



For Immediate Release
October 18, 2013

Media Contact: Tina Walker
Office: 415.227.9700
Cell: 650.248.1037
Email: tina@singersf.com

Drakes Bay Oyster Company Files Petition for Rehearing by Ninth Circuit

Oyster Company remains open for business while petition is reviewed

INVERNESS, CALIF. — Drakes Bay Oyster Company filed a petition today requesting an En Banc hearing of its case in the Ninth Circuit (that is, a request that the case be reheard in front of the Ninth Circuit’s full panel).

The historic oyster farm is fighting to remain open in the face of Park Service wrongdoing. Its case in the Ninth Circuit is about the request for an injunction to remain in business while its lawsuit against the agency proceeds.

If the petition is accepted by the Ninth Circuit, both parties will have the opportunity to re-argue their case to the entire 11 judge panel over the next several months. In the meantime, the popular oyster farm remains in operation.

The petition argues that En Banc review should be granted because the panel decision conflicts with several decisions of the United States Supreme Court, and of the Ninth Circuit, on questions of exceptional importance. “The majority decision, if allowed to stand, would set some alarming precedents,” said Peter Prows, a member of the Drakes Bay legal team and partner with Briscoe Ivester & Bazel LLP. “The majority has created new rules that would allow government agencies to disobey Congress, prohibit courts from considering whether the actions of government agencies were arbitrary and capricious, and seriously undermine environmental law.”

In September, the Ninth Circuit's three-judge panel issued a split decision against the oyster operation, with Judge Paul J. Watford (an Obama appointee) dissenting. Judge Watford forcefully argued that the injunction should be granted because "Drakes Bay is likely to prevail on the merits."

In his dissent, Judge Watford wrote: "continued operation of the oyster farm is fully consistent with the Wilderness Act" and that the Park Service had been "bizarrely" misinterpreting the law since 2005. Tellingly, Judge Watford noted that the majority "never attempts to argue" that the government's interpretation "was *correct*."

Judge Watford concluded that former Secretary Salazar's decision not to renew the permit was based on a "legally erroneous interpretation of the controlling statute." The petition filed today argues that the majority has jurisdiction to consider this issue and should have considered it.

Drakes Bay Oyster is supported by thousands of environmentalists and community members and by a growing number of concerned elected officials. "We are grateful to have so much support from the community and across the nation," said Kevin Lunny, owner of Drakes Bay Oyster. "We remain committed to succeeding in our fight to remain open and serve our community," Lunny said.

About Drakes Bay Oyster Company

The historic oyster farm in Drakes Estero, located in Point Reyes, Marin County, has been part of the community for nearly 100 years. The Lunnys, a fourth-generation Point Reyes ranching family, purchased Drakes Bay in 2004. Modern environmentalists and proponents of sustainable agriculture praise Drakes Bay Oyster as a superb example of how people can produce high-quality food in harmony with the environment. The firm produces approximately one third of all oysters grown in California, and employs 30 members of the community. The Lunnys also contribute the oyster shells that make possible the restoration of native oysters in San Francisco Bay and the oyster shells used to create habitat for the Snowy Plover and Least Tern. As the last oyster cannery in California, Drakes Bay is the only local (and thus the only safe and affordable) source of these shells. The Lunny family is proud of its contributions to a sustainable food model that conserves and maintains the productivity of the local landscapes and the health of its inhabitants. For more information, please visit www.drakesbayoyster.com.