

1 Deborah A. Sivas (Ca. Bar No.135446)
Alicia Thesing (Cal. Bar No. 211751)
2 Robb W. Kapla (Cal. Bar. No.238896)
ENVIRONMENTAL LAW CLINIC
3 Mills Legal Clinic at Stanford Law School
Crown Quadrangle
4 559 Nathan Abbott Way
Stanford, California 94305-8610
5 Tel: (650) 723-0325
Fax: (650) 723-4426

6 Attorney for Petitioner
7

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SACRAMENTO

10
11 CENTER FOR BIOLOGICAL)
DIVERSITY, a nonprofit corporation,)
12)
Petitioner,)
13)
v.)
14)
CALIFORNIA DEPARTMENT OF)
15 FISH AND GAME, a state agency,)
16)
Respondent.)
_____)

Case No.: 06CS01451

**SUPPLEMENTAL VERIFIED
PETITION FOR WRIT OF
MANDATE**

(Pursuant to California Environmental
Quality Act.; Cal. Pub. Res. Code § 21168
and/or 21168.5; Cal. Civ. Proc. Code §§
1094.5 and/or 1085)

17
18
19 Petitioner Center for Biological Diversity (“Petitioner”) hereby petitions this Court for a
20 Writ of Mandate pursuant to California Code of Civil Procedure §§ 1085 and/or 1094.5 declaring
21 unlawful and setting aside Respondent California Department of Fish and Game’s
22 (“Respondent”) Final Hatchery and Stocking Program Environmental Impact Report/
23 Environmental Impact Statement (“Fish Stocking EIR”), certified on January 11, 2010, and
24 ordering the continuation of interim protective measures currently in place under the Court’s
25 Order Modifying Judgment, entered on November 20, 2008, pending full compliance with the
26 California Environmental Quality Act (“CEQA”), California Public Resources Code §§ 21000 *et*
27 *seq.* Petitioner alleges:
28

1 **INTRODUCTION**

2 1. This Supplemental Petition for Writ of Mandate challenges Respondent’s failure
3 to comply with CEQA in completing, approving, and certifying the Fish Stocking EIR.

4 2. The Fish Stocking EIR was prepared in response to this Court’s Peremptory Writ
5 of Mandate issued on July 18, 2007.

6 3. The Fish Stocking EIR was certified, and Respondent filed a Notice of
7 Determination with the Office of Planning and Research, on January 11, 2010.

8 4. Respondent filed a Return to Writ of Mandate with this Court on January 14,
9 2010.

10 5. The Peremptory Writ of Mandate should not be discharged because, as the Return
11 to Writ demonstrates, Respondent has not satisfied the requirements of CEQA. In particular,
12 Respondent has committed a prejudicial abuse of discretion by (I) improperly constraining the
13 objectives, purpose, and need for the Fish Stocking EIR, (ii) establishing an improper
14 environmental baseline against which to assess impacts in the Fish Stocking EIR, (iii) failing to
15 adequately evaluate and disclose the direct, indirect, and cumulative impacts of the State of
16 California’s fish stocking program, (iv) failing to consider a reasonable range of alternatives in
17 the Fish Stocking EIR, (v) failing to adopt reasonable mitigation measures for the significant
18 adverse impacts of the fish stocking program and unlawfully deferring the implementation of
19 feasible mitigation measures, (vi) failing disregarding the best available science in evaluating
20 impacts, (vii) failing to adequately respond to credible scientific and public comments on the
21 draft Fish Stocking EIR; and (viii) failing to support its decision to approve and certify the Fish
22 Stocking EIR with substantial evidence in the record.

23 6. Accordingly, Petitioner hereby seeks an additional writ of mandate (I) directing
24 Respondent to conduct further environmental review and analysis as required by CEQA and (ii)
25 ordering that the existing interim protective measures put in place by this Court’s November 20,
26 2008 Order Modifying Judgment.

27
28

1 **JURISDICTION AND VENUE**

2 7. This Court has jurisdiction over this matter pursuant to California Code of Civil
3 Procedure §§ 1085 and 1094.5. Venue is proper pursuant to California Code of Civil Procedure
4 § 395.

5 8. Following issuance of a peremptory writ, “[t]he trial court shall retain jurisdiction
6 over the public agency’s proceedings by way of a return to the peremptory writ until the court
7 has determined that the public agency has complied with this division.” Cal. Pub. Res. Code §
8 21168.9(b)(3). Accordingly, this Court has jurisdiction to review this Supplemental Petition for
9 Writ of Mandate and to hear Petitioner’s objections to the Fish Stocking EIR and Return to Writ.

10 9. On January 14, 2010, Respondent filed a Return to Writ of Mandate, attached to
11 which was a copy of a Notice of Determination dated January 11, 2010. Accordingly, this
12 Supplemental Petition is timely filed pursuant to Cal. Pub. Res. Code § 21167.

13 **PARTIES**

14 10. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (“CBD”) is a national,
15 non-profit organization with its main office in Arizona and regional California offices in San
16 Francisco, San Diego, Joshua Tree, and Sacramento. CBD has over 44,000 members, many of
17 whom reside in California. CBD engages in policy advocacy, public education, and litigation on
18 behalf of species facing extinction and the habitat those species rely upon.

19 11. Petitioner CBD and its staff and members regularly use and enjoy California’s
20 lakes, rivers, and streams for a variety of recreational, aesthetic, educational, and scientific
21 purposes, including, but not limited to, hiking, fishing, swimming, boating, wildlife observation,
22 scientific research, photography, nature study, and aesthetic appreciation. Petitioner and its staff
23 and members intend to do all of the foregoing on an ongoing basis in the future and thereby do
24 and will continue to derive recreational, aesthetic, scientific, educational, conservational, and
25 economic benefits from the native habitats of California’s lakes, rivers, and streams. These
26 benefits and the recreational, aesthetic, scientific, educational, conservational, and economic
27 interests of Petitioner have been and, in the absence of relief from the court, will continue to be
28 adversely affected by Respondent’s fish introduction policies and practices that cause significant

1 d. Introducing hatchery-produced, non-native fish that hybridize with, and
2 diminish the genetic makeup of, native salmonids;

3 e. Introducing hatchery-produced, non-native fish that compete with native
4 fish for spawning, holding, and rearing habitat; and

5 f. Creating other ecosystem impacts.

6 16. Despite these documented impacts, Respondent had never complied with CEQA
7 in carrying out its hatchery and fish stocking program prior to the filing of this lawsuit.

8 17. Accordingly, Petitioner filed a petition for writ of mandate in this Court on
9 October 6, 2006, seeking a writ directing Respondent to comply with the requirements of CEQA.

10 18. After briefing and trial, the Court issued a Peremptory Writ of Mandate, dated
11 August 2, 2007, ordering Respondent to prepare an EIR for its fish stocking program in
12 compliance with CEQA and file a Notice of Determination with the Office of Planning and
13 Research by no later than December 31, 2008 and to make and file a return to writ demonstrating
14 compliance with the writ by no later than January 15, 2009. These dates were established by the
15 Court based on Respondent's representation that it could complete and certify an EIR by the end
16 of 2008.

17 19. Respondent subsequently notified Petitioner and the Court that it could not
18 complete the required EIR by the date ordered in the Peremptory Writ of Mandate and that it
19 needed an additional year to comply with the Writ. Accordingly, on November 20, 2008, the
20 Court entered an Order Modifying Judgment which extended the date for satisfying the Writ to
21 January 15, 2010 and also ordered certain interim protections intended to reduce the potential for
22 irreparable interim harm to certain native fish and amphibian species from stocking.

23 20. Petitioner and others timely submitted comments on the draft Fish Stocking EIR,
24 issued on September 25, 2009, raising concerns about numerous legal defects in the
25 environmental evaluation and in the consideration of mitigation and alternatives.

26 21. Respondent finalized and certified the Fish Stocking EIR without meaningfully
27 addressing these public comments or curing the many legal defects in its analysis.

28

1 violation of CEQA..

2 d. The EIR fails to consider and analyze a reasonable range of alternatives to
3 the proposed fish hatchery and stocking 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 fish hatchery and stocking program and unlawfully defers the
6 implementation of feasible mitigation measures without adequately specifying performance
7 standards and specific options, in violation of CEQA.

8 f. Respondent's conclusions in the EIR regarding insignificant impacts for
9 several species are not based on the best available scientific information, in violation of CEQA.

10 g. Respondent's failed to adequately respond to credible scientific and public
11 comments on the draft EIR, in violation of CEQA.

12 h. Respondent failed to support its decision to approve and certify the Fish
13 EIR with substantial evidence in the record.

14 28. Respondent's actions in completing, approving, and certifying the Fish Stocking
15 EIR violated its legal duties under CEQA and the Court's Peremptory Writ of Mandate and
16 constitute a prejudicial abuse of discretion that is actionable under Cal. Pub. Res. Code §
17 21168/Cal. Civ. Proc. Code § 1094.5 and/or 21168.5/Cal. Civ. Proc. Code §1085.

18 **RELIEF REQUESTED**

19 WHEREFORE, Petitioner prays for entry of judgment as follows:

20 1. For an additional peremptory writ of mandate declaring that Respondent has not
21 satisfied the Peremptory Writ of Mandate and the requirements of CEQA and directing
22 Respondent to prepare and circulate for public comment a new or supplemental EIR that fully
23 complies with the law.

24 2. For a further order and judgment directing that the interim protective measures
25 established in the Order Modifying Judgment shall remain in place pending completion of a new
26 or supplemental EIR and final discharge of the Peremptory Writ.

27 3. For an award to Petitioner of its attorneys' fees and costs of suit (including
28 reasonable attorney, witness, and consultant fees) as authorized by Cal. Civ. Proc. Code §

1 1021.5.

2 4. For any such other equitable or legal relief that the Court deems appropriate.

3
4 Date: February 10, 2010

ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School

5
6 By: _____
7 Deborah A. Sivas

8 Attorneys for Petitioner CENTER FOR BIOLOGICAL
9 DIVERSITY

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **VERIFICATION**

2 I am a representative of Petitioner Center for Biological Diversity and am authorized to
3 execute this verification on its behalf. I have read the foregoing Supplemental Petition for Writ
4 of Mandate and am familiar with its contents. I am informed and believe and on that ground
5 allege that the matters stated in this Supplemental Petition are true.

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

8 Date:

9 _____
Noah Greenwald

