closure between March 1 to  
16 June 30 (*see* Ketcham Dec. D. 64-2 ¶ 29, stating that rack removal should be done outside the  
17 harbor seal pupping season), the apparent work window for offshore oyster rack removal activities  
18 is a 136 day period between October 15 and February 28. This does not include potential nesting  
19 bird issues that may be encountered during the month of February. Finally, in my opinion,  
20 potential take of one or more of these listed species cannot be considered a "short term minor  
21 adverse" impact, as suggested by Mr. Ketcham, nor would it be viewed so by the regulatory  
22 agencies who protect these species.

23 11. Mr. Ketcham identifies that there will be immediate adverse impacts to eel grass  
24 beds growing in and around the DBOC oyster racks during the dismantling process, regardless of  
25 the removal process employed for the rack removal. Ketcham Dec. D. 64-2 ¶ 34. These impacts  
26 are regulated and, therefore, agency coordination and permitting will be necessary with [CDFW,  
27 USFWS, NMFS, USACE and potentially others. Moran Dec. D. 35 ¶¶ 5-15. Furthermore, as  
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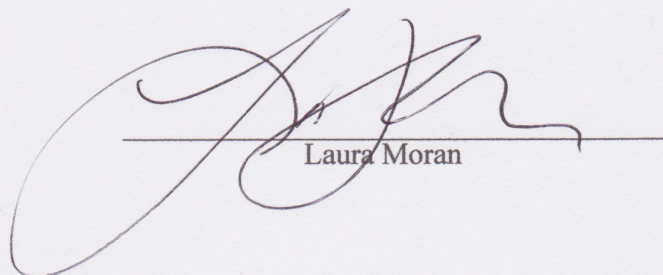
1 described in the Rebuttal Declaration of Scott Luchessa ¶¶ 12-17, the implementation of best  
2 management practices like silt curtains may have an adverse impact on eelgrass.

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

3 Executed this 15 day of January, 2013 in Novato, California.

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Laura Moran

# EXHIBIT 1



# Laura Moran

## Sr. Manager/Sr. Biologist

Laura Moran is a Senior Biologist and Manager at ENVIRON, with over 26 years of environmental consulting experience in both biology and project management. Ms. Moran has directed, managed, and conducted a broad range of multi-agency permitting activities including wetland delineation and resource studies, biological resource inventories, special-status species surveys, environmental impact analyses, and environmental monitoring plans for mitigation and construction projects for a variety of public and private sector clients on both the east and west coasts. Ms. Moran has a thorough understanding of CEQA and NEPA, both state and federal endangered species acts, and state and federal regulations and permits involving biological and water resources. She has worked on a wide variety of complex, multi-jurisdictional and environmental compliance projects, involving EIR and EIS compliance documentation as well as multi-agency consultation, reporting and permit application preparation for projects in the eastern and western United States. Ms. Moran maintains an excellent rapport with state and federal resource agencies. Her professional specialty includes multiple aspects of environmental studies and analyses, wetland delineation, restoration and mitigation design in support of environmental compliance and permitting.

### EXPERTISE

Regulatory Permitting  
 NEPA/CEQA Technical Reporting and Impact Analysis  
 Wetland Delineation  
 Habitat Management, Restoration, Mitigation and Monitoring Plans  
 Environmental Permitting  
 Biological Assessments and Baseline Studies

### CREDENTIALS

BSLA/MUP Degree Program, City University of New York  
 BS Biology, St. Lawrence University  
 Habitat Evaluation Procedure (HEP) Certification, US Fish and Wildlife Service, Anchorage Alaska  
 Wetland Delineation Certification, Rutgers University  
 Wetland Restoration, Enhancement and Construction, Environmental Concern, St. Michaels, MD  
 Society of Wetland Scientists  
 Association of Environmental Professionals  
 California Native Plant Society, Marin Chapter  
 Hazardous Material Handling Training  
 CERT, American Red Cross First Aid and CPR  
 NAUI Open Water Scuba Certification

### EXPERIENCE HIGHLIGHTS

- Currently providing technical and strategic guidance for biological and hydrological resources components of joint CEQA/NEPA environmental review and regulatory permitting for a green waste to energy biofuels project in southern California. Project to be located on inert landfill and active sand and gravel quarry regulated under SMARA. Permitting lead for confidential private client currently seeking qualification for a federal U.S. Department of Energy (USDOE) loan guarantee that requires NEPA compliance.
- Currently managing adaptation portion of the Climate Mitigation and Adaptation Plan (CMAP) for the Port of San Diego. Project involves extensive analysis of land uses within Port jurisdiction relative to sea level rise and other potential impacts associated with climate change. An initial vulnerability assessment is underway to identify high risk areas. The CMAP will be appended to the Port's Master Plan and will be used to guide the CEQA and NEPA process for future Port projects.
- Currently managing preparation of regulatory agency permit applications to US Army Corps of Engineers (USACOE), California Department of Fish and Game (CDFG), US Fish and Wildlife Service, Regional Water Quality Control Board (RWQCB), California Coastal Commission (CCC), and San Francisco Bay Conservation and Development Commission (SFBCDC). Multiple projects.
- Recently managed preparation of biological portions of PES in support of a federal Tiger II Grant Application submittal by the San Francisco Redevelopment Agency for the infrastructure portions of the Mission Bay Development area. Project implementation will likely require a Minimal Impact NES in support of a Caltrans Categorical Exemption determination. Managing NEPA compliance, BDCD and CCC coordination. The Mission Bay Development project is the largest project currently underway in the City of San Francisco.
- Recently completed biological assessment for Section 7, wetland delineation and regulatory agency permitting for several segments of the flood control channel desiltation and improvement projects in Hayward, Union City, and Fremont, CA. The flood control projects involve levee reconstruction/construction, channel desiltation and bank stabilization, dredging, and desiltation basin maintenance. Future tasks include a system-wide marsh enhancement plan. The flood control projects are part of the South Bay Salt Pond Restoration Project. Key biological issues include freshwater and tidal wetlands, multiple special status species, western pond turtle, pallid bat, steelhead and Chinook salmon.

