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CENTER FOR BIOLOGICAL DIVERSITY,
19 SNOWLANDS NETWORK, and WINTER WILDLANDS ALLIANCE

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 IN AND FOR THE COUNTY OF SACRAMENTO

FILED
Superior Court Of California,
Sacramento
01/19/2011
amacias
By _____, Deputy
Case Number:
34-2011-30000763

DEPARTMENT 31

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CENTER FOR BIOLOGICAL)
DIVERSITY, SNOWLANDS NETWORK,)
INC., and WINTER WILDLANDS)
ALLIANCE,)

Petitioners,)

vs.)
CALIFORNIA DEPARTMENT OF)
PARKS AND RECREATION, an agency of)
the State of California; OFF-HIGHWAY)
MOTOR VEHICLE RECREATION)
DIVISION, a division of the California)
Department of Parks and Recreation, and)
RUTH COLEMAN, in her official capacity)
as Director of California Department of)
Parks and Recreation,)

Respondents.)

Case No. _____

**VERIFIED PETITION FOR PEREMPTORY
WRIT OF MANDATE**

**(California Environmental Quality Act
("CEQA"), Pub. Res. Code § 21000, et seq.;
Code of Civil Procedure §§ 1094.5; 1085)**

Dept.: CEQA

UNITED STATE FOREST SERVICE,
and DOES 1-20,

Real Parties in Interest.

1 Petitioners CENTER FOR BIOLOGICAL DIVERSITY, a non-profit corporation,
2 SNOWLANDS NETWORK, a California nonprofit public benefit corporation, and WINTER
3 WILDLANDS ALLIANCE, a non-profit corporation, (collectively, “Petitioners”) bring this
4 action on their own behalf, on behalf of their members, on behalf of the general public, and in
5 the public interest, pursuant to Code of Civil Procedure § 1094.5 and Public Res. Code §
6 21168, or, in the alternative, pursuant to Code of Civil Procedure §1085 and Public Res. Code
7 § 21168.5, and respectfully allege as follows:

8
9 **INTRODUCTION**

10 1. This action challenges the approval by the Off-Highway Motor Vehicle
11 Recreation Division (the “Division”) of the California Department of Parks and Recreation of a
12 ten-year commitment to fund the Over Snow Vehicle Program, Program Years 2010-2020 (the
13 “OSV Program” or “Project”) and certification of the final Environmental Impact Report
14 (“EIR”) for the OSV Program (State Clearinghouse Number 2009042113). The OSV Program
15 is designed to provide funding to support and promote the sport of snowmobiling in California,
16 an activity that occurs primarily on public lands managed by the U.S. Forest Service.

17 Specifically, the OSV Program would fund the grooming of approximately 1,761 miles of
18 snowmobile trails, the plowing of approximately 34 trailhead locations, the plowing of
19 approximately 97 miles of roads to these trailhead locations, the maintenance of associated
20 restrooms and other associated activity on eleven national forests in California: Klamath,
21 Modoc, Shasta-Trinity, Lassen, Plumas, Tahoe, Eldorado, Stanislaus, Sequoia, Sierra and Inyo.

22 2. Prior to 2010, the Division annually authorized funding for the OSV Program
23 without preparation of an Environmental Impact Report (“EIR”). In December 2008,
24 Petitioners submitted written comments on the OSV Program to the Division and stressed the
25 need for CEQA review in an EIR before the Division could approve any funding.

26 3. In October 2010, the Division released a draft EIR for the OSV Program over a
27 ten-year period from 2010-2020. Petitioners submitted extensive written comments on the

1 draft EIR in November 2010 and supplemental comments in December 2010. The Division
2 issued its final environmental impact report (the “EIR”) and notice of determination (“NOD”)
3 on or about December 20, 2010. The NOD indicated that the Division found that there would
4 be no significant unmitigated adverse environmental impacts from the OSV Program.

5 4. Petitioners challenge the adoption of the OSV Program and the determination of
6 no significant impacts and request that this Court vacate and set aside the OSV Program
7 approvals and the EIR certification because Respondents failed to comply with the California
8 Environmental Quality Act (Pub. Res. Code § 21000 et seq., herein “CEQA”), and other laws.

9 5. Petitioners petition this Court for a writ of mandate under Code of Civil
10 Procedure section 1085 and 1094.5 directing Respondents to vacate and set aside the approvals
11 of the OSV Program and certification of the EIR for the OSV Program.

12
13 **JURISDICTION AND VENUE**

14 6. This Court has jurisdiction over this action pursuant to sections 1085, 1094.5,
15 and 187 of the California Code of Civil Procedure, and sections 21168, and 21168.5 of the
16 Public Resources Code. This Court has the authority to issue a writ of mandate directing
17 Respondents to vacate and set aside its approval of the OSV Program and certification of the
18 EIR for the OSV Program under the Code of Civil Procedure sections 1085 and 1094.5.

19 7. Venue for this action properly lies in the Sacramento County Superior Court
20 because Respondents have their headquarters in Sacramento County.

21 8. Petitioners have exhausted all administrative remedies, as required by Public
22 Resources Code section 21177, by submitting written comments regarding the Draft EIR to the
23 Division prior to the OSV Program approval requesting compliance with CEQA and other
24 laws, and seeking the completion of full and adequate environmental review. All issues raised
25 in this petition were raised in a timely manner before Respondents by Petitioners, other
26 members of the public, or public agencies.

1 9. Petitioners have complied with Public Resources Code § 21167.5 by prior
2 service of a notice upon the Respondents indicating its intent to file this Petition. Proof of
3 Service of this notification, with the notification attached, is attached as Exhibit A.

4 10. This petition is timely filed in accordance with Public Resources Code § 21167
5 and CEQA Guidelines § 15112.

6
7 **THE PARTIES**

8 11. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (the “Center”) is a non-
9 profit, public interest corporation, with over 42,000 members and offices in Los Angeles and
10 San Francisco, California; Arizona; New Mexico; Oregon; Alaska; and Washington, D.C. The
11 Center and its members are dedicated to protecting the diverse native species and habitats
12 through science, policy, education, and environmental law. Center members and staff have
13 interests in the species and habitats that will be affected by the Program and use the national
14 forests subject to the OSV Program for recreational, wildlife viewing, scientific, and
15 educational purposes. The Center and its members are directly, adversely and irreparably
16 affected, and will continue to be prejudiced by the OSV Program and its components, as
17 described herein, until and unless this Court provides the relief prayed for in this petition.

18 12. Petitioner SNOWLANDS NETWORK is a California nonprofit public benefit
19 corporation with over 500 members that represents the interests of skiers, snowshoers and
20 other winter recreationists who desire to recreate in areas free from motorized use. Snowlands
21 Network, its members and staff recreate on the national forest lands impacted by the OSV
22 Program. Snowlands Network, its members and staff are directly, adversely and irreparably
23 affected by, and will continue to be prejudiced by the OSV Program, as described herein, until
24 and unless this Court provides the relief prayed for in this petition.

25 13. Petitioner WINTER WILDLANDS ALLIANCE is a national nonprofit
26 organization promoting and preserving winter wildlands and a quality human-powered
27 snowsports experience on public lands nationwide. It has 1,300 members and 35 affiliated

1 organizations who together have an additional 30,000 members including many members who
2 live and recreate in California.

3 14. Respondent CALIFORNIA DEPARTMENT OF PARKS AND RECREATION
4 (“DPR” or “State Parks”) is a state agency under the laws of the State of California.

5 15. Respondent DIVISION OF OFF-HIGHWAY MOTOR VEHICLE
6 RECREATION (“OHMVR” or the “Division”) is a Division of DPR. OHMVR was the
7 CEQA “lead agency” for the Over Snow Vehicle Program, Program Years 2010-2020 (the
8 “Project”) and certified the EIR at issue in this action.

9 16. Respondent RUTH COLEMAN is named in her official capacity as Director of
10 California Department of Parks and Recreation.

11 17. Respondents herein are collectively referred to as the “Division.”

12 18. Real Party in Interest UNITED STATES FOREST SERVICE (“USFS”) is an
13 agency of the United States Department of Agriculture. The USFS is responsible for the
14 administration and management of the federal lands and may receive funding for activities on
15 those federal lands under the OSV Program. The USFS is named as a real party in interest in
16 the event that it may be deemed necessary in order to comply with Public Resources Code
17 section 21167.6.5. Petitioners assert no claims against and seek no remedies against the USFS.

18 19. Petitioners are currently unaware of the true names and capacities of Real
19 Parties in Interest, Does 1 through 20, inclusive. Does 1 through 20, inclusive, are persons or
20 entities presently unknown to Petitioners who claim some legal or equitable interest in the
21 Project that is the subject of this action. Petitioners will amend this petition to show the true
22 names and capacities of Does 1 through 20 when such names and capacities become known.

23
24 **STATEMENT OF FACTS**

25 20. The OSV Program is designed to stimulate and promote the sport of
26 snowmobiling in California, including the practice of snowmobile activity deep in the national
27 forests in areas that otherwise would remain relatively free from winter incursion by motorized

1 vehicles. Because snowmobiles are noisy, highly-polluting vehicles that travel at highway
2 speeds, the OSV Program has a substantial impact on many resources including wildlife,
3 hydrology, air quality and impacts on other users. The OSV Program intends to fund the
4 grooming of trails that extend many miles into the national forests, thus bringing grooming
5 operations deep into forest lands near wilderness areas. The OSV Program facilitates
6 snowmobile travel deep into the forests in areas that would otherwise be inaccessible and
7 trespass into wilderness. Such activity has a substantial adverse impact on wildlife as well as
8 hydrology and air quality.

9 21. The Division improperly identified the baseline for analysis such that the
10 impacts of the OSV Program were understated, thus undermining the identification and
11 analysis of significant impacts.

12 22. The EIR failed to accurately identify and analyze all of the direct, indirect, and
13 cumulative impacts on wildlife and other resources. For example, while the EIR admits that in
14 the past the OSV Program activities caused impacts to wildlife and other resources, the
15 Division improperly established a baseline that assumed that the OSV Program is a continuing
16 activity and that such impacts would continue to occur regardless of the decision made by the
17 Division. Because the Division assumed the same level of activities would continue with or
18 without the proposal being approved, the EIR used a baseline that undermined adequate
19 identification and analysis of impacts in the EIR. As a result, the Division's identification and
20 analysis of impacts of the proposed OSV Program understated the impacts of the project by
21 using an improper baseline that assumed the approval of the Project itself.

22 23. The Division also improperly deferred to and relied on Forest Service
23 management of the national forest lands to manage and mitigate many of the adverse impacts
24 of the OSV Program that were identified. In fact, much of the management and mitigation that
25 is presumed will be undertaken by the Forest Service has not taken place in the past and is
26 uncertain to take place in the future. For example: the Forest Service has not adopted winter
27 recreation plans for many of the national forests that are affected by the OSV Program; has in

1 the past universally relied on “categorical exclusions” under the federal National
2 Environmental Policy Act¹ for yearly approvals of the OSV Program; has not undertaken
3 detailed environmental impact study of the activities funded by the OSV Program; has not
4 evaluated the impacts of the use of two-stroke snowmobiles on air quality and other resources;
5 has not adequately addressed user conflicts; and has not committed to or secured funding to
6 undertake all the management or mitigation measures relied on by the Division in adopting the
7 OSV Program and certifying the EIR to reduce the environmental impacts of the OSV
8 Program.

9 24. The OSV Program has a significant impact on winter recreation in California
10 that was not identified in the EIR. Unlike summer recreation, much of the winter on-snow
11 recreation depends on the existence of plowed parking areas for access. Without plowed
12 parking areas, most winter recreation on snow-covered national forest lands is, in practical
13 terms, impossible. Under the OSV Program, trailheads are plowed for OSV usage at such
14 places as mountain passes and at points where snow-covered roads intersect plowed roads or
15 highways, thus utilizing some of the prime locations for access to the winter landscape. The
16 impact on shaping winter recreation overall is significant because there are relatively few
17 official, plowed trailheads under other programs (such as the Sno-Park program) that are
18 protected solely for non-motorized users. The State of California provides designated official
19 winter parking areas through its Sno-Park program and the OSV Program. Together, the
20 programs provide at least 46 plowed winter trailheads in the California national forests².
21 Although only seven of the winter trailheads are reserved for non-motorized use, the EIR

23 ¹ The United States Forest Service is named a Real Party in Interest herein, however,
24 Petitioners herein do not assert claims under NEPA against the Forest Service or any other
25 party.

26 ² The EIR provides various numbers regarding the trailheads groomed under the OSV Program
27 (EIR at 2.1 states that there are 26 trail systems and 34 trailheads., however, Table 2-1 lists 27
trailheads are plowed), the Sno-Parks program grooms an additional 19 trailheads seven of
which overlap with the OSV Program (DEIR at 2-26, S-7).

1 mistakenly states that there are 10 trailheads reserved for non-motorized use. The EIR also
2 inaccurately calculated the amount of lands overall that are available for quiet recreation and
3 non-motorized users during winter,

4 25. Although State and County agencies that are responsible for plowing of roads
5 do plow occasional turnouts that may be used for non-motorized winter recreation access,
6 those turnouts together with the 7 non-motorized trail heads do not provide a choice in
7 recreational opportunity that is comparable to the choice provided to motorized users, do not
8 meet non-motorized recreation demand on busy days and, moreover, do not provide adequate
9 safe and legal access for all non-motorized recreationists.

10 26. Grooming and plowing operations under the OSV Program both at trail heads
11 and along trails have an adverse environmental impact on wildlife and other resources through
12 the noise, disturbance and pollution created by plowing and grooming vehicles.

13 27. The use of the groomed trails by snowmobiles and off-trail use by snowmobiles
14 in the backcountry (facilitated by the access provided by groomed trails) also have significant
15 adverse environmental impacts on wildlife, air quality, hydrology, other resources, and on
16 other non-motorized recreational users. Simply put, snowmobiles are extremely noisy, emit
17 extreme amounts of pollution, and can damage wildlife and wildlands both on and off of
18 groomed trails.

19 28. As the Division admits, snowmobile use would be significantly more limited
20 without the OSV Program, both in quantity and scope of use. Accordingly, the OSV Program
21 is directly and indirectly responsible for increasing and extending the environmental impact of
22 snowmobiles themselves.

23 29. According to the Division, over 95% of the snowmobiles used in California's
24 national forests use older two-stroke technology, which, according to the U.S. Environmental
25 Protection Agency, each emit nearly as much pollution as 100 passenger vehicles, and which
26 create noise comparable to the noise of aircraft. State and federal regulation are notoriously
27 lax in regulating emissions from snowmobiles as compared to emissions from passenger

1 vehicles and from other types of motorized recreational vehicles. The lack of other regulation,
2 however, does not excuse the Division from taking a close look at the environmental impact of
3 all types of snowmobiles under CEQA when considering adoption of the OSV Program.

4 30. The EIR also failed to adequately address changes to snowmobile activity in the
5 last ten to twenty years, with high-powered machines now able to travel in areas that were
6 previously inaccessible.

7 31. Trailheads provided under the OSV Program are often enveloped in their own
8 smog during days of heavy use. The noise from snowmobiles is generally significantly louder
9 – by many decibels - than any other man-made noise at trailhead locations; and is generally far
10 louder – by dozens of decibels - than other man-made noise throughout the California national
11 forests in winter.

12 32. Although trailheads provided under the OSV Program are legally open to non-
13 motorized users, including skiers, snowshoers and snow play, and seven of the trailheads
14 overlap with Sno-Park trailheads, the noise, odors, pollution and danger from snowmobile
15 activity renders these areas unacceptable to most other forms of recreation, in particular on
16 weekends and over holidays. In the absence of the OSV Program, many of the OSV Program
17 locations would still be accessible to some non-motorized recreationists through the Sno-Park
18 program, plowed turnouts, and/or through other plowing provided outside the OSV Program
19 and would be more suitable for skiing, snowshoeing and other non-motorized recreation. As a
20 result, the OSV Program favors motorized recreation at these sites and has the effect of
21 reducing the areas available for users seeking a clean and quiet recreation experience.

22 33. As a direct result of the OSV Program, users who desire to recreate in areas free
23 from motorized traffic are being increasingly crowded into the very few areas where motorized
24 travel is prohibited.

25 34. Petitioners suggested several mitigation measures that the Division could
26 undertake in order to mitigate the impact of the OSV Program. For example, several of such
27 measures recognize that primary stewardship of the national forests is the responsibility of the

1 Forest Service and, accordingly, achieve their objective by conditioning the disbursement of
2 OSV Program funds on a requirement that the Forest Service adopt mitigation measures such
3 as providing more areas protected from OSV incursion and/or restricting OSV usage to quieter
4 and less-polluting snowmobiles using newer technology.

5 35. The Division's conclusion that the impacts to air quality, including greenhouse
6 gas emissions, are not significant is not based on substantial evidence. In fact there was no
7 basis provided at all for the conclusion that emissions from the Project are not significant or
8 cumulatively considerable or that such emissions, which will admittedly increase under the
9 OSV Program, will not impair the achievement of statewide goals for greenhouse gas emission
10 reductions. The Division also improperly failed to require any minimization or mitigation
11 measures that would reduce emissions (including greenhouse gas emissions) from grooming
12 and plowing equipment although such measures are feasible, and improperly failed to adopt
13 any minimization or mitigation measures to require, or even encourage, the reduction in use of
14 snowmobiles with highly polluting two-stroke engines on the trails that would be made
15 accessible under the OSV Program. While the EIR did examine alternatives that would reduce
16 these emissions by reducing funding for grooming and plowing, these alternatives were
17 rejected as not fulfilling the project objectives. In addition, because the Division inaccurately
18 found that impacts to air quality were not significant, it also failed to adequately address
19 alternatives that would avoid or minimize impacts to air quality including, for example,
20 impacts to non-motorized users at trail heads and along the trails from air quality impairment
21 on days of high-use.

22 36. The Division did not adequately consider alternatives that would avoid many of
23 the significant impacts of the Project and meet some or all of the project objectives and failed
24 to fully consider feasible measures to minimize and mitigate impacts from the OSV Program.

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1 **FIRST CAUSE OF ACTION**

2 **(Against All Respondents for Violations of CEQA –**
3 **Public Resources Code § 21000 *et seq.*)**

4 37. Petitioners hereby incorporate by reference the allegations contained in
5 paragraphs 1 through 36, inclusive. In carrying out their review and approval activities with
6 respect to the Project, Respondents were, and are, at all times mentioned herein under a
7 mandatory duty to comply with the provisions of CEQA and the CEQA Guidelines. Among
8 other things, the Division was charged with a duty to fully and accurately consider the
9 environmental consequences of the Project Approval through preparation of an EIR that
10 complied with CEQA; to fully disclose, consider and adopt feasible mitigation measures and
11 alternatives that would reduce or eliminate significant environmental impacts; and to make
12 lawful findings that supported the decisions made and were supported by substantial evidence in
13 the administrative record.

14 38. In certifying the Project EIR and granting the Project Approval, the Division
15 violated CEQA, failed to proceed in a manner required by law, failed to fully and accurately
16 disclose and consider the significant impacts of the Project on the environment failed to disclose
17 and adopt feasible mitigation measures and alternatives that could reduce the Project’s
18 significant environmental effects, failed to adopt findings that supported the decisions made, and
19 failed to support their findings with substantial evidence as detailed herein.

20 39. The EIR does not meet the requirements of CEQA for the following reasons:

21 a. Respondents’ stated objective and purpose for the EIR improperly and
22 unlawfully narrows the analysis contained in the EIR, in violation of CEQA.

23 b. Respondents improperly defined the environmental baseline for the EIR,
24 resulting in an underestimation of the OSV Program impacts on sensitive species and the
25 surrounding ecosystem, air quality, and other non-motorized recreation in violation of CEQA.

26 c. The EIR fails to adequately and accurately evaluate and fully disclose the
27 direct, indirect, and cumulative impacts of the OSV program on sensitive species and

1 ecosystems, air quality, and other resources in violation of CEQA.

2 d. The EIR fails to consider and analyze a reasonable range of alternatives to
3 the proposed OSV Program, in violation of CEQA.

4 e. The EIR fails to consider or adopt reasonable mitigation measures for the
5 significant adverse impacts of the OSV Program and unlawfully relies on the implementation of
6 monitoring and mitigation measures to reduce significant impacts without ensuring
7 implementation or secured funding for those measures, in violation of CEQA.

8 f. Respondents' conclusions in the EIR regarding insignificant impacts to several
9 environmental resources, including wildlife and air quality, are not based on an accurate baseline
10 or the best available scientific information, in violation of CEQA.

11 g. Respondents failed to adequately respond to credible scientific and public
12 comments on the draft EIR, in violation of CEQA.

13 h. Respondents failed to support the decision to approve and certify the EIR with
14 substantial evidence in the record.

15 Accordingly, Respondents' approval of the OSV Project is based on an inadequate and
16 inaccurate disclosure and analysis of the Project's impacts on wildlife, air quality, hydrology and
17 other non-motorized users, is not supported by substantial evidence, and represents a failure to
18 proceed in the manner required by law. Respondents' actions in completing, approving, and
19 certifying the OSV Program EIR violated their legal duties under CEQA and constitute a
20 prejudicial abuse of discretion that is actionable under Cal. Pub. Res. Code § 21168, Cal. Civ.
21 Proc. Code § 1094.5 and/or 21168.5, Cal. Civ. Proc. Code §1085.

22 40. Respondents acted arbitrarily and capriciously, failed to proceed in accordance
23 with the law, and lacked substantial evidence to support their findings and decisions.

24 Respondents' approval of the Project is, therefore, subject to being set aside by a Writ of
25 Mandate issued by this Court.

26 41. Petitioners have a clear, present, and beneficial right to the proper performance by
27 the Respondents of their duties as alleged herein. Petitioners are beneficially interested in the

1 issuance of a Writ of Mandate by virtue of the facts set forth previously, in that Petitioners and
2 the general public will otherwise be adversely affected by the actions of the Respondents herein
3 challenged.

4 42. Petitioners have no plain, speedy, or adequate remedy in the ordinary course of
5 the law other than the relief herein sought. Petitioners are entitled to seek a peremptory writ of
6 mandate declaring that Respondents have not satisfied the requirements of CEQA and to seek an
7 order directing Respondents to prepare and circulate for public comment a new or supplemental
8 EIR that fully complies with the law. Petitioners are also entitled to seek interim protective
9 measures to stay the effectiveness of Respondents' approval of the final EIR and adoption of the
10 OSV Program herein challenged to protect wildlife and other resources pending a decision on the
11 merits.

12 43. Petitioners are entitled to attorneys' fees pursuant to Code of Civil Procedure
13 Section 1021.5 in that:

14 44. The successful disposition of this lawsuit will result in the enforcement
15 of important rights affecting the public interest and will confer significant benefits upon
16 the public or large class of persons. Petitioners seek to enforce provisions of important
17 state and local environmental and administrative laws for the benefit of the public, and
18 to rectify certain procedural improprieties which will benefit all the future participants
19 in the decision making process employed by the Respondents;

20 45. The necessity and financial burden of private enforcement is such to make the
21 award appropriate; and

22 46. Such fees will not be paid out of any recovery.

23 47. The actions of Respondents herein complained of were arbitrary and capricious
24 and Petitioners are entitled to recover attorneys' fees pursuant to Government Code Section
25 800.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Petitioners prays for relief as follows:

3 1. For alternative and peremptory writs of mandate, commanding Respondents:

4 (A) to vacate and set aside approval of the Project;

5 (B) to vacate and set aside certification of the Final Environmental Impact Report for
6 the Project and adoption of the Mitigation Monitoring and Reporting Plan for the Project;

7 (C) to prepare and certify a legally adequate EIR for the Project;

8 (D) to suspend any and all activity pursuant to Respondents' approval of the Project
9 which could prejudice the consideration or implementation of particular mitigation measures or
10 alternatives, until Respondents have complied with all requirements of the California
11 Environmental Quality Act, and all other applicable state and local laws, policies, ordinances,
12 and regulations as are directed by this Court pursuant to Public Resources Code section 21168.9;

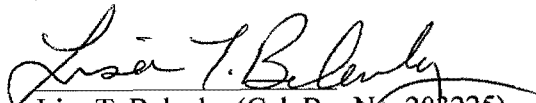
13 2. For a declaration that the Project is inconsistent with the requirements of the
14 California Environmental Quality Act;

15 3. For costs of the suit;

16 4. For attorney's fees pursuant to the Code of Civil Procedure section 1021.5; and

17 5. For such other and further relief as the Court deems just and proper.

18 DATED: January 19, 2011

19 

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