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13 CENTER FOR SIERRA NEVADA CONSERVATION, and  
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15 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

16 IN AND FOR THE COUNTY OF ALAMEDA

17 CENTER FOR SIERRA NEVADA  
18 CONSERVATION, a non-profit corporation;  
19 CENTER FOR BIOLOGICAL DIVERSITY, a  
20 non-profit corporation,

21 Petitioners and Plaintiffs,

22 vs.

23 CALIFORNIA DEPARTMENT OF PARKS  
24 AND RECREATION, an agency of the State of  
25 California; DIVISION OF OFF-HIGHWAY  
26 MOTOR VEHICLE RECREATION, a division  
27 of the California Department of Parks and  
28 Recreation,

Respondents and Defendants.

ELDORADO NATIONAL FOREST; UNITED STATES FOREST SERVICE, an agency of the U.S. Department of Agriculture; and RAMIRO VILLALVAZO, in his official capacity as Forest Supervisor for the Eldorado National Forest; and DOES I – X, inclusive,

Real Parties in Interest and Defendants.

Case No.:

VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF

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

Dept.: CEQA

1           Petitioners and plaintiffs CENTER FOR SIERRA NEVADA CONSERVATION  
2 (“CSNC”), a non-profit corporation; and CENTER FOR BIOLOGICAL DIVERSITY  
3 (“CBD”), a non-profit corporation, (collectively, “Petitioners”) bring this action on their own  
4 behalf, on behalf of their members, on behalf of the general public and in the public interest  
5 pursuant to Code of Civil Procedure § 1094.5 and Public Res. Code § 21168, or, in the  
6 alternative, pursuant to Code of Civil Procedure §1085 and Public Res. Code § 21168.5.

## 7                                   **INTRODUCTION**

8           1.       This action challenges the decision of respondents and defendants, CALIFORNIA  
9 DEPARTMENT OF PARKS AND RECREATION (“DPR”) and the DIVISION OF OFF-  
10 HIGHWAY MOTOR VEHICLE RECREATION (“OHMVR”) to refuse to prepare an  
11 environmental impact report (“EIR”) under the California Environmental Quality Act  
12 (“CEQA”), Pub. Res. Code §21000, et seq., for a major expansion of off-road vehicle  
13 (“ORV”) trails, bridges, and other facilities in the Rock Creek Recreation Area (“Rock  
14 Creek”) in the Eldorado National Forest.

15          2.       Rock Creek is a popular area for off-road vehicles (“ORVs”).   The Rock Creek Trail  
16 Development Project at issue in this action (State Clearinghouse Number 2010032092)  
17 (“Project”) would add 8.9 miles of new trails to the existing network of ORV trails in the  
18 Rock Creek area, and would involve construction of 3 new bridges, blasting of rock  
19 outcroppings, excavation, construction of retaining walls and new restrooms, and other  
20 “improvements” that will result in a significant increase in the use of the Rock Creek area by  
21 ORVs.

22          3.       Rock Creek is home to a large number of endangered, threatened, protected and  
23 sensitive plant and animal species, including the California Red Legged Frog (“CRLF”), the  
24 Western pond turtle, the Eldorado Manzanita,<sup>1</sup> and many others. All of these species are  
25 threatened by the both the construction activities and increased use of ORVs that will result  
26 from the Project. The Rock Creek Trail Development Project construction activities and the

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27 \_\_\_\_\_  
28 <sup>1</sup> (*Arctostaphylos nissenana Merriam*) also commonly called Nissenan manzanita.

1 increased ORV use the new construction will facilitate will result in erosion, air pollution,  
2 sedimentation of creeks, noise pollution, direct destruction of species through habitat  
3 destruction or even direct physical crushing by ORV tires, and many other impacts.

4 4. Because Respondents refused to prepare an EIR for the Project, the agency failed to  
5 adequately analyze the Project's environmental impacts, failed to adopt feasible mitigation  
6 measures to reduce those impacts, and failed to consider feasible alternatives to the Project.  
7 Indeed, the Respondents failed entirely to analyze *any* of the impacts of ORV use on  
8 endangered and sensitive species. Instead, Respondent merely prepared an Initial  
9 Study/Mitigated Negative Declaration ("MND") that analyzed only the short term impacts of  
10 trail construction, did not adequately address the impacts of construction on endangered and  
11 sensitive species, and *ignored entirely the long-term impacts of decades of ORV use that will*  
12 *result from the Project.*

13 5. Despite substantial evidence of its significant environmental impacts, Respondents  
14 refused to prepare an EIR as required by CEQA.

15 6. Respondents' decision to approve the Project without preparing an EIR is a violation  
16 of CEQA. CEQA contains a strong preference in favor of preparation of an EIR rather than  
17 an abbreviated MND, and requires an EIR whenever there is a "fair argument" that a  
18 proposed project "may have significant adverse environmental impacts." In denying the  
19 Petitioners' request to prepare an EIR, Respondents failed to proceed in a manner required by  
20 law. In approving the Project without an EIR, Respondents failed to consider substantial  
21 evidence constituting a fair argument of significant environmental impacts related to the  
22 Project, and the inadequacy of mitigation measures to reduce those impacts below  
23 significance.

24 7. The MND prepared for the Project admits that the Rock Creek Trail Development  
25 Project may have adverse impacts on protected and sensitive species unless mitigation  
26 measures are implemented. However, the MND fails to fully analyze those impacts and  
27 imposes wholly inadequate mitigation measures that at best may mitigate only some direct  
28 construction impacts, and do nothing to mitigate indirect and cumulative impacts or decades

1 of increased ORV use that will result from the Project. The MND also illegally defers  
2 development of numerous mitigation measures, stating only that mitigation measures will be  
3 developed later, outside of the scope of public review, if necessary. Such deferred mitigation  
4 is improper under CEQA. Some mitigation measures are inconsistent with each other. The  
5 MND's mitigation measures are not sufficient to reduce the Project's significant impact to  
6 below the level of significance.

7 8. The MND prepared for the Project is woefully inadequate in that it fails to adequately  
8 describe the Project and its environmental setting. In particular, the MND fails to identify  
9 the location of the new ORV trails, fails to identify whether many sensitive species exist in  
10 the Rock Creek area, and fails to identify whether species that are known to exist in the area  
11 will be in close proximity to the new ORV trails or streams and creeks that will be impacted  
12 by the Project.

13 9. An EIR is required to analyze and mitigate the Rock Creek Trail Development  
14 Project's environmental impacts, including its adverse impacts on the many endangered,  
15 threatened and sensitive animal and plant species found in the Rock Creek area. The MND  
16 fails to adequately address the impacts from the Project's construction activities and ignores  
17 entirely the impacts that increased ORV use will have on these species for decades to come,  
18 and includes wholly inadequate mitigation measures.

19 **PARTIES**

20 10. Petitioner and plaintiff CENTER FOR SIERRA NEVADA CONSERVATION  
21 ("CSNC") is a non-profit corporation organized in 1986 and headquartered in Georgetown,  
22 California. CSNC and its members have a long-standing interest in protecting the  
23 biodiversity, wildlands, ecosystem values, and long-term sustainability of natural resources  
24 on private and public lands in the vicinity of the Eldorado National Forest and the Rock  
25 Creek area in particular. Dozens of CSNC's members regularly use and will continue to use  
26 the trails and other areas within the Rock Creek area – including the specific trails and  
27 adjacent areas at issue in this action – for recreational and aesthetic pursuits, including, but  
28 not limited to, fishing, hiking, hunting, wildlife appreciation, nature observation,

1 photography, aesthetic enjoyment, and spiritual rejuvenation. The impacts of ORV use on  
2 species and water quality in the Eldorado National Forest and the Rock Creek area in  
3 particular are a detriment to achieving the group's goal of protection and restoration, and the  
4 its members and staff will be injured by the activities challenged in this action. These injuries  
5 would be redressed by the relief sought.

6 11. CSNC submitted a written joint comment letter with CBD to Respondents during the  
7 CEQA comment period. The letter requested that Respondents prepare an EIR for the  
8 Project and presented substantial evidence that the Project may have significant adverse  
9 environmental impacts. CSNC's letter was signed by CSNC President, Karen Schambach.  
10 Ms. Schambach is an expert in the impacts of ORVs on endangered and threatened species in  
11 the Eldorado National Forest and the Rock Creek area in particular. She has spent and will  
12 continue to spend time enjoying the natural environment in and around Rock Creek. Ms.  
13 Schambach has a Bachelor's degree in Environmental Studies, with a minor in Biology,  
14 including classes in geology, ecology and environmental law, including the Clean Water Act  
15 and the Porter Cologne Act. She has 25 years of experience dealing with off-road vehicle  
16 impacts to soil and water quality, particularly at Rock Creek. She serves on the State Water  
17 Board's Stakeholder group for development of a revised Water Quality Management Plan for  
18 the Forest Service, including new best management practices ("BMPs") for off-highway  
19 vehicle use. She has alerted the Regional Water Board to water quality issues at Rock Creek  
20 and the Rubicon Trail, resulting in a Clean-up and Abatement Order for the Rubicon and  
21 route closures at Rock Creek. She has training in stream rapid bioassessment from the  
22 California Department of Fish and Game.

23 12. Petitioner and plaintiff CENTER FOR BIOLOGICAL DIVERSITY ("CBD") is a  
24 non-profit corporation with offices in San Francisco and Los Angeles, California; Oregon;  
25 Arizona; New Mexico; and Washington, D.C. CBD is actively involved in species and  
26 habitat protection issues throughout North America, and has over 42,000 members including  
27 many members who reside and recreate in California. One of CBD's primary missions is to  
28 protect and restore habitat and populations of imperiled species throughout western North

1 America. The group's members and staff include individuals who visit the Eldorado National  
2 Forest and have biological, health, educational, scientific research, spiritual and aesthetic  
3 interests in the Sierra Nevada forest ecosystems and the species and habitats affected by the  
4 decision at issue and intend to continue to do so in the future. CBD's members and staff  
5 regularly use and intend to continue to use lands throughout the Sierra Nevada, including the  
6 Eldorado National Forest and the Rock Creek area, as well as the rivers, streams and other  
7 waters found therein, for observation, research, aesthetic enjoyment, and other recreational,  
8 scientific, and educational activities. CBD's members and staff have researched, studied,  
9 observed, and sought protection for many imperiled species, including federally listed  
10 threatened and endangered species that live in the Sierra Nevada and in the Eldorado  
11 National Forest. CBD's members and staff have and continue to derive scientific,  
12 recreational, educational, conservation, and aesthetic benefits from the continued existence of  
13 these imperiled species in the wild and the preservation of the ecosystems upon which they  
14 depend. The impacts of ORV use on species and water quality in the Eldorado National  
15 Forest and the Rock Creek area in particular are a detriment to achieving the group's goal of  
16 protection and restoration, and its members and staff will be injured by the activities  
17 challenged in this action. These injuries would be redressed by the relief sought.

18 13. CBD submitted a written joint comment letter with CSNC to Respondents during the  
19 CEQA comment period. The letter requested that Respondents prepare an EIR for the  
20 Project and presented substantial evidence that the Project may have significant adverse  
21 environmental impacts. CSNC's letter was signed by its Senior Attorney, Lisa Belenky. Ms.  
22 Belenky practices in the field of environmental law, with significant experience in the areas  
23 of CEQA and the Endangered Species Act.

24 14. This suit is brought by CSNC and CBD on behalf of themselves and their adversely  
25 affected members and staff (collectively "Petitioners"). Petitioners and their members'  
26 present and future intended use of the Rock Creek Recreation Area and the waters therein  
27 and downstream waters is and will be directly and adversely affected by the decisions,  
28 actions, and failures to act alleged in this action. Those adverse effects include, but are not

1 limited to: (1) disruption of their recreational experiences; (2) reduction and impairment of  
2 recreational opportunities; (3) impacts to native plants and wildlife and their habitats within  
3 the Rock Creek area of the Eldorado National Forest; (4) impacts to riparian areas and water  
4 quality in this area and downstream; and (5) impaired aesthetic value of trails and other areas  
5 caused by Respondents' failure to comply with environmental requirements of CEQA in  
6 approving the Rock Creek Trail Development Project in the Rock Creek area of the Eldorado  
7 National Forest. The injuries caused by Respondent's failure to follow mandatory procedures  
8 in reviewing the project including the use of the ORV routes in the Rock Creek area include,  
9 but are not limited to, increased water pollution, noise and air pollution in the Eldorado  
10 National Forest and surrounding environs, degradation and impairment of the Forest  
11 landscape, disruption of wildlife, destruction of native plants, destruction of soil structure and  
12 quality, increased user conflicts, and loss of opportunities for solitude and nature  
13 appreciation.

14 15. Respondent and defendant CALIFORNIA DEPARTMENT OF PARKS AND  
15 RECREATION ("DPR") is a state agency under the laws of the State of California.

16 16. Respondent and defendant DIVISION OF OFF-HIGHWAY MOTOR VEHICLE  
17 REGISTRATION ("OHMVR") is a Division of DPR. OHMVR was the CEQA "lead  
18 agency" for the Rock Creek Project, and approved the Mitigated Negative Declaration  
19 ("MND") at issue in this action. The mission of OHMVR is to acquire, develop, and operate  
20 state-owned vehicular recreation areas for off highway motor vehicles.

21 17. Real Party in Interest and defendant ELDORADO NATIONAL FOREST is the  
22 Project Applicant for the Rock Creek Development Project at issue in this action. The  
23 ELDORADO NATIONAL FOREST is an entity of the UNITED STATES FOREST  
24 SERVICE with a mailing address of 100 Forni Road, Placerville, California 95667.

25 18. Real Party in Interest and defendant UNITED STATES FOREST SERVICE  
26 ("USFS") is an agency of the United States Department of Agriculture. The USFS is  
27 responsible for the administration and management of the federal lands subject to this action.

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1 19. Real Party in Interest and defendant RAMIRO VILLALVAZO is the Forest  
2 Supervisor for the ELDORADO NATIONAL FOREST. In that capacity, he is directly  
3 responsible for properly managing vehicle and trail use in the Forest and ensuring that ORV  
4 route designation and use in the Forest complies with the Eldorado Forest Plan and all other  
5 applicable laws. He officially resides in Placerville, California. Mr. Villalvazo is sued in his  
6 official capacity.

7 20. Petitioners and plaintiffs do not know the true names or capacities of the persons or  
8 entities sued as Real Parties in Interest DOES I through X, inclusive, and therefore sue these  
9 real parties by their fictitious names. Petitioners and plaintiffs will amend the Petition and  
10 Complaint to set forth the names and capacities of the Doe defendants along with appropriate  
11 charging allegations when such information has been ascertained.

#### 12 **JURISDICTION AND VENUE**

13 21. This court has jurisdiction pursuant to Government Code § 11523 and Code of Civil  
14 Procedure § 1094.5, or in the alternative, Code of Civil Procedure § 1085.

15 22. Venue is proper in this court pursuant to Code of Civil Procedure §401(1) because the  
16 Attorney General maintains an office in this County.

#### 17 **STATEMENT OF FACTS**

18 23. The Eldorado National Forest (“ENF” or “Forest”), located in the heart of the Sierra  
19 Nevada mountain range, is situated in central California, east of Sacramento and west of  
20 Lake Tahoe. Parts of Alpine, Amador, Eldorado, and Placer Counties lie within the ENF. The  
21 Forest contains areas of diverse topography, soil type, vegetation, and habitat type.

22 24. The Forest also provides habitat for numerous endangered, threatened, and sensitive  
23 wildlife species, species of concern, and management indicator species, including the Bald  
24 eagle, California red-legged frog, California spotted owl, Great gray owl, Northern goshawk,  
25 Willow flycatcher, Pacific fisher, American marten, Sierra Nevada red fox, California  
26 wolverine, Foothill yellow-legged frog, Mountain yellow-legged frog, Northwestern pond  
27 turtle, Yosemite toad, Mule deer, and assorted species of trout. A variety of listed, sensitive,  
28 and rare plant species can likewise be found within the Eldorado National Forest. The Forest



1 includes portions of the Pacific Deer Herd winter range, including critical winter range, and  
2 summer habitat, including fawning areas, for the Pacific, Blue Canyon and Grizzly deer  
3 herds. Many of these species are known or suspected to exist in the Rock Creek area. The  
4 Rock Creek Recreation Area contains known or potential habitat for species including, but  
5 not limited to the California red-legged frog, the Northwestern pond turtle, the California  
6 spotted owl and northern goshawk, the valley elderberry longhorn beetle, and several bat  
7 species.

8 25. The Forest contains essential recovery habitat for the threatened California red-legged  
9 frog which was listed as threatened under the Federal Endangered Species Act (“ESA”) in  
10 1996. 61 Fed. Reg. 25813 (May 23, 1996) and is a California Department of Fish and Game  
11 Species of Special Concern. In the final listing rule, the U.S. Fish and Wildlife Service noted  
12 that urbanization, agriculture, and many other land-disturbing activities have caused  
13 substantial changes in the red-legged frog habitat in California and noted that preservation  
14 and proper management of open space in riparian areas is a “fundamental requirement in the  
15 survival and recovery of the California red-legged frog.” *Id.* at 25819. In 2002, the Fish and  
16 Wildlife Service adopted the Recovery Plan for the California Red Legged Frog.

17 26. The Rock Creek area is also known or potential habitat for numerous endangered,  
18 threatened and sensitive plant species, including, but not limited to: the Eldorado Manzanita,  
19 the Pleasant Valley Mariposa lily, the Red Hills soaproot, and Parry’s horkelia.

20 27. On average, the Eldorado National Forest receives about 56 inches of precipitation  
21 annually. The surface water of Eldorado National Forest is of excellent quality year round  
22 and yields approximately 1.4 million acre-feet annually. Numerous streams, natural lakes,  
23 and man-made reservoirs provide key features for a substantial share of all recreation  
24 activities. The Forest contains 611 miles of fishable streams in the four major river systems.

25 28. “Off-road vehicle” or “ORV” is the generic term used to describe motorized vehicles  
26 equipped for travel off of improved and maintained roads. Such vehicles include “dirt  
27 bikes,” enduro bikes, high-clearance jeeps and trucks, cross-country motorcycles, dune  
28 buggies, snowmobiles, off-highway vehicles (“OHV”), and all-terrain vehicles (“ATVs”).

1 29. ORV's have significant, negative impacts on practically every aspect of the natural  
2 environment wherever they are used. For example, ORV's degrade air and water quality;  
3 impair others' ability to enjoy natural sights, sounds and smells; and create safety hazards –  
4 for ORV users themselves, hikers, mountain bikers, and imperiled plant and animal species.  
5 Natural areas sustain significant damage due to the impacts of ORVs. These impacts include,  
6 but are not limited to, erosion and damage to soils and vegetation; harm to wildlife and  
7 wildlife habitat; degraded water quality and riparian health; and harm to cultural resources.

8 30. The Rock Creek Trail Development Project at issue in this action is designed to  
9 increase ORV use in the Rock Creek Area. It would involve construction of 8.9 miles of new  
10 ORV trails, erection of three new bridges, excavation, construction of retaining walls, new  
11 vault toilets and other facilities intended to be used by ORVs and their operators.

12 31. The MND prepared by Respondents admits that the Project may adversely impact the  
13 many imperiled plant and animal species found in the Rock Creek Area. For this reason, the  
14 MND imposes five mitigation measures. Unfortunately, none of the measures meets the  
15 standards set forth in CEQA and none of them are sufficient to reduce the Project's impacts  
16 below the level of significance.

17 32. The mitigation measures rely on improper deferred mitigation, which is disallowed  
18 under CEQA. For example, mitigation measure BIO-1 provides that if certain protected  
19 species are identified in the Project area during Project construction, "a Forest Service  
20 botanist will be consulted to develop a proper mitigation strategy." Mitigation measure BIO-  
21 3 provides that "follow up surveys will be required to determine presence/absence of  
22 northwestern pond turtles." Mitigation measure BIO-5 states that a revised Biological  
23 Opinion is under way but not yet completed by the United States Fish and Wildlife Service.  
24 The measure continues that if any California Red-legged Frogs are discovered, "a qualified  
25 Forest Service biologist shall be contacted for identification and on how to proceed." Such  
26 measures are precisely the type of deferred mitigation prohibited by CEQA. An EIR is  
27 required to analyze the Project's impacts on imperiled plant and animal species and propose  
28 specific mitigation measures in the EIR for public review. CEQA requires that any

1 mitigation measures must be described in the CEQA document, not developed after Project  
2 approval. Only in this way can the public assess whether mitigation measures are adequate  
3 or even whether adequate measures exist. Deferring mitigation until after approval of the  
4 CEQA document improperly removes the public from the review process.

5 33. The mitigation measures are also inadequate because they address only construction  
6 impacts and at best could mitigate only the impacts of the short-term construction phase of  
7 the Project, while ignoring decades of increased ORV use that will result from the ongoing  
8 operation of the Project. The MND contains absolutely no analysis of the impacts of  
9 increased ORV use that will result from the Project and no measures to mitigate those  
10 impacts. ORVs may adversely impact imperiled species by creating erosion, noise,  
11 sedimentation of Rock Creek, and even directly running over or crushing protected plants  
12 and animals. The MND ignores the ongoing and increased impacts of ORVs entirely.

13 34. The mitigation measures are inadequate to mitigate even the construction impacts of  
14 the Project. The mitigation measures often rely on largely untrained construction workers to  
15 identify imperiled plant and animal species. However, most construction workers do not  
16 have sufficient training, knowledge, or motivation, to make such identifications.

17 35. Other mitigation measures are inadequate to reduce Project impacts even if  
18 implemented. For example, the MND suggests transplanting sensitive plants species if found  
19 despite the fact that the California Native Plant Society does not condone transplanting as  
20 adequate mitigation given the poor likelihood of success and other factors.

21 36. The MND ignores entirely the Project's noise, odor and visual impacts, providing  
22 only the bare conclusion that these impacts are less than significant. Increased ORV use of  
23 Rock Creek will have adverse noise, odor and visual impacts on other recreational users of  
24 the area, including hikers, fishers, mountain bikers, and others, as well as on species sensitive  
25 to noise and odor. The MND ignores these impacts entirely and proposes no mitigation  
26 measures or alternatives.

27 37. The MND concludes that visual impacts are insignificant because the Rock Creek  
28 area is already badly degraded. However, the existing environmental harm is reason to be

1 more, not less concerned about inflicting even greater environmental damage. There is no  
2 question that a massive 80-foot bridge proposed for lower Rock Creek, and other Project  
3 elements, will have enormous visual impacts on hikers and fishers that must be disclosed and  
4 mitigated.

5 38. The MND ignores air quality impacts of the Project, including ozone formation and  
6 particulate matter (PM-10), despite the fact that the region already fails to attain state  
7 standards for both pollutants. While the MND contains a mitigation measure to reduce dust  
8 during the construction phase of the Project by limiting construction to times when moisture  
9 is optimal, it contains no analysis or mitigation for ozone or PM-10 pollution that will be  
10 caused by the ORVs themselves. Furthermore, the construction mitigation measure is legally  
11 inadequate since it is not binding, but is only recommended. Finally, the construction  
12 mitigation measure directly conflicts with other mitigation measures that limit construction to  
13 the dry season to avoid other Project impacts. The MND proposes to limit construction to  
14 times when soil is moist will reduce air quality impacts, but later proposes to protect certain  
15 riparian wildlife species by prohibiting construction during the wet months between  
16 September 1 and June 15. Respondents cannot have it both ways and these mitigation  
17 measures cannot both be implemented.

18 39. The MND fails to provide an adequate description of the Project. For example, it  
19 fails even to identify the location of the 8.9 miles of new trails. While trail reroutes and new  
20 trail locations are shown on a map, according to the MND, the actual trail locations will be  
21 determined at some later date. As a result of this omission, it is not possible to determine  
22 whether all or part of these trails will be near riparian habitat, or will cross over or even  
23 destroy sensitive plant or animal habitats.

24 40. The MND fails to analyze the whole Project, limiting analysis only to the short-term  
25 construction phase, and ignoring the long-term operation of the Project entirely. As a result,  
26 the MND ignores impacts caused by dirt bikes, and other off-road vehicles such as air  
27 pollution, noise, particulate dust, erosion of trails, sedimentation of streams, direct  
28 destruction of habitat, direct destruction of protected plant and animal species, and many

1 other impacts.

2 41. The MND fails to analyze the environmental setting of the Project. For example, the  
3 MND fails to identify whether several protected species are present in the Rock Creek area,  
4 despite the existence of proper habitat. Instead, the MND defers to later studies the  
5 determination of whether species exist in the Project area, including the Northwestern pond  
6 turtle, the California spotted owl, the California red-legged frog (for which a Biological  
7 Opinion is under way but not yet completed), several bat species, the Eldorado Manzanita,  
8 the Red Hills soaproot and Parry's Horkelia ("no surveys have been conducted to determine  
9 the presence of the Red Hills soaproot or Parry's horkelia or their habitat for this specific  
10 project, but potentially suitable habitat is known to be present throughout the Rock Creek  
11 Recreation Area" (MND, p. 37)), and other species. Obviously, if the MND does not even  
12 disclose whether and where sensitive species are present on the site, it cannot analyze the  
13 Project's impacts on those species, the severity of those impacts, or propose adequate  
14 mitigation measures.

15 42. The MND inaccurately describes the environmental setting with respect to the  
16 sensitive plant species Eldorado Manzanita (*Arctostaphylos nissenana* (ARNI)) in Eldorado  
17 County. The MND states that ARNI has been identified in 8 locations in Eldorado County.  
18 This is untrue. ARNI has not been seen at the Aschcraft Ranch location since 1965, ARNI at  
19 the Martinex Creek location is being lost to residential development, the Placerville  
20 occurrence was destroyed by the Eskaton building, and two other locations are questionable  
21 (Ice House/Wrights Lake Road and Fruitridge Road). The Rock Creek Project would appear  
22 to place two new ORV trails within close proximity of the Slate Mountain ARNI population,  
23 placing this species at risk.

24 43. The MND inaccurately states that there is a single occurrence of yew in the Rock  
25 Creek area. In fact, yew are frequently found along Rock Creek. The setting discussion  
26 must be accurate in order to properly assess the impacts of the Project.

27 44. The MND fails to analyze the Project's cumulative impacts with the existing trail  
28 system in Rock Creek and other pressures on endangered species in the area. In fact the

1 MND does precisely the opposite, and minimizes the Project’s impacts based on the fact that  
2 the environment in the area is already degraded. Under CEQA, it is not acceptable to add  
3 further insult to an existing environmental injury. Rather, the question is whether any  
4 additional environmental harm should be allowed at all given the extent of the existing  
5 degradation. The MND has this exactly backward.

### 6 THE CEQA REVIEW PROCESS

7 45. CEQA is intended to provide the fullest possible protection to the environment.  
8 CEQA provides that the lead agency may issue a Negative Declaration only if “[t]here is no  
9 substantial evidence before the agency that the project may have a significant effect on the  
10 environment.” Pub. Res. Code §21080(c)(1). An EIR is required whenever substantial  
11 evidence in the record supports a “fair argument that significant impacts may occur.” Pub.  
12 Res. Code §21080. If an agency's initial study determines that there is substantial evidence  
13 that any aspect of a project, either individually or cumulatively, may cause a significant  
14 effect on the environment, regardless of whether the overall effect of the project is beneficial,  
15 the agency must prepare an EIR. 14 Cal. Code Regs. 15063(b).

16 46. CEQA requires analysis of the “whole of an action,” including the “direct physical  
17 change in the environment, or a reasonably foreseeable indirect physical change in the  
18 environment.” Pub. Res. Code §21065; CEQA Guidelines §15378(A).

19 47. Impacts to habitat and rare flora and fauna are significant under CEQA and require  
20 full analysis and mitigation. CEQA Guidelines 15065(A)(1); *Mira Monte Homeowners*  
21 *Assoc. v. Ventura County* (1985) 165 Cal.App.3d 357, 363-364.

22 48. On March 26, 2010 OHMVR issued a notice of availability of the MND for the Rock  
23 Creek Project, and invited public comments for a 30-day period.

24 49. On Monday, April 26, 2010, CBD and CSNC filed extensive written comments with  
25 OHMVR providing substantial evidence that the Project would have significant adverse  
26 environmental impacts, that proposed mitigation measures were insufficient to reduce those  
27 impacts below significance, and urging OHMVR to prepare an EIR to analyze those impacts,  
28 to propose proper mitigation measures, and to consider alternatives to the Project.

1 50. On July 2, 2010, OHMVR posted a Notice of Determination (“NOD”) with the State  
2 CEQA Clearinghouse, setting forth its determination that the Project would not have  
3 significant impacts, and refusing to prepare an EIR.

4 51. This action is timely filed under Public Resources Code §21167(b).

5 52. Petitioners and plaintiffs have exhausted the available administrative remedies by  
6 presenting comments during the comment period.

7 53. Petitioners are beneficially interested in an evaluation of the project that complies  
8 with CEQA and they have a clear and present right to the enforcement of CEQA. The  
9 enforcement of CEQA is in the public interest to avoid harm to the environment. An EIR  
10 must be prepared for this project because substantial evidence supports a fair argument that  
11 significant impacts may occur.

12 54. In pursuing this action, petitioners and plaintiffs will confer a substantial benefit on  
13 the People of the State of California and therefore are entitled to recover reasonable  
14 attorney’s fees from Respondents pursuant to Code of Civ. Proc. § 1021.5.

15 55. Petitioners have notified Respondents of their intention to bring this action in  
16 accordance with Public Resources Code § 21167.5. A true copy of this letter is attached to  
17 this petition as Exhibit A.

18 **FIRST CAUSE OF ACTION**  
19 **(Cal. Code of Civil Proc. §1094.5<sup>2</sup>, Pub. Resources Code §§ 21168, 21168.5 -**  
20 **Respondents Prejudicially Abused their Discretion by Failing to Prepare an EIR.**  
21 **By all Petitioners Against All Respondents)**

22 56. Petitioners and plaintiffs reallege and incorporate all of the above paragraphs as if  
23 fully set forth herein.

24 57. CEQA reflects a strong preference in favor of preparing an environmental impact  
25 report for a proposed project rather than a negative declaration.

26 58. A negative declaration is improper, and an EIR is required, whenever substantial  
27 evidence in the record supports a “fair argument” that a project “may have” any significant

28 <sup>2</sup> Or in the alternative Code of Civil Procedure §1085.

1 environmental impact. Even if other substantial evidence supports the opposite conclusion,  
2 the agency nevertheless must prepare an EIR. (Pub. Resources Code § 21080, subd. (c)).

3 59. There is substantial evidence, in light of the whole record before the Respondents,  
4 that the Rock Creek Project may have significant adverse impacts on the environment,  
5 including impacts on imperiled plant and animal species, visual resources, air quality, water  
6 quality, erosion, sedimentation, noise and other impacts.

7 60. There is also substantial evidence that mitigation measures proposed in the MND are  
8 inadequate to reduce the Project's impact below the level of significance.

9 61. Respondents' action adopting a Negative Declaration for the Project, rather than  
10 preparing an EIR, therefore constitutes a prejudicial abuse of discretion in that Respondents  
11 failed to proceed in the manner required by law.

12 62. Petitioners have no plain, speedy or adequate remedy at law unless this Court grants  
13 the requested writ of mandate.

14 63. If Respondents and Defendants are not enjoined from undertaking acts in furtherance  
15 of the Project, Petitioners and Plaintiffs will suffer irreparable harm from which there is no  
16 adequate remedy at law in that the Project area would be irrevocably altered and significant  
17 adverse impacts on the environment would occur, contrary to the requirements of state law.

18 **SECOND CAUSE OF ACTION**

19 **(Cal. Code of Civil Proc. §1094.5<sup>3</sup>, Pub. Resources Code §§ 21168, 21168.5 -**  
20 **Respondents Prejudicially Abused their Discretion by Failing to Prepare an Adequate**  
21 **Project Description or Environmental Setting Discussion.**  
22 **By all Petitioners Against All Respondents)**

23 64. Petitioners and plaintiffs reallege and incorporate all of the above paragraphs as if  
24 fully set forth herein.

25 65. A negative declaration is legally defective if it fails to accurately describe a proposed  
26 project and its environmental setting. (*Christward Ministry v. Superior Court* (1986) 184  
27 Cal.App.3d 180; CEQA Guide lines §15071(a)) The negative declaration must describe the

28 <sup>3</sup> Or in the alternative Code of Civil Procedure §1085.



1 proposed project with sufficient particularity to allow the public to fully understand the scope  
2 and nature of the project and its impacts.

3 66. The MND failed to adequately describe the Project, its environmental setting and its  
4 impacts, thereby thwarting public review of the Project. For example, the MND fails to  
5 describe the location of the proposed new trail network and fails to analyze whether several  
6 species are present on the Project site.

7 67. The MND also fails to describe or analyze the whole of the Project, focusing only on  
8 the short-term construction phase, while ignoring the operation of the Project that will last for  
9 decades, during which time off-road vehicles will create noise, dust, pollution, habitat  
10 destruction, erosion, direct destruction of threatened plant and animal species, sedimentation  
11 and other impacts. The MND ignores the operation of the Project entirely.

12 68. Respondents' action adopting a Negative Declaration for the Project without  
13 requiring a legally adequate project description constitutes a prejudicial abuse of discretion in  
14 that Respondents failed to proceed in the manner required by law.

15 69. Petitioners have no plain, speedy or adequate remedy at law unless this Court grants  
16 the requested writ of mandate.

17 70. If Respondents and Real Parties in Interest are not enjoined from undertaking acts in  
18 furtherance of the Project, Petitioners will suffer irreparable harm from which there is no  
19 adequate remedy at law in that the Project area would be irrevocably altered and significant  
20 adverse impacts on the environment would occur, contrary to the requirements of state law.

21 **THIRD CAUSE OF ACTION**  
22 **(Cal. Code of Civil Proc. §1094.5<sup>4</sup>, Pub. Resources Code §§ 21168, 21168.5 -**  
23 **Respondents Prejudicially Abused their Discretion by Failing to Adopt Adequate**  
24 **Mitigation Measures to Reduce the Project's Impacts.**  
25 **By all Petitioners Against All Respondents)**

26 71. Petitioners and plaintiffs reallege and incorporate all of the above paragraphs as if  
27 fully set forth herein.

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<sup>4</sup> Or in the alternative Code of Civil Procedure §1085.

1 72. A mitigated negative declaration is improper unless it includes binding, enforceable,  
2 and adequately defined mitigation measures that will reduce all project impacts below the  
3 level of significance.

4 73. The Rock Creek MND contains numerous unenforceable, ineffective, contradictory  
5 and otherwise inadequate mitigation measures. These measures are insufficient to reduce the  
6 Project's impacts below the level of significance.

7 74. The Rock Creek MND contains numerous measures that improperly defer the  
8 development of actual mitigation measures until after Project approval. Such deferred  
9 mitigation is improper under CEQA.

10 75. Respondents' action adopting a Negative Declaration for the Project without  
11 requiring a legally adequate mitigation measures constitutes a prejudicial abuse of discretion  
12 in that Respondents failed to proceed in the manner required by law.

13 76. Petitioners have no plain, speedy or adequate remedy at law unless this Court grants  
14 the requested writ of mandate.

15 77. If Respondents and Real Parties in Interest are not enjoined from undertaking acts in  
16 furtherance of the Project, Petitioners will suffer irreparable harm from which there is no  
17 adequate remedy at law in that the Project area would be irrevocably altered and significant  
18 adverse impacts on the environment would occur, contrary to the requirements of state law.

19 **PRAYER**

20 WHEREFORE, PETITIONERS AND PLAINTIFFS PRAY FOR THE  
21 FOLLOWING RELIEF:

- 22 1. For a peremptory writ of mandate directing the Respondents to:
- 23 a. set aside their approval of a Negative Declaration for the Project;
  - 24 b. set aside their Notice of Determination for the Project;
  - 25 c. set aside their approval of the Project;
  - 26 d. set aside any and all other actions approving or granting any permits, entitlements,  
27 financing, or other approvals referring or related to the Project unless and until  
28 Respondents have prepared an environmental impact report for the Project,

1 required implementation of all feasible mitigation measures to reduce the  
2 Project's environmental impacts, analyzed all feasible alternatives to the Project,  
3 issued the findings required by law, and taken all actions necessary to bring its  
4 approval into compliance with CEQA;

5 e. prepare and circulate an environmental impact report for the Project, requiring  
6 implementation of all feasible mitigation measures to reduce the Project's  
7 environmental impacts, and otherwise to comply with CEQA prior to taking any  
8 subsequent action or actions to approve the Project.

9 2. For a preliminary and permanent injunction staying the effect of Respondents' actions  
10 approving the Negative Declaration for the Project, issuing a Notice of Determination for the  
11 Project, approving any permits or other entitlements for the Project, and authorizing any  
12 financing for the Project pending the outcome of this proceeding.

13 3. For a writ of mandate directing Respondents and Real Parties in Interest to suspend  
14 any and all activity in furtherance of the Project until Respondents take all necessary steps to  
15 bring their actions into compliance with CEQA.

16 4. For a preliminary and permanent injunction directing Respondents and Real Parties in  
17 Interest, and DOES I through X, inclusive, to cease and refrain from engaging in any and all  
18 activities in furtherance of the Project unless and until Respondents take all necessary steps  
19 to bring their actions into compliance with CEQA.

20 5. For the cost of suit.

21 6. For an award of attorneys' fees.

22 7. For any other and further relief as this Court deems proper.

23 Respectfully submitted,

24 July 30, 2010

LOZEAU|DRURY LLP

25  
26 By: \_\_\_\_\_  
27 Richard Toshiyuki Drury  
28 Attorneys for Petitioners

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VERIFICATION

I am Richard Toshiyuki Drury, attorney for petitioners in this action. I am verifying this Petition pursuant to Code of Civil Procedure section 446. Petitioners are absent from the County of Alameda, in which I have my office. I have read the foregoing petition and complaint. I am informed and believe that the matters in it are true and on that ground allege that the matters stated in the petition and complaint are true.

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

Date: July 30, 2010

\_\_\_\_\_  
Richard Toshiyuki Drury  
Attorney for Petitioners and Plaintiffs

**PROOF OF SERVICE**

I, Toyer Gear, declare as follows:

I am a resident of the State of California, and employed in Alameda, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 1516 Oak Street, Suite 216, Alameda, California, 94501.

On July 30, 2010, I served a copy of the foregoing document(s) entitled:

**VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF** on the following interested parties in the above referenced case:

--	--

**BY MAIL.** By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Alameda, California addressed as set forth below.

**BY OVERNIGHT DELIVERY.** By placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.

**BY FACSIMILE.** By transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

**ELECTRONIC MAIL.** By transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

**PERSONAL SERVICE**  
By personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

**via hand by:**

I declare under penalty of perjury (under the laws of the State of California) that the foregoing is true and correct, and that this declaration was executed December 18, 2009 at Alameda, California.

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Toyer Gear

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# EXHIBIT A

1 Michael R. Lozeau (CA Bar No. 142893)  
Richard T. Drury (CA Bar No. 163559)  
2 Christina Caro (CA Bar No. 250797)  
3 LOZEAU | DRURY LLP  
4 410 12th street., suite 250  
Oakland, CA 94607  
5 Tel: 510-836-4200  
6 Fax: 510-836-4205  
7 E-mail: michael@lozeaudrury.com  
richard@lozeaudrury.com  
christina@lozeaudrury.com

8 Attorneys for Petitioners and Plaintiffs  
9 CENTER FOR SIERRA NEVADA CONSERVATION, and  
CENTER FOR BIOLOGICAL DIVERSITY

10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF ALAMEDA

12 CENTER FOR SIERRA NEVADA  
13 CONSERVATION, a non-profit corporation;  
14 CENTER FOR BIOLOGICAL DIVERSITY, a  
non-profit corporation,

15 Petitioners and Plaintiffs,

16 vs.

17 CALIFORNIA DEPARTMENT OF PARKS  
AND RECREATION, an agency of the State of  
18 California; DIVISION OF OFF-HIGHWAY  
MOTOR VEHICLE RECREATION, a division  
19 of the California Department of Parks and  
Recreation,

20 Respondents and Defendants.  
21

22 ELDORADO NATIONAL FOREST; UNITED  
STATES FOREST SERVICE, an agency of the  
23 U.S. Department of Agriculture; and RAMIRO  
VILLALVAZO, in his official capacity as Forest  
24 Supervisor for the Eldorado National Forest; and  
DOES I – X, inclusive,

25 Real Parties in Interest and Defendants.  
26

27 ///

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Case No.:

NOTICE OF INTENT TO FILE CEQA  
PETITION

(Public Resources Code § 21167.5)

Dept.: CEQA



1 To the California Department of Parks and Recreation and the Division of Off-  
2 Highway Motor Vehicle Recreation:

3 PLEASE TAKE NOTICE, under Public Resources Code § 21167.5, that Petitioners  
4 and plaintiffs CENTER FOR SIERRA NEVADA CONSERVATION and CENTER FOR  
5 BIOLOGICAL DIVERSITY (“Petitioners”) intend to file a petition under the provisions of  
6 the California Environmental Quality Act (“CEQA”), Public Resources Code § 21000 et  
7 seq., against Respondents CALIFORNIA DEPARTMENT OF PARKS AND  
8 RECREATION and the DIVISION OF OFF-HIGHWAY MOTOR VEHICLE  
9 RECREATION (“Respondents”), challenging the unlawful action of Respondents in failing  
10 to prepare an environmental impact report (“EIR”) under CEQA, Pub. Res. Code §21000, et  
11 seq., for the Rock Creek Trail Development Project (“Project”), a major expansion of off-  
12 road vehicle trails, bridges, and other facilities in the Rock Creek Recreation Area in the  
13 Eldorado National Forest, and Respondents’ illegal adoption of a Negative Declaration for  
14 the Project without requiring a legally adequate mitigation measures, in violation of the  
15 requirements of CEQA.

16 The petition will seek the following relief:

17 (1) for a peremptory writ of mandate directing the Respondents to (a) set aside their  
18 approval of a Negative Declaration for the Project, (b) to set aside their Notice of  
19 Determination for the Project, (c) set aside their approval of the Project, (d) set aside any and  
20 all other actions approving or granting any permits, entitlements, financing, or other  
21 approvals referring or related to the Project unless and until Respondents have prepared an  
22 environmental impact report for the Project, required implementation of all feasible  
23 mitigation measures to reduce the Project’s environmental impacts, analyzed all feasible  
24 alternatives to the Project, issued the findings required by law, and taken all actions  
25 necessary to bring its approval into compliance with CEQA, (e) prepare and circulate an  
26 environmental impact report for the Project, requiring implementation of all feasible  
27 mitigation measures to reduce the Project’s environmental impacts, and otherwise to comply  
28 with CEQA prior to taking any subsequent action or actions to approve the Project.

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(2) For a preliminary and permanent injunction staying the effect of Respondents' actions approving the Negative Declaration for the Project, issuing a Notice of Determination for the Project, approving any permits or other entitlements for the Project, and authorizing any financing for the Project pending the outcome of this proceeding.

(3) For a writ of mandate directing Respondents and Real Parties in Interest to suspend any and all activity in furtherance of the Project until Respondents take all necessary steps to bring their actions into compliance with CEQA.

(4) For a preliminary and permanent injunction directing Respondents and Real Parties in Interest, and DOES I through X, inclusive, to cease and refrain from engaging in any and all activities in furtherance of the Project unless and until Respondents take all necessary steps to bring their actions into compliance with CEQA.

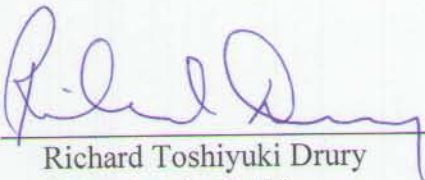
(5) for Petitioner's costs of suit.

(6) for an award of attorney fees pursuant to Code of Civil Procedure § 1021.5 and any other applicable provisions of law; and,

(7) any other equitable or legal relief that the Court considers just and proper.

Dated: July 28, 2010

LOZEAU|DRURY LLP

By:   
Richard Toshuyuki Drury  
Attorneys for Petitioners

1 I, Toyer Grear, declare as follows:

2 I am a resident of the State of California, and employed in Alameda, California. I am  
3 over the age of 18 years and am not a party to the above-entitled action. My business address  
4 is 1516 Oak Street, Suite 216, Alameda, California, 94501.

5 On July 28, 2010, I served a copy of the foregoing document(s) entitled:  
6 **NOTICE OF INTENT TO FILE CEQA PETITION** on the following interested parties in  
7 the above referenced case:

6 Office of the Attorney General 7 1515 Clay Street 8 Oakland, CA 94612-1499 9 Phone: (510) 622-2100	Ruth Coleman, Director Daphne Greene, Deputy Director California Dept. of Parks and Recreation 1416 9th Street Sacramento, CA 95814 FAX 916-654-6374
10 Ruth Coleman, Director 11 Daphne Greene, Deputy Director 12 Division of Off-Highway Motor Vehicle 13 Recreation 1725 23rd Street, Suite 200 Sacramento, CA 95816 FAX: (916) 324-1610	

14  **BY MAIL.** By placing the document(s) listed above in a sealed envelope with postage  
15 thereon fully prepaid, in the United States mail at Alameda, California addressed as set  
16 forth below.

17  **BY OVERNIGHT DELIVERY.** By placing the document(s) listed above in a sealed  
18 Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to  
19 be delivered to a Federal Express agent for delivery.

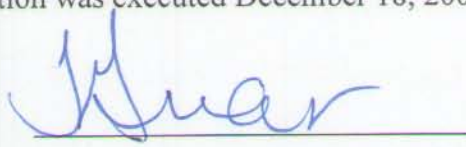
20  **BY FACSIMILE.** By transmitting via facsimile the document(s) listed above to the  
21 fax number(s) set forth below on this date before 5:00 p.m.

22  **ELECTRONIC MAIL.** By transmitting via e-mail or electronic transmission the  
23 document(s) listed above to the person(s) at the e-mail address(es) set forth below.

24  **PERSONAL SERVICE.** By personally delivering the document(s) listed above to the  
25 person(s) at the address(es) set forth below.

26 [ ] **via hand by:**

27 I declare under penalty of perjury (under the laws of the State of California that the  
28 foregoing is true and correct, and that this declaration was executed December 18, 2009 at  
Alameda, California.



Toyer Grear