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Weighing the Facts

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NPS Assertion: The Lunnys purchased the oyster farm lease knowing **it expired in 2012**

NPS and its allies claim the Lunnys were told—before they purchased the oyster farm—that the farm was slated for shutdown in 2012.

DBOC Assertion: The lease was expressly renewable, and the Lunnys had a reasonable belief that it would be renewed

The oyster-farm agreement purchased by the Lunnys had a renewal clause, which the Park Service superintendent at the time tried, and failed, to remove. The Lunnys were not told that the Park Service intended to remove the oyster farm until *after* they had purchased the remaining years on the agreement, and had spent a small fortune on cleaning up the operation.

This issue bears no resemblance to a simple landlord/tenant dispute. The oyster farm's agreements with the Federal government and with the State of California (which owns the fishing and mineral rights to the water bottom) are rooted in the legislative record and subject to a large body of NPS, Interior, State, and County policy.

The Seashore's General Management Plan explicitly supports the oyster farm, listing as a Natural Resource Management goal "To monitor and improve maricultural operations, in particular the oyster farm operation in Drakes Estero, in cooperation with the California Department of Fish and Game."

The oyster-farm agreement the Lunnys purchased makes it

clear that onshore operations could continue as long as the oyster farm had a valid California Fish and Game Commission (CFGC) lease in Drakes Estero. The oyster farm's CFGC lease is currently valid until 2029.

According to Kevin Lunny, at the time of purchase Neubacher promised (but not in writing) that he would put three Special Use Permits (SUPs) into the name of DBOC - one for the septic system area, one for the water well and pipeline area, and one for the ancillary use area (2.2 upland acres surrounding the 1.4 acre Reservation of Use and Occupancy; an RUO is a leaselike agreement).

"Don kept his word for the septic and the well SUPs," says Lunny. "But the Ancillary Use SUP, which had been expired and never renewed and never charged or paid for by the Johnsons since 1997, was not put into DBOC's name as promised."

After the Lunnys purchased the oyster farm and spent a small fortune cleaning up the operation, instead of putting the Ancillary Use SUP in DBOC's name, Neubacher rewrote this SUP to include a new clause requiring that the oyster farm vacate the premises in 2012. Explains Lunny, "Don attempted to contractually remove our chance for renewal seven years before the expiration, cancelling the renewal clause we had spent months talking about."

Given the extreme change in the agreement, this was a permit the Lunnys could not and did not sign. The Lunnys were supported in this decision by both Senator Feinstein and then-director of the National Park Service Mary Bomar.

Senator Feinstein became involved in early May, 2007 at the request of the Marin County Board of Supervisors. The Supervisors had become alarmed at the false science created by the NPS and the false rumors Neubacher spread about the Lunnys.

At a meeting in Olema, CA on July 21, 2007 (attended by Senator Feinstein, Marin County Supervisor Steve Kinsey, NPS Director Mary Bomar, NPS Regional Director Jon Jarvis, Superintendent Neubacher, DOI Solicitor's Office attorney Molly Ross, Dr. Corey Goodman, and Kevin Lunny), Director Bomar removed Neubacher from the negotiations and ordered Jarvis to deal directly with the

Lunnys.

Bomar specifically ordered Jarvis to remove the surrender clause added by Neubacher. The Jarvis rewrite of the SUP added multiple unjustified restrictions and new assertions of jurisdiction, but once the surrender clause was removed in 2008, the Lunnys signed the permit, considering it the best option available.