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

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|----------------------------------|---|--------------------------------|
| CALIFORNIA SPORTFISHING |) | |
| PROTECTION ALLIANCE, a non- |) | 2:10-cv-01207-GEB-GGH |
| profit corporation, |) | |
| |) | |
| Plaintiff, |) | <u>ORDER REQUIRING FURTHER</u> |
| |) | <u>BRIEFING</u> |
| v. |) | |
| |) | |
| CHICO SCRAP METAL, INC., a |) | |
| California corporation; GEORGE |) | |
| W. SCOTT, SR. REVOCABLE INTER |) | |
| VIVOS TRUST; GEORGE SCOTT, SR., |) | |
| an individual; and GEORGE SCOTT, |) | |
| JR., an individual, |) | |
| |) | |
| Defendants. |) | |

Following oral argument on Defendants' dismissal motion heard on February 7, 2011, the judge realized the parties have not briefed 33 U.S.C. § 1365(b)(1)(B), which is a statute applicable to whether jurisdiction exists over Plaintiff's action. Defendants mentioned this statute in their brief, without discussing its applicability to the jurisdiction issue raised in their dismissal motion, and Plaintiff mentioned it in its opposition brief when indicating that Defendants incorrectly referenced the statute in their brief. (Defs.' Notice of Mot. to Dismiss and Mem. of P. & A. in Supp. Thereof 18:10-11, 19:25-26; Pl.'s Mem. in Opp. to Defs.' Mot. to Dismiss Pl.'s Claims Against Defs. 19:18-20.) This statute prescribes in pertinent part:

No action may be commenced . . . if the Administrator or State has commenced and is

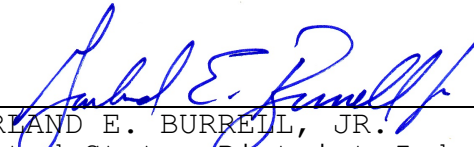
1 diligently prosecuting a civil or criminal action
2 in a court of the United States, or a State to
3 require compliance with the standard, limitation,
or order

4 33 U.S.C. § 1365(b)(1)(B). Since the applicability of this statute
5 concerns whether jurisdiction exists in this case, each party shall file
6 a brief addressing this statute. (See Sierra Club v. City and Cnty. of
7 Honolulu, No. 04-00463 DAE-BMK, 2008 WL 1968317, at *3 (D. Hawaii May
8 7, 2008) (analyzing 33 U.S.C. § 1365(b)(1)(B) as a jurisdictional
9 issue). Each brief shall include a discussion on the interpretation of
10 the following phrase in 33 U.S.C. § 1365(b)(1)(B): "has commenced and
11 is diligently prosecuting a civil or criminal action."

12 Further, during oral argument, Plaintiff's counsel requested
13 an opportunity to file a supplemental brief on the applicability of 33
14 U.S.C. § 1319(g)(6)(A)(ii). Each party has leave to submit a
15 supplemental brief on this statute, including the meaning of the
16 following phrase in the statute: "has commenced and is diligently
17 prosecuting an action."

18 The referenced brief shall be filed no later than March 7,
19 2011. Any response brief shall be filed no later than March 14, 2011.

20 Dated: February 10, 2011

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GARLAND E. BURRELL, JR.
United States District Judge