

1 Amber D. Abbasi [CSBN 240956]  
2 **CAUSE OF ACTION**  
3 1919 Pennsylvania Ave. NW, Suite 650  
4 Washington, D.C. 20006  
5 Phone: 202.499.4232  
6 Fax: 202.300.5842  
7 E-mail: amber.abbasi@causeofaction.org

8 S. Wayne Rosenbaum [CSBN 182456]  
9 Ryan Waterman [CSBN 229485]  
10 **STOEL RIVES LLP**  
11 12255 El Camino Real, Suite 100  
12 San Diego, CA 92130  
13 Phone: 858.794.4100  
14 Fax: 858.794.4101  
15 Email: swrosenbaum@stoel.com; rrwaterman@stoel.com

16 *Counsel list continues on next page*

17 Attorneys for Plaintiffs DRAKES BAY OYSTER COMPANY and KEVIN LUNNY

18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA  
20 OAKLAND 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;  
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

**DECLARATION OF PETER PROWS  
IN SUPPORT OF MOTION TO  
EXPEDITE RULING AND  
FOR INJUNCTION PENDING APPEAL**

1 **Counsel List Continued**

2 John Briscoe [CSBN 53223]  
3 Lawrence S. Bazel [CSBN 114641]  
4 Peter S. Prows [CSBN 257819]  
5 **BRISCOE IVESTER & BAZEL LLP**  
6 155 Sansome Street, Suite 700  
7 San Francisco, CA 94104  
8 Phone: 415.402.2700  
9 Fax: 415.398.5630  
10 E-mail: jbriscoe@briscoelaw.net; lbazel@briscoelaw.net;  
11 pprows@briscoelaw.net

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
Zackary Walton[CSBN 181041]  
**SSL LAW FIRM LLP**  
575 Market Street, Suite 2700  
San Francisco, CA 94105  
Phone: 415.243.2685  
Email: zack@sslfirm.com

**DECLARATION OF PETER PROWS**

1  
2           1.       I am an attorney with the law firm Briscoe Ivester & Bazel LLP, which represents  
3 Plaintiffs Drakes Bay Oyster Company and Kevin Lunny in this litigation. I am making this  
4 declaration in support of Plaintiffs' motion to expedite ruling and for an injunction pending  
5 appeal. I have personal knowledge of the following facts and if called as a witness I could and  
6 would competently testify to them under oath.

7           2.       Plaintiffs seek to have a decision on their motion for an injunction decided on an  
8 expedited basis so that, if it is denied, sufficient time to bring an emergency motion in the Ninth  
9 Circuit for an injunction pending appeal will remain before Defendants' February 28, 2013  
10 deadline for Plaintiffs to cease operations.

11           3.       On February 5, 2013, co-counsel Amber Abassi and I spoke with Stephen  
12 MacFarlane, counsel for Defendants, by telephone. I told Mr. MacFarlane of Plaintiffs' intent to  
13 file an appeal of this Court's denial of Plaintiffs' motion for a preliminary injunction. I asked Mr.  
14 MacFarlane whether Defendants would stipulate to an injunction pending appeal. Mr.  
15 MacFarlane said Defendants would not so stipulate. I then asked whether Defendants would  
16 object to Plaintiffs filing a motion for an injunction pending appeal in the Ninth Circuit without  
17 first filing that motion in the District Court. Mr. MacFarlane noted that Rule 8 of the Federal  
18 Rules of Appellate Procedure ordinarily requires a party to move for an injunction pending appeal  
19 in the District Court first. Ms. Abassi explained that Plaintiffs would need an expedited ruling  
20 from the District Court on such a motion within a matter of days. Mr. MacFarlane promised to  
21 get back to us.

22           4.       The next day, on February 6, 2013, Mr. MacFarlane called back and said that  
23 Defendants would not object to Plaintiffs moving early in the week of February 11 in the Ninth  
24 Circuit for an injunction pending appeal, so long as they first filed their motion for an injunction  
25 pending appeal in the District Court on the same grounds as Plaintiffs' original motion for a  
26 preliminary injunction.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

February 7, 2013

/s/ Peter S. Prows  
PETER S. PROWS