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*Attorneys for Defendant-Intervenor Applicants*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DRAKES BAY OYSTER COMPANY; and  
KEVIN LUNNY,

Plaintiffs,

v.

KENNETH L. SALAZAR; U.S. DEPARTMENT  
OF THE INTERIOR; U.S. NATIONAL PARK  
SERVICE; JONATHAN JARVIS; and DOES 1-  
100,

Defendants,

ENVIRONMENTAL ACTION COMMITTEE OF  
WEST MARIN; NATIONAL PARKS  
CONSERVATION ASSOCIATION; NATURAL  
RESOURCES DEFENSE COUNCIL; and SAVE  
OUR SEASHORE, non-profit organizations,

Defendant-Intervenor Applicants.

) Case No. C-12-6134 EDL

) DECLARATION OF GORDON BENNETT

) Date: January 15, 2013

) Time: 9:00 a.m.

) Judge: Hon. Elizabeth D. Laporte

) Place: Courtroom E, 15th Floor

I, Gordon Bennett, hereby declare and state:

1. This declaration is based on my personal knowledge, information, and belief.

2. I am a resident of Inverness, California. I am over the age of eighteen years and suffer from no legal incapacity. I submit this declaration in support of Save Our Seashore’s motion to intervene in this action.

3. Since 1995, I have been the President of Muir Beach Enviro, now doing business as Save Our Seashore (SOS). I was also from 2000 to 2008 the Conservation Chair of the Marin Sierra

1 Club and from 2000 to 2002 was a member of the federal Citizens' Advisory Commission for the  
2 Golden Gate National Recreation Area and Point Reyes National Seashore (PRNS), appointed by  
3 Interior Secretary Bruce Babbitt to represent the public at large.

4 4. The mission of Save Our Seashore (SOS) is to educate the public about  
5 environmental issues and to encourage environmental agencies to take responsible actions. SOS  
6 strongly supports the full protection of the congressionally-designated "potential wilderness" of  
7 Drakes Estero in PRNS as part of the federal wilderness system and, as described herein, has worked  
8 to achieve such protection. SOS is a 501(c)(3) organization that does not have members.

9 5. Through my work for the Sierra Club and for SOS, I became aware that the status of  
10 Drakes Estero as a congressionally designated wilderness was threatened by attempts by Drakes Bay  
11 Oyster Company (DBOC) to have its non-conforming operating rights extended. I have worked  
12 since 2005 to secure wilderness protection for Drakes Estero.

13 6. The Sierra Club ("the Club") was extensively involved in the hearings that resulted in  
14 the 1976 PRNS Wilderness Act. In my role as the Marin Group Conservation Chair, I worked with  
15 the Club's honorary President, Dr. Edward Wayburn, who was profoundly instrumental in shaping  
16 the 1976 PRNS Wilderness Act and who continued until his death in 2010 to advocate for the  
17 fulfillment of congressional intent for wilderness at Drake Estero. The Club was also involved in  
18 struggles beginning in the 1980's to get DBOC's predecessor, the Johnson Oyster Company (JOC),  
19 into compliance with its operating regulations. When the proposed sale of JOC became known, I  
20 met Mr. Lunny, DBOC's owner, in my capacity as the Club's Conservation Chair in January 2005  
21 (which we understood then to be prior to the close of escrow on the purchase of JOC). I discussed  
22 the history of JOC problems with Mr. Lunny and informed him that the Club was aware that JOC  
23 knew of the decision by NPS not to extend the JOC operating rights past 2012, that the Club (and  
24 many other environmental organizations) had long anticipated and supported that decision, and that  
25 we wanted to be sure that Mr. Lunny knew those facts before he closed escrow. In response, Mr.  
26 Lunny stated that he planned to clean up JOC's violations, that he had been informed by NPS of its  
27 decision not to extend operating rights past 2012, and that he had a "business plan" to recoup his  
28 investment within the remaining seven years of operating rights. Based on those statements by Mr.

1 Lunny, the Club initially supported the sale of the oyster operation but also requested that NPS begin  
2 to limit the operation's scope (which had varied greatly during the JOC years) during the remaining  
3 seven years in recognition of and to facilitate its closure in 2012. Since it became clear that Mr.  
4 Lunny was adding to the JOC violations (rather than cleaning them up), expanding operations  
5 toward areas used by harbor seals (that JOC operations had allowed the seals to use), and lobbying to  
6 extend operating rights past 2012 (rather than recouping his investment by 2012), I have worked to  
7 support the NPS wilderness decision by authoring numerous opinion pieces for newspapers, as well  
8 as by providing written and oral testimony to agencies including the National Park Service, the  
9 Marine Mammal Commission, the California Coastal Commission, and the California Fish and  
10 Game Commission. On behalf of SOS, I submitted extensive comments on the NPS Draft  
11 Environmental Impact Statement (DEIS) re DBOC. I also testified before the National Academy of  
12 Sciences in both its 2009 and 2012 reviews of NPS science and in both cases submitted factual  
13 information that required the NAS to correct its draft publications.

14 7. Living within 20 minutes of Drakes Estero for the last twelve years, my wife and I  
15 have been frequent visitors seeking that combined sense of peace and discovery that nature offers. I  
16 have both led and participated in numerous guided nature tours to Drakes Estero. I have walked the  
17 hills above the Estero, scoured the beaches in the Estero, and kayaked on the Estero. For the past 20  
18 years, my wife and I have surveyed harbor seals for Gulf of the Farallones National Marine  
19 Sanctuary (GFNMS) and for PRNS, which conducts harbor seal surveys in Drakes Estero. I am also  
20 Beach Watch surveyor for GFNMS; the end point of my monthly survey for the last eleven years has  
21 been the mouth of Drakes Estero.

22 8. I intend to continue visiting Drakes Estero and its surrounding lands on a regular  
23 basis as I have in the past, at least once a month on average.

24 9. For eleven years, as a GFNMS Surveyor, I have documented year-round and in some  
25 cases collected plastic debris discharged into the National Marine Sanctuary first by JOC and then  
26 by DBOC. I have also documented in recent springs numerous fresh-dead harbor seal pups whose  
27 necropsies found milk in the stomachs, which is indicative of a traumatic separation from the mother  
28 seal. I have experienced in the summer the natural sounds during a hike along the Estero interrupted

1 by the sound of DBOC motor boats and the music from boom-boxes in the DBOC boats. I have also  
2 witnessed birds forced to flee as DBOC motor boats cut through the large flocks that winter on the  
3 Estero.

4 10. DBOC's ongoing flouting of NPS rules and Coastal Commission orders, the  
5 continued presence of their plastic debris on the PRNS beaches, the noise from the DBOC boats, and  
6 their documented incursions into harbor seal protection areas have significantly diminished my  
7 enjoyment of Drakes Estero. Every time I see a DBOC boat in the Estero or a piece of their plastic  
8 on the beach, I am reminded of those dead seal pups with their mothers' milk still in their bellies,  
9 and I am deeply concerned about the effects those boats and oyster workers have when they "share"  
10 the same sandbars that the seals need for nursing their pups. I used to visit the beach at the DBOC  
11 retail shop regularly to see what birds might be visible on the mudflats. However, DBOC has turned  
12 that shop into an "anti-park visitor center" spewing conspiracy theories and unrelenting personal  
13 attacks on NPS scientists and staff that are so distasteful and incongruous in a National Park that I  
14 never visit the retail site any more except in support of my function as SOS President. The  
15 continuation of the DBOC operating rights past November 2012 would further diminish my use and  
16 enjoyment of Drakes Estero.

17 11. Although Save Our Seashore is very happy that the Secretary of the Interior has let  
18 DBOC's reservation of use and occupancy expire on its own terms as of November 30, 2012, we are  
19 disappointed that this was not done more expeditiously so that the operation could have been phased  
20 out by, not 90 days after, that expiration date. Further, we are concerned that neither the Secretary's  
21 November 29, 2012 announcement nor National Park Service's oversight of the 90-day period that  
22 the Secretary allowed for closure requires immediate steps to be taken to curb some of the worst  
23 environmental threats posed by DBOC's interim operations. On December 3, 2012, I wrote a letter  
24 on behalf of Save Our Seashore to the National Park Service regarding these issues. We asked that  
25 steps be taken to require the immediate removal from the Estero of all Manila clams (an invasive  
26 species planted without National Park Service permission), and the immediate cessation of onshore  
27 pre-planting activities (*i.e.*, preparing to put more immature shellfish stock into the Estero), in light  
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1 of the Secretary’s intent that commercial activities in the Estero should be prohibited, not  
2 perpetuated. I have not yet received a response to this letter.

3 I declare under the penalty of perjury that the foregoing is true and correct.

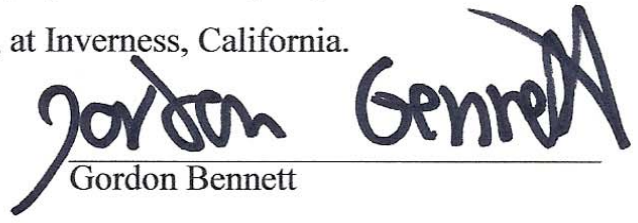
4 Executed December \_\_\_\_, 2012, at Inverness, California.

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Gordon Bennett

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3 I declare under the penalty of perjury that the foregoing is true and correct.

4 Executed December 6, 2012, at Inverness, California.

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6 Gordon Bennett

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