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INYO CO. SUPERIOR COURT  
TAMMY L. GRIMM, CLERK

BY **C. ALEXANDER** DEPUTY

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14 Attorneys for Petitioners PUBLIC EMPLOYEES FOR  
15 ENVIRONMENTAL RESPONSIBILITY and CENTER  
16 FOR BIOLOGICAL DIVERSITY

17 IN THE SUPERIOR COURT OF THE  
18 STATE OF CALIFORNIA IN AND FOR THE  
19 COUNTY OF INYO 06-13-12 P03:03 RCVD

20 CENTER FOR BIOLOGICAL DIVERSITY, a non-  
21 profit public interest corporation,

22 Petitioner,

23 PUBLIC EMPLOYEES FOR ENVIRONMENTAL  
24 RESPONSIBILITY, a national non-profit alliance of  
25 local, state, and federal resource professionals,

26 Petitioner,

27 v.

28 INYO COUNTY and INYO COUNTY BOARD OF  
SUPERVISORS,

Respondents.

CASE NO. **S1CVPT12-53821**

**VERIFIED PETITION FOR WRIT OF  
MANDATE**

[Code Civ. Proc. §§ 1085 and 1094.5; Pub.  
Res. Code § 21000 *et seq.* (California  
Environmental Quality Act)]

**BY FAX**

1 **PARTIES**

2 **Petitioner Center for Biological Diversity**

3 1. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (the “Center”) is a non-profit,  
4 public interest corporation, with over 42,000 members and offices in Los Angeles and San  
5 Francisco, California; Arizona; New Mexico; Oregon; Alaska; and Washington, D.C. The Center  
6 and its members are dedicated to protecting the diverse native species and habitats through science,  
7 policy, education, and environmental law. The Center submitted comments to Inyo County regarding  
8 the Project.

9 **Petitioner Public Employees For Environmental Responsibility**

10 PEER is a non-profit service organization dedicated to protecting those who protect our  
11 environment. PEER provides legal defense to federal, state, local and tribal employees dedicated to  
12 ecologically responsible management against the sometimes onerous repercussions of merely doing  
13 their jobs. In addition, PEER serves as a safe, collective and credible voice for expressing the  
14 viewpoints otherwise cloistered within the cubicles. Headquartered in Washington, D.C., PEER has  
15 a network of seven state and regional offices, including California.

16  
17 **Respondents, County of Inyo, and Inyo County Board of Supervisors**

18 2. Respondent County of Inyo (“County”) is a local governmental agency and political  
19 subdivision of the State of California charged with the authority to regulate and administer land use  
20 activities within its boundaries, subject at all times to the obligations and limitations of all applicable  
21 state, federal, and other laws, including CEQA, the CEQA Guidelines, the California Endangered  
22 Species Act, and the Federal Endangered Species Act. The County is the CEQA lead agency for the  
23 Mitigated Negative Declaration prepared for the Project.

24 3. Respondent Inyo County Board of Supervisors (“Board”) is the legislative body and the  
25 highest administrative body of the County.

1 STATEMENT OF FACTS

2 4. On April 25, 2012, the Inyo County Planning Commission made findings, and  
3 recommended approval of a mitigated negative declaration by the Board of Supervisors in connection  
4 with “Procedures to Implement Assembly Bill 628.” Planning Commission Resolution No. 2012-03.

5 5. On May 8, 2012, the Inyo County Board of Supervisors approved Resolution 2012 – [ ]  
6 approving the Mitigated Negative Declaration of Environmental Impact for the Procedures to Implement  
7 Assembly Bill 628 and Approving the Implementing Procedures.”

8 6. On May 15, 2012 the County filed a Notice of Determination with respect to “Procedures  
9 to Implement Assembly Bill 628.” Under Project Description, the NOD stated:

10 “The combined use routes allow the use of County streets and roads by off-highway  
11 vehicles to connect OHV trail segments and recreation areas with necessary services and  
12 lodging facilities.”

13 The NOD recites that as mitigated the Project will not have a significant effect on the  
14 environment.

15 7. The Legislative intent of AB 628 includes the improvement of natural resource  
16 protection, reduction in off--highway vehicle trespass on private land and the minimization of impacts  
17 on county residents. (VC 38026.1. (a)). AB 628 provides for Inyo County to develop combined use  
18 routes allowing the use of County roads by off-highway vehicles for certain specified purposes. The  
19 County’s “Procedures to Implement Assembly Bill 628 would result in a proliferation of off--highway  
20 vehicle use that will increase impacts to natural resources, increase trespass, expose residents adjacent to  
21 the combined use roads to the noise of dirt bikes, ATVs and other vehicles that were never intended for  
22 use in residential areas, and increase traffic and decrease road safety for all drivers.

23 8. The County is home to many rare, listed and imperiled species including Mojave ground  
24 squirrel, Desert Tortoise, Owens Tui Chub, Owens pupfish, California Inyo Towhee, Southwestern  
25 Willow Flycatcher, Swainson’s Hawk. Black Toad, Yellow Billed Cuckoo, Western Snowy Plover,  
26 Least Bell’s Vireo, Ash meadows gumplant, Amargosa niterwort, Owens Checkerbloom, Death Valley  
27 sandpaper-plant, Tecopa bird's-beak, Charlotte's phacelia, Creamy blazing star, Forked buckwheat,  
28

1 DeDecker's clover, Inyo Rock Daisy, Pinyon Mesa buckwheat, Amargosa beardtongue, Darwin Mesa  
2 milk-vetch, Inyo County star-tulip, Horn's milk-vetch, Parish's popcorn-flower, and Mono County  
3 phacelia.

4 9. By letter dated February 16, 2012, PEER and CBD commented on the Project.

5  
6 10. In their February 16, 2012 letter PEER and CBD identified inadequacies in Inyo  
7 County's Draft Initial Study/Mitigated Negative Declaration (IS/MND) and implementation plan. These  
8 include:

9 (1) a complete dismissal of increase of noise from off-road vehicles and its effect on the  
10 environment;

11 (2) disregard for the fact that vehicle use is intended to and likely will increase substantially on  
12 combined use roads and routes on BLM lands and in the National Forests, with a corresponding  
13 increase in environmental impacts, including noise, dust and water quality impacts where roads  
14 cross unarmored streams;

15 (3) disregard for the fact that road shoulders were designed for occasional use for stopping and in  
16 emergencies, not for travel, and that any proposed use of shoulders for travel under the program  
17 may have significant impacts on adjacent habitat and surface water flow in addition to impacts  
18 on safety;

19 (4) disregard for the fact that the pilot project would allow the operation of motorized vehicles on  
20 county roads by unlicensed drivers because green sticker vehicles can be driven without a valid  
21 driver's license;

22 (5) disregard for the fact that the "licenses and devices" for off road vehicles are very difficult to  
23 read from any distance and this may create additional safety hazards and difficulties for  
24 enforcement;

25 (6) disregard for the fact that site-specific CEQA review will be required for applications but the  
26 program procedures do not provide for any funding mechanism for the required CEQA review;

27 (7) The assumption that ORVs will stay on the designated right of ways completely ignores a  
28 vast body of evidence to the contrary;

(8) the only criteria to be considered in the Implementation Plan are safety, liability and  
maintenance; the plan ignores environmental impacts entirely.

11. In their letter PEER and CBD stated that a Mitigated Negative Declaration would be  
inappropriate for the proposed program; a program EIR is needed. The County has provided a proposed  
"pilot program procedure outline" that sets up an application procedure but has no information about

1 likely site specific applications. The County then proceeds in the IS/MND to dismiss most of the  
2 potentially significant impacts of the program without even identifying those impacts on a site specific  
3 basis or on a county--wide programmatic basis. As such, the mitigated negative declaration provides  
4 inadequate identification or analysis of potential impacts of the program itself .

5 12. PEER and CBD also pointed out that the IS/MND and Implementation Plan fail to  
6 mitigate the impacts of increased noise on residents and completely ignore the impacts of noise on other  
7 visitors and recreationists, as well as the impacts of noise on wildlife.

8 13. CBD and PEER pointed out that this project would increase noise levels significantly  
9 from those allowed in the General Plan. Even OHVs within the legally allowable noise limit of 82 db  
10 would exceed the maximums suggested in the General Plan.

11 14. PEER and CBD noted also that the Implementation Plan includes the notification of  
12 hearings to property owners adjacent to any of the routes proposed for multi-use designation. But there  
13 is nothing in the plan that requires consideration of objections by property owners to the designation of  
14 those routes. Consideration for combined use of a route relies only on a recommendation for each route  
15 from the Public Works Director, the Risk Manager, the Sheriff, and County Counsel, and only addresses  
16 safety, liability and risk and potential maintenance costs. (IP, Item 9). Noise impacts on wildlife will  
17 also increase in intensity and frequency. The IS/MND entirely ignores these impacts.

18 15. PEER and CBD also pointed out that the IS/MND and Implementation Plan disregard the  
19 fact that vehicle use may increase substantially on combined use roads and routes on BLM lands and in  
20 the National Forests, with a corresponding increase in environmental impacts, including noise, dust and,  
21 where roads cross unarmored streams, water quality impacts. During the AB628 legislative process,  
22 Inyo County and the project proponents made it quite clear that their goal is to increase off-highway  
23 vehicle use in Inyo County. Roads and road segments that become part of this combined-use system will  
24 see both an increase in use and a change in the nature of the use. The proposed project is intended to  
25 foster economic growth and that growth will encourage and facilitate other activities that could  
26 significantly affect the environment—including for example, increased use of routes in the National  
27 Forest and on BLM lands and increased use of stream crossings by motorized vehicles as well as similar  
28

1 impacts in other sensitive areas. The proposed project will also lead to growth that will increase impacts  
2 to air quality and noise. Off-highway vehicles are notorious for failing to stay on designated routes. The  
3 hundreds of miles of user-created routes on the Inyo NF are evidence of that. When one sees a road or  
4 trail where OHV use is allowed, there are always signs where vehicle tracks have left the right-of-way to  
5 ride on adjacent lands. Sometimes this involves just a small digression into adjacent areas, other times it  
6 involves the creation of an entirely new route. The County's belief that new users of a combined use  
7 road will stay within the right of way is not correct.

8           16.     CBD and PEER also note that the the draft IS/MND dismisses impacts to riparian  
9 resources.

10           17.     CBD and PEER noted impacts on air quality. The IS/MND fails to acknowledge that the  
11 volume of traffic affects the amount of fugitive dust. Fugitive dust, including PM10 and smaller, is a  
12 health hazard. The additional use of dirt roads by OHVs will increase dust, PM10 and related health  
13 hazards.

14           18.     CBD and PEER noted that the County had not studied impacts to habitat adjacent to  
15 roads. The IS/MND fails to address impacts to habitat adjacent to roads that could occur from the  
16 combined use where that use is on the road and/or on the shoulders. Road shoulders, even where paved  
17 and certainly where unpaved, were not designed for constant use and in fact many shoulders are not  
18 complete along the length of the roads and are not a consistent width. Using shoulders, particularly  
19 unpaved shoulders-- as a route for motorized vehicles may significantly impact adjacent habitat by for  
20 example, compacting areas on the shoulder that are now rarely used by motorized vehicles, changing the  
21 drainage flow and shape of the shoulders, and encouraging widening of the shoulders by use. The  
22 impacts to shoulders and changes in water flow across shoulders can also have significant impacts on  
23 adjacent soils and down gradient waters that provide habitat. Because Inyo County is home to many  
24 rare, imperiled and endangered species, these issues are of particular concern. None of these issues are  
25 addressed in the IS/MND which dismisses the issue stating only that the proposals allow use on  
26 "existing County roadways" (at 21) and ignoring the fact that the proposed procedures expressly invites  
27 applications for use of the shoulders.  
28

1 19. The Toiyabe Chapter of the Sierra Club also submitted comments to the Planning  
2 Commission received February 17, 2012, with respect to the Initial Study and Draft Mitigated Negative  
3 Declaration for the “Combined Use Roadway Designation.” Its comments expressed similar concerns to  
4 those of CBD and PEER.

5 **JURISDICTION AND VENUE**

6  
7 20. This Court has jurisdiction over the matters alleged in this Petition pursuant to CCP  
8 §§1085, 1086, 1094.5, and Pub. Res. Code §21167 (CEQA).

9 21. Venue is proper in the County of Inyo under CCP §§ 392, 393, 394.

10 **ADMINISTRATIVE REMEDIES**

11 22. The Center for Biological Diversity and PEER have performed any and all conditions  
12 precedent to the filing of this petition. The Center and PEER submitted comment letters to the Planning  
13 Commission, and exhausted available administrative remedies.

14 23. All of the statements and letters of the petitioners urged the Board not to approve the  
15 Project until it had first prepared and certified programmatic EIR.

16 24. Petitioners have complied with Public Resources Code § 21167.5 by service of a notice  
17 upon the County indicating its intent to file this Petition. The notification is attached as Exhibit A.

18 25. This Petition is timely filed in accordance with Public Resources Code § 21167 and  
19 CEQA Guidelines § 15112.

20 **PUBLIC BENEFIT**

21 26. In seeking to compel the Board to discharge its public duties with respect to enforcement  
22 of CEQA, the Center and PEER are beneficially interested in this proceeding and are acting in the public  
23 interest as private attorney-generals to enforce important rights and if successful, will confer a  
24 substantial benefit on the residents of the County to the extent the environmental effects of the Project  
25 Amendment are appropriately identified in an EIR, upon issuance of this Court’s Writ of Mandate.

26 **STANDARD OF REVIEW**

27 27. This action is brought pursuant to Section 21168 of the Public Resources Code and  
28 Section 1094.5 of the Code of Civil Procedure, which require that a public agency’s approval of a

1 project be set aside if the agency prejudicially abuses its discretion. Prejudicial abuse of discretion  
2 occurs where the agency fails to proceed in a manner required by law, where the decision is not  
3 supported by the findings, or where the findings are not supported by substantial evidence in light of the  
4 whole record. In the alternative, this action is brought pursuant to Section 1085 of the Code of Civil  
5 Procedure and Section 21168.5 of the Public Resources Code which also require that a public agency's  
6 approval of a project be set aside where the agency prejudicially abuses its discretion.

7 28. Abuse of discretion is established if the agency has not proceeded in a manner required  
8 by law or if the determinations or decisions are not supported by substantial evidence.

9 29. Respondents have abused their discretion and failed to act as required by law, as set forth  
10 below.

11 **FIRST CAUSE OF ACTION (CEQA)**  
12 **(Failure to Prepare an EIR Prior to Project Approval)**

13 30. Petitioners hereby incorporate by reference paragraphs 1 through 29 of this Petition.

14 31. A "project" is "the whole of an action" directly undertaken, supported or authorized by a  
15 public agency which may cause either a direct physical change in the environment or a reasonably  
16 foreseeable indirect physical change in the environment." Pub. Res. Code §21065, CEQA §15738(a).  
17 Under CEQA Guidelines, the term "project" refers to the underlying activity and not the governmental  
18 approval process. *California Unions for Reliable Energy v. Mojave Desert Air Quality Mgmt. District*  
19 (2009) 178 Cal.App.4<sup>th</sup> 1225, 1241.

20 32. Petitioners, through their respective letters, have demonstrated there is a "fair argument"  
21 that the proposed project may have a significant effect on the environment, and as a consequence,  
22 preparation of an EIR is required. Pub. Res. Code §21100, 21151, CEQA Guidelines §15064(a)(i); *No*  
23 *Oil Inc. v. City of Los Angeles* (1974), 13 Cal.3d 68, 82.

24 33. Negative declarations are appropriate only when there is no substantial evidence in light  
25 of the whole record before the public agency that the project, as revised; may have a significant effect on  
26 the environment. Pub. Resources Code, § 21064.5; see also § 21080, subd. (c); CEQA Guidelines §§  
27 15006, subd. (h), 15064, subd. (f)(2), 15070, subd. (b), 15369.5. No such determination can be made in  
28 this instance.



1           34. CEQA requires the preparation of environmental review documents “as early as feasible  
2 in the planning process to enable environmental considerations to influence project program and design  
3 and yet late enough to provide meaningful information for environmental assessment.” *Laurel Heights*  
4 *I*, 47 Ca1.3d 376 at 395 (1988); see also CEQA Guidelines § 15004(b). The purpose of CEQA is to  
5 provide decision-makers and the public with environmental information before decisions are made, not  
6 after. As the California Supreme Court observed in *Laurel Heights I*, “[i]f post-approval environmental  
7 review were allowed, [CEQA analyses] would likely become nothing more than post hoc  
8 rationalizations to support action already taken. We have expressly condemned this [practice].” 47 Cal.  
9 3d at 394 (citation omitted). Accordingly, “public agencies shall not undertake actions concerning the  
10 proposed public project that would have a significant adverse effect or limit the choice of alternatives or  
11 mitigation measures, before completion of CEQA compliance.” CEQA Guidelines § 15004(b)(2). In  
12 particular, an agency shall not “take any action which gives impetus to a planned or foreseeable project  
13 in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQ A  
14 review of that public project.” CEQA Guidelines § 15004(b)(2)(B).

15           35. The Project will have direct and foreseeable indirect impacts on the environment  
16 including biological resources. The approval of the Project by the Board constituted a prejudicial abuse  
17 of discretion under Section 21168.5 of the Public Resources Code because there was a fair argument in  
18 the record before the Board that the project would have significant impacts on the environment  
19 including rare, threatened, and endangered species and water resources. As a result, a full  
20 environmental review should have been conducted for the impacts of the project as a whole in  
21 connection with the Project. The time for complete CEQA review of this proposed project was before  
22 plan approval, when environmental considerations can inform the County's decision, and before the  
23 County takes any steps that could foreclose any potential alternatives or mitigation measures. *Laurel*  
24 *Heights I*, 47 Ca1.3d at 394-95; CEQA Guidelines § 15004(b)(2)(B). It does not matter for purposes of  
25 CEQA that the County or any other public agency may need to render some later decision with regard to  
26 the specific project approvals. See *Fullerton Joint Union High Sch. Dist. v. State Bd. of Educ.* (1982) 32  
27 Cal. 3d 779, 795. The County cannot defer evaluation of environmental impacts until after project  
28 approval or skirt the required procedure for public review and agency scrutiny of potential impacts.

1 *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296,307-09.

2 36. Respondents acted arbitrarily and capriciously, failed to proceed in accordance with the  
3 law, and lacked substantial evidence to support their findings and decisions. On the basis of the record,  
4 and based on public comments, there is a “fair argument” that Respondents’ approval of the Project will  
5 have a significant impact on biological resources, including rare, threatened, and endangered species.  
6 Respondents’ approval of the Project is, therefore, subject to being set aside by a Writ of Mandate issued  
7 by this Court. CCP §21168.5.

8 37. Petitioners have a clear, present, and beneficial right to the proper performance by the  
9 Respondents of their duties as alleged herein. Petitioners are beneficially interested in the issuance of a  
10 Writ of Mandate by virtue of the facts set forth previously, in that Petitioners and the general public will  
11 otherwise be adversely affected by the actions of the Respondents herein challenged.

12 38. Petitioners have no plain, speedy, or adequate remedy in the ordinary course of the law  
13 other than the relief herein sought.

14  
15 **PRAYER FOR RELIEF**

16 1. On their First Cause of Action, Petitioners ask the Court to issue a Writ of Mandate  
17 directing the Board to set aside its approval of the Project, and to set aside the Board’s certification of  
18 the MND/IS.

19 2. Petitioners seek: costs if they prevail; attorney’s fees pursuant to the Code of Civil  
20 Procedure §1021.5; and for any such other relief as may be just and proper.

21  
22  
23 Date: June 13, 2012



24 \_\_\_\_\_  
Laurens H. Silver, Esq.  
California Environmental Law Project

25  
26 Lisa T. Belenky, Senior Attorney  
Center for Biological Diversity

**VERIFICATION**

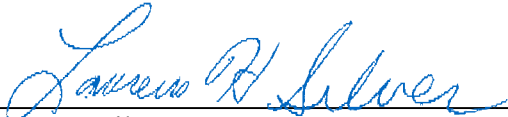
I, Laurens H. Silver, declare:

1. I am an attorney for the Petitioners, which have authorized me to make this verification on their behalf.

2. I have read the foregoing Petition for Writ of Mandate (“Petition”) and know the contents thereof. I certify that the allegations contained in the Petition are true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true. I represented Petitioners in connection with the matters set forth in this Petition, appeared through a letter to the Planning Commission in connection with this Project, on behalf of petitioners, and have personal knowledge of the matters set forth in the Petition.

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

Executed on June 13, 2012 at Richmond, CA.

  
\_\_\_\_\_  
Laurens H. Silver