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

JOHN REYNOLDS,
Plaintiff,
vs.
KAMALA D. HARRIS,
Defendant.

No. CIV S-11-2387-MCE-CMK

FINDINGS AND RECOMMENDATIONS

Plaintiff, who is proceeding pro se, brings this civil action challenging the constitutionality of California Fish and Game Code §§ 5653-5653.9 and seeking prospective declaratory and injunctive relief.¹ Pending before the court is plaintiff’s complaint (which he

¹ The court takes judicial notice of an identical action filed in this court as Reynolds v. State of California, E. Dist. Cal. case no. CIV-S-11-1381-MCE-CMK. See Chandler v. U.S., 378 F.2d 906, 909 (9th Cir. 1967) (stating that court may take judicial notice of its own records). In the earlier action, defendants moved to dismiss, arguing that defendant is immune under the Eleventh Amendment, and also that the court should abstain from exercising jurisdiction. Following oral argument on defendant’s motion, plaintiff was provided an opportunity to file further briefing addressing these issues. This new action appears to have been filed in response. Specifically, plaintiff addresses the Eleventh Amendment immunity issue by naming as the only defendant to this action the California Attorney General and seeking prospective declaratory and injunctive relief only. Thus, the Eleventh Amendment problem is solved under the doctrine announced in Ex Parte Young, 209 U.S. 123 (1908).

1 entitles “Petition for a Finding of Unconstitutionality”). The court is required to screen
2 complaints brought by prisoners seeking relief against a governmental entity or officer or
3 employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court is also required to
4 screen complaints brought by litigants who have been granted leave to proceed in forma pauperis.
5 See 28 U.S.C. § 1915(e)(2). Under these screening provisions, the court must dismiss a
6 complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon
7 which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from
8 such relief. See 28 U.S.C. §§ 1915(e)(2)(A), (B) and 1915A(b)(1), (2). Moreover, pursuant to
9 Federal Rule of Civil Procedure 12(h), this court must dismiss an action “[w]henver it
10 appears . . . that the court lacks jurisdiction of the subject matter” Because plaintiff, who is
11 not a prisoner, has been granted leave to proceed in forma pauperis, the court will screen the
12 complaint pursuant to § 1915(e)(2). Pursuant to Rule 12(h), the court will also consider as a
13 threshold matter whether it has subject-matter jurisdiction.

14 Upon review of the complaint in this action as well as the file in plaintiff’s other
15 action, Reynolds v. State of California, the court finds that it should abstain from exercising
16 jurisdiction pursuant to Younger v. Harris, 401 U.S. 37 (1971), in light of ongoing state judicial
17 proceedings. Under Younger, a federal court must abstain and dismiss an action where: (1) there
18 are ongoing state judicial proceedings; (2) those proceedings implicate important state interests;
19 (3) the federal plaintiff is not barred from litigating federal constitutional issues in the state
20 proceedings; and (4) the federal action would interfere with the state proceedings. See
21 Gilbertson v. Albright, 381 F.3d 965, 975 (9th Cir. 2004) (en banc).

22 As revealed by defendant’s filings in Reynolds v. State of California, these factors
23 are met here. First, there are ongoing state judicial proceedings relating to the state suction
24 dredge mining statutes plaintiff is challenging. In 2005, an action was initiated in the Alameda
25 County Superior Court, Karuk Tribe of Calif. v. Calif. Dept. of Fish & Game, No. RG
26 052115970, to enjoin suction dredge mining in various state rivers. A number of miners, either

1 individually or through associations, intervened in the action arguing that federal law preempts
2 and prohibits state regulation of suction dredge mining and that the Department of Fish and
3 Game should be required to issue mining permits regardless of the need for any environmental
4 review. A consent judgment was entered in that action on December 20, 2006, and the state
5 court retains continuing jurisdiction over the case. A second action was filed in early 2009,
6 Hillman v. Calif. Dept. of Fish & Game, No. RG 09434444, seeking to enjoin public funding of
7 the state's suction dredge permitting program. Again, a number of individual miners intervened
8 arguing preemption. The state trial court entered an order enjoining the permit program, thereby
9 essentially imposing a moratorium on suction dredge mining in California. The individual
10 miners' appeal from that order is pending in state court.

11 Second, these ongoing actions implicate California's important state interest in
12 protecting the environment. Third, plaintiff is not barred from litigating his claims in the state
13 actions and, indeed, the intervening miners are doing just that. And, fourth, this federal action
14 would interfere with the ongoing state proceedings in that the relief plaintiff seeks is in
15 contravention with the various state court orders issued in the ongoing state proceedings. In
16 particular, the state courts have essentially ordered a halt to suction dredge mining and, if
17 plaintiff is successful in this action, this court would be put in the position of contravening those
18 orders by directing that suction dredge mining permits be issued to plaintiff.

19 While plaintiff has avoided any Eleventh Amendment defects by naming the
20 California Attorney General and seeking only prospective declaratory and injunctive relief, the
21 court nonetheless finds that dismissal is appropriate pursuant to the Younger abstention doctrine.

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1 Based on the foregoing, the undersigned recommends that this action be
2 dismissed.

3 These findings and recommendations are submitted to the United States District
4 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
5 after being served with these findings and recommendations, any party may file written
6 objections with the court. Responses to objections shall be filed within 14 days after service of
7 objections. Failure to file objections within the specified time may waive the right to appeal.
8 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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10 DATED: September 20, 2011

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12 **CRAIG M. KELLISON**
13 UNITED STATES MAGISTRATE JUDGE
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