NO. S217763

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CENTER FOR BIOLOGICAL DIVERSITY, et al.,
Plaintiffs and Respondents,

v.

CALIFORNIA DEPARTMENT OF FISH AND GAME,
Defendant and Appellant,

THE NEWHALL LAND AND FARMING COMPANY
Real Party in Interest and Appellant.

After a Partially-Published Decision by the Court of Appeal,
Second Appellate District, Division Five, Civil Case No. B245131

ANSWER TO PETITION FOR REVIEW

Thomas R. Gibson, SBN 192270 Thomas.Gibson@wildlife.ca.gov General Counsel John H. Mattox, SBN 164409 John.Mattox@wildlife.ca.gov Senior Staff Counsel OFFICE OF THE GENERAL COUNSEL CALIFORNIA DEPARTMENT OF FISH AND GAME 1416 9th Street, Floor 12 Sacramento, CA 95814 Tel: (916) 651-7648 Fax: (916) 654-3805	*Tina A. Thomas, SBN 088796 tthomas@thomaslaw.com Ashle T. Crocker, SBN 215709 acrocker@thomaslaw.com Amy R. Higuera, SBN 232876 ahiguera@thomaslaw.com THOMAS LAW GROUP 455 Capitol Mall, Suite 801 Sacramento, CA 95814 Tel: (916) 287-9292 Fax: (916) 737-5858
Attorneys for Defendant and Appellant, **California Department of Fish and Game**	

NO. S217763

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CENTER FOR BIOLOGICAL DIVERSITY, et al.,
Plaintiffs and Respondents,

v.

CALIFORNIA DEPARTMENT OF FISH AND GAME,
Defendant and Appellant,

THE NEWHALL LAND AND FARMING COMPANY
Real Party in Interest and Appellant.

After a Partially-Published Decision by the Court of Appeal,
Second Appellate District, Division Five, Civil Case No. B245131

ANSWER TO PETITION FOR REVIEW

Thomas R. Gibson, SBN 192270 Thomas.Gibson@wildlife.ca.gov General Counsel John H. Mattox, SBN 164409 John.Mattox@wildlife.ca.gov Senior Staff Counsel OFFICE OF THE GENERAL COUNSEL CALIFORNIA DEPARTMENT OF FISH AND GAME 1416 9th Street, Floor 12 Sacramento, CA 95814 Tel: (916) 651-7648 Fax: (916) 654-3805	*Tina A. Thomas, SBN 088796 tthomas@thomaslaw.com Ashle T. Crocker, SBN 215709 acrocker@thomaslaw.com Amy R. Higuera, SBN 232876 ahiguera@thomaslaw.com THOMAS LAW GROUP 455 Capitol Mall, Suite 801 Sacramento, CA 95814 Tel: (916) 287-9292 Fax: (916) 737-5858
Attorneys for Defendant and Appellant, **California Department of Fish and Game**	

TABLE OF CONTENTS

I. INTRODUCTION. 1

II. FACTUAL BACKGROUND. 1

A. The Department conducted extensive public review of the project prior to approval 2

B. The Department did not authorize, and specifically prohibited, the "take" of state designated fully protected species in approving the project and related permits under the California Fish and Game Code 2

III. THIS COURT SHOULD DENY THE PETITION FOR REVIEW.. 4

A. The alleged violation of the take prohibition for fully protected species does not warrant review. 4

1. The opinion harmonizes section 5515's take prohibition in context of the entire Fish and Game Code 5

2. The opinion does not create a new exception to the take prohibition in Fish and Game section 5515 or repeal any portion of that statute by implication 8

B. Petitioners' disagreement with the Court of Appeal's application of the exhaustion doctrine under CEQA does not warrant review 9

1. The Court of Appeal properly held that Petitioners did not raise their claims during the comment period 10

C. Petitioners' disagreement with the methodology used to analyze greenhouse gas impacts does not warrant review.... 12

IV. CONCLUSION 12

TABLE OF AUTHORITIES

California Cases

Briggs v. Eden Council for Hope & Opportunity
(1999) 19 Cal.4th 1106 7

Endangered Habitats League v. State Water Res. Control Bd.
(1997) 63 Cal.App.4th 227 10

Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection
(2008) 44 Cal.4th 459 5

Galante Vineyards v. Monterey Peninsula Water Management Dist.
(1997) 60 Cal.App.4th 1109 11

Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles
(2013) 55 Cal.4th 783 7

People v. Davis
(1905) 147 Cal. 346 1

Reno v. Baird
(1998) 18 Cal.4th 640 7

Sierra Club v. Superior Court
(2013) 57 Cal.4th 157 7

Watershed Enforcers v. Dept. of Water Resources
(2010) 185 Cal.App.4th 969 5

California Statutes

Fish and Game Code Section	2	5
	86	4, 7
	2061	5, 6, 7
	5515	4, 5, 6, 8
	5515, subd. (a)(1)	6, 7
	5515, subd. (b)(9)	6
Public Resources Code Section	21177	9
	21177, subd. (a)	9, 11
	21177, subd. (e)	10

California Regulations

California Code of Regulations, Title 14 Section	670.5, subd. (a)(2)(L)	6
	15089	11

Federal Regulations

40 C.F.R. Section	1506.10	2, 10

Miscellaneous

California Rules of Court, Rule	8.500(b)	1, 12
	8.500(b)(1)	1, 9
	8.504(b)(2)	9

I. INTRODUCTION.

The pending petition for review should be denied because Petitioners have not shown why this case satisfies the criteria for review, and because the Court of Appeal properly interpreted the relevant statutes and case law.

Rule 8.500(b) of the California Rules of Court delineates the narrow criteria this Court considers in deciding whether to accept a case for review.[1] Specifically, a petition for review must *explain* how the case presents a ground for review under rule 8.500(b). Here, Petitioners contend each of the three issues they raise warrants review under rule 8.500(b)(1) to "secure uniformity of decision and to settle an important question of law." (PFR, pp. 2-6.) But Petitioners fail to support their assertion that any of the issues they raise involves an unsettled principle of law or an existing conflict with case law. Rather, the Petition for Review is a request to re-try their case.

Division Five of the Second Appellate District wrote a thoughtful decision based on sound legal principles that properly interpreted the California Environmental Quality Act (CEQA) and the Fish and Game Code. The fact that Petitioners are dissatisfied with the result is not a reason for this Court to grant review. (*People v. Davis* (1905) 147 Cal. 346, 348-350.) The Department respectfully requests the Court deny the Petition for Review.

II. FACTUAL BACKGROUND.

The Court of Appeal's opinion provides a comprehensive and accurate discussion of the operative facts of the case (Slip Opn., pp. 3-14). There is no need to repeat that discussion here, but the Department does want to offer the following focused discussion of relevant facts.

[1] Subsequent rules references are to the California Rules of Court.

A. The Department conducted extensive public review of the project prior to approval.

Preparation of the EIS/EIR was a joint effort by the Department, as the lead agency under CEQA, and the Army Corps of Engineers (Corps), as the lead agency under the National Environmental Policy Act, taking nearly ten years from the first scoping meeting to final certification. During that time, the Department required an exhaustive analysis of the project's impacts. (AR:777-48452.) These efforts resulted in the Department commencing an extended 120-day public/agency review period on the Draft EIS/EIR in 2009, during which time it received intense public scrutiny. (Slip Opn., p. 6; AR:15-16.) On June 11, 2009, the Department and the Corps jointly held a public hearing to receive comments on the Draft EIS/EIR. (AR:2417, 21043-21124.) The comment period closed on August 27, 2009. (AR:2417.)

Federal law required the Corps to circulate the Final EIS/EIR for another public review. (40 C.F.R. § 1506.10.) The Corps then prepared responses to comments on the Final EIS/EIR, and the Department prepared an addendum to the Final EIS/EIR. (AR:16.) On December 3, 2010, the Department certified the Final EIS/EIR and approved Newhall's Resource Management and Development Plan; Spineflower Conservation Plan; a Master Streambed Alteration Agreement; and two Incidental Take Permits, one for spineflower and one for three bird species. (AR:220-264, 556-776).

B. The Department did not authorize, and specifically prohibited, the "take" of state designated fully protected species in approving the project and related permits under the California Fish and Game Code.

The spineflower permit authorizes limited take of the spineflower, a state listed plant, consistent with required implementation of the Spineflower Conservation Plan, the underlying mitigation and conservation plan for the plant. (AR:639-97.) The multi-species permit authorizes

incidental take of three other species consistent with required implementation of a related conservation plan, the Resources Management and Development Plan. (AR:19-20, 232-233, 698-776.)

Neither incidental take permit issued by the Department authorizes take of any "fully-protected species" as defined by state law, including the unarmored threespine stickleback. In fact, both incidental take permits *explicitly prohibit* take of any state-designated fully protected species. (AR:645, 706.)

Additionally, in approving the project, the Department required Newhall to implement EIS/EIR mitigation measures BIO-43 through BIO-46, measures designed to, among other things, prevent unauthorized take of stickleback during project construction activities. (Slip Opn., pp. 18- 23; AR:92-95.) The Department developed these measures in consultation with Dr. Camm Swift, a leading national authority in the field of stickleback protection, and a team of qualified professionals with expertise in conservation and protection of special status fish species. (AR 13647.)

The overall conservation strategy requires pre-construction surveys and suspension of construction activities if spawning has occurred or if gravid or juvenile fish are present (AR:92 [BIO-43]), and precludes construction during winter when spawning occurs (AR:92-93 [BIO-44]). The strategy requires Newhall to construct bypass channels; prohibits use of equipment in areas with ponded or flowing water; requires the construction of bypass channels before actually diverting the natural water course; and generally prohibits construction of diversion channels if surveys required by BIO-43 detect gravid or juvenile fish or spawning has recently occurred. (AR:92.) BIO-45 requires assessment of surface water elevations to safeguard critical flow regimes to avoid fish stranding. (AR:93-95.) Mitigation measures BIO-44 and 46 also allow relocation pursuant to specific scientifically formulated methods if and only when

stickleback are stranded during construction-related activities. (AR:301, 303, 768.)

Taken together, these measures are designed to ensure the prospect that "relocation" of any stranded stickleback will be required only if necessary, after implementation of other avoidance and minimization measures. Petitioners ask this Court to review the Court of Appeal's conclusion that potential relocation methods imposed by the Department as part of the overall conservation strategy do not constitute prohibited take under the Fish and Game Code. Petitioners' position lacks merit.

III. THIS COURT SHOULD DENY THE PETITION FOR REVIEW.

Petitioners contend this Court should grant review to "secure uniformity of decision and to settle an important question of law" with regard to (a) an alleged conflict the Court of Appeal created between the California Endangered Species Act and Fish and Game Code section 5515, (b) the Court of Appeal's interpretation of CEQA exhaustion principles, and (c) an alleged conflict in CEQA "baseline" case law concerning greenhouse gas impacts. (PFR, pp. 2-6.) As the Department will explain, Petitioners mischaracterize the Court of Appeal's opinion, which properly interprets the Fish and Game Code, CEQA, and related case law.

A. The alleged violation of the take prohibition for fully protected species does not warrant review.

The fundamental question addressed by the Court of Appeal is whether project mitigation measures will cause "take" of stickleback. (Slip Opn., pp. 32, 47.) An understanding of how "take" is defined in the Fish and Game Code answers this question.

"Take" is defined by Fish and Game Code section 86 to include "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." The Court of Appeal held that the strict measures

imposed by the Department allowing herding and relocation of stickleback out of harm's way, if necessary at all, are not prohibited "capture" under section 86, and thereby do not constitute take or otherwise violate section 5515's related prohibition. (Slip Opn., p. 48.)

In reaching this conclusion, the Court of Appeal properly reviewed the statutory scheme as a whole and considered approximately 300 pages of relevant legislative history. The opinion does not create a conflict of law, nor create new law. Rather, the Court of Appeal's decision is the correct interpretation of the Fish and Game Code. There is no basis for this Court to grant review.

1. The opinion harmonizes section 5515's take prohibition in context of the entire Fish and Game Code.

The Court of Appeal upheld the Department's conclusion that the above-described mitigation measures did not authorize and would not result in prohibited "take" of stickleback. (Slip Opn., p. 48.) Petitioners contend the opinion thereby "manufactures" a conflict between relevant provisions of the California Endangered Species Act and Fish and Game Code section 5515. (PFR, pp. 8, 15.) Petitioners mischaracterize the opinion and the applicable statutory scheme.

Consistent with case law and statute, context informed the Court of Appeal's interpretation of "take." (Slip Opn., p. 40; Fish & G. Code, § 2 [context informs any interpretation of the definition of "take"]; *Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 507; *Watershed Enforcers v. Dept. of Water Resources* (2010) 185 Cal.App.4th 969, 974.)

The opinion cites Fish and Game Code section 2061 for the proposition that "conserving a species has as its goal the use of methods and procedures which are necessary to make a species no longer in need of

the protections of the endangered species act." (Slip Opn., p. 36.) Among the legislatively sanctioned conservation measures is live trapping and transplantation. (Fish & G. Code, § 2061.)

The Fish and Game Code section 2061 definition of "conservation" is relevant to the mitigation measures challenged in this case because the stickleback is *both* an endangered species under the California Endangered Species Act, of which section 2061 is a part, *and* a fully protected species under Fish and Game Code section 5515. (Cal. Code Regs., tit. 14, § 670.5, subd. (a)(2)(L) [designating unarmored threespine stickleback as endangered under State law].) The stickleback is therefore entitled to the conservation benefits afforded under section 2061, and its dual protected status informs the context in which the challenged mitigation measures and the legislative history of section 2061 must be viewed.

Considering the take prohibition in Fish and Game Code section 5515 in context, the Court of Appeal found an ambiguity in the statutory language because, "on the one hand, Fish and Game Code section 5515, subdivisions (a)(1) and (b)(9), enacted effective January 1, 1971, prohibits a take or possession of the stickleback" and "on the other hand, the subsequently enacted endangered species act permits live trapping and transplantation techniques performed for conservation purposes. Such techniques, as explained by the Department's expert, Dr. Swift, can involve possession and movement of the stickleback in containers to other parts of the Santa Clara River." (Slip Opn., pp. 45-46.) In fact, as explained by Dr. Swift, these techniques have been used for stickleback hundreds of times. (Slip Opn., p. 28.) The Court of Appeal turned to the legislative histories of the California Endangered Species Act and Fish and Game Code section 5515 to address the ambiguity. (Slip Opn., pp. 45-46.)

First, the Court of Appeal noted that California enacted both the endangered species and Fish and Game Code section 5515, subdivision

(a)(1), protections for the stickleback in 1970. In 1984, the Legislature amended the endangered species provisions to clarify California law protecting endangered species and their habitats. (Slip Opn., p. 49.) Thus, "the 1984 legislation, which includes for the first time the use of live trapping and transplantation for conservation purposes, materially changed the state of the law from that in 1970." (Slip Opn., p. 49.) If the Legislature intended that the conservation measures apply only to endangered species, but not to fully protected species, it would have said so.

Second, the Court of Appeal held it could not read Fish and Game Code sections 86 and 5515, subdivision (a)(1), in isolation. Rather, as discussed above, the Court of Appeal determined it must construe them in light of the entire statutory scheme, which includes use of live trapping and transplantation as conservation under Fish and Game Code section 2061. To do otherwise would treat "section 2061 and its related provisions as surplusage[,]" contrary to established canons of statutory construction. (Slip Opn., p. 50; *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1118; *Reno v. Baird* (1998) 18 Cal.4th 640, 658.)

Third, consistent with canons of statutory construction, the Court of Appeal harmonized the statutes covering the same subject area. (Slip Opn., p. 48.) The 1984 update to the California Endangered Species Act, which characterizes live trapping and transplantation techniques as conservation, is consistent with a prohibition on take or possession of stickleback when conservation techniques are used. (Slip Opn., p. 50; *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 165-166; *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2013) 55 Cal.4th 783, 805.) It makes no sense that relocating a fish protected under the fully protected statute constitutes prohibited take, but the same action to relocate a fish under the California Endangered Species Act would be considered

conservation. The conservation definition in CESA is thus an appropriate reference to use with regard to stickleback.

In sum, consistent with statute, case law, and the rules of statutory construction, the Court of Appeal correctly read the "take" prohibition in the fully protected species law in conjunction with the definition of "conservation" in the California Endangered Species Act to conclude that, because measures to conserve a species may include trapping and transplanting the species, the analogous herding and relocation techniques specifically required by the Department in the context of its related approvals to Newhall do not constitute or otherwise authorize prohibited "take" of fully protected species under the California Fish and Game Code. While Petitioners may not agree with the Court of Appeal's conclusion, their disagreement does not warrant review.

2. The opinion does not create a new exception to the take prohibition in Fish and Game Code section 5515 or repeal any portion of that statute by implication.

Petitioners contend that the Court of Appeal's opinion creates an "unauthorized new exception to the take prohibition" in Fish and Game Code section 5515 by finding "repeal by implication" in the legislative history of CESA. (PFR, pp. 12-14.) Again, Petitioners mischaracterize the opinion. The Court of Appeal upheld the Department's finding that the project, as to stickleback, could be implemented consistent with the Fish and Game Code. (Slip Opn., 48.) Accordingly, the Court of Appeal's decision did not establish an exception to or otherwise repeal the statutory prohibition regarding take of fully protected species.

The Court of Appeal held that no prohibited capture or other "take" would occur, and that substantial evidence supports the Department's related conclusion "given the extraordinary measures taken by the department to ensure the stickleback's safety." (Slip Opn., pp. 43, 48.)

The opinion cites the numerous and extensive surveys of stickleback habitat and protection, including the work of Dr. Swift who explains in considerable detail how to relocate the stickleback without harming the fish. The Court of Appeal correctly concluded that the extensive mitigation measures, coupled with Dr. Swift's expertise, constitute substantial evidence that no take will result. (Slip Opn., p. 43.)

Petitioners disagree with the opinion's ruling on this point, but fail to credibly explain how their disagreement with the Court of Appeal necessitates review by this Court "to secure uniformity of decision or to settle an important question of law." (Rules 8.500(b)(1), 8.504(b)(2).)

B. Petitioners' disagreement with the Court of Appeal's application of the exhaustion doctrine under CEQA does not warrant review.

Relying on the plain language of Public Resources Code section 21177, subdivision (a), the Court of Appeal held that Petitioners forfeited their challenges to the EIS/EIR's findings on cultural resources and water quality impacts on steelhead smolt by failing to raise those issues before the close of the comment period on the Draft EIR portion of the jointly prepared EIS/EIR. (Slip Opn., pp. 58-89, 70-71.)

Petitioners raised issues regarding cultural resource and steelhead smolt impacts in August 2010, *after* the close of the June 11, 2009 public hearing, and *after* the 120-day public comment period on the Draft EIR had closed on August 27, 2009. The Court of Appeal therefore concluded Petitioners had forfeited those arguments. (Slip Opn., pp. 59, 70.) Petitioners disagree with the Court's conclusion and attempt to recast the opinion as issuing a "sweeping ruling that ignores the plain language of . . . Public Resources Code section 21177" and "defies precedent and fairness." (PFR, p. 18.) Despite Petitioners' alarmist rhetoric, the opinion is consistent with section 21177 and CEQA case law.

1. The Court of Appeal properly held that Petitioners did not raise their claims during the comment period.

The public comment period on the Draft EIR began on April 27, 2009 and closed on August 25, 2009. (Slip Opn., p. 6; AR:2417, 13719, 118840-11841, 118852-11854, 119099-119100.) On June 11, 2009 (before the close of the comment period), the Department and the Corps held a joint public hearing on the Draft EIS/EIR.[2] (AR:2417, 21043-21124.) Contrary to Petitioners' assertions, there was *no* "public comment period" on the *Final* EIR for CEQA purposes. (PFR, p. 26.) Federal law requirements allowed further input on the Final EIS (40 C.F.R. § 1506.10), but this did not reopen the CEQA public comment period. (Compare AR:118840-11844 [Joint Notice of Availability of Draft EIR setting comment period from April to June, 2009] and AR:119099-119100 [Joint Notice extending the comment period to August, 2009] with AR:122307-122320 [Corps individual Notice of Availability of Final EIR with no mention of Department review].)

Petitioners rely on Public Resources Code section 21177, subdivision (e), which provides that the exhaustion requirement does not apply where no public hearing has been held and no opportunity to submit written or oral comments has been extended (PFR, p. 22), insisting it was given "no meaningful opportunity to raise issues during the environmental review process." (PFR, pp. 24.) But in *Endangered Habitats League v. State Water Res. Control Bd.* (1997) 63 Cal.App.4th 227 (*EHL*), the case cited by Petitioners, all the court held was that where a lead agency takes an action and provides "no mechanism for the receipt of ... objections," the

[2] The Department also held three scoping meetings pursuant to CEQA: the first in February, 2000; the second in February, 2004; and a third meeting in August, 2005. (AR:15-19, 2416, 33844-33847, 33852-33859; 33971-33973.)

exhaustion requirement does not apply. (*Id.* at pp. 237-240.) Here, by stark contrast, the Department provided the public with ample opportunity to participate in the nearly ten-year-long CEQA process, including public hearings and a 120-day review period on the Draft EIS/EIR. Petitioners' claim that they were not provided a meaningful opportunity to comment is contradicted by the record.

Petitioners' contention that the opinion contradicts *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109 (*Galante Vineyards*) (PFR, pp. 26-27) lacks merit. In *Galante Vineyards*, the reviewing court held that comments received during a public comment period provided for the final EIR were timely because "any alleged grounds for noncompliance with CEQA provisions may be raised by any person prior to the close of the public hearing on the project before the issuance of the notice of determination." (*Id.* at pp. 1118, 1121.) But in *Galante Vineyards* – unlike the case at bench – a public hearing was held on the project *after* the petitioner submitted its comments on the final EIR – meaning the comments submitted by the petitioner were submitted "prior to the close of the public hearing on the project before the issuance of the notice of determination" as required by Public Resources Code section 21177, subdivision (a).

Here, in contrast, there was no "statutory or regulatory requirement of a public hearing in connection with an agency's decision to certify an environmental impact report" and a hearing was not held before the Department's certification of the EIR. (Guidelines, § 15089 [public review of final EIR is allowed, but not required].) The opinion recognizes this fact, noting "[t]here is no pertinent statutory or regulatory requirement of a public hearing in connection with an agency's decision to certify an environmental impact report." (Slip Opn., p. 58.) Accordingly, neither the public hearing clause in Public Resources Code section 21177, subdivision

(a), nor the exception where no public hearing is held under subdivision (e), applies here. The Court of Appeal's holding is entirely consistent with the statute and case law.

C. Petitioners' disagreement with the methodology used to analyze greenhouse gas impacts does not warrant review.

In an unpublished portion of the opinion, the Court of Appeal held that the Department complied with CEQA in analyzing the project's greenhouse gas impacts. (Slip Opn., pp. 99, 107.) As the Court of Appeal explained in its April 7, 2014 order recommending this Court's denial of a request for publication of that section of the opinion, the unpublished discussion simply "applies established rules of environmental law to a meritless aspect of a challenge to an environmental impact report certification." The Department agrees.

IV. CONCLUSION.

The opinion properly interpreted the Fish and Game Code, CEQA, and CEQA case law. In doing so, it did not create any unsettled questions of law or a split in authority. Petitioners failed to meet their burden to explain how the case presents a ground for review under rule 8.500(b).

///

///

///

///

///

///

///

///

///

///

(Rules of Court, Rule 8.504(b)(2).) The Petition for Review, therefore, should be denied.

Respectfully submitted,

Dated: May 19, 2014

Thomas R. Gibson
John H. Mattox
OFFICE OF THE GENERAL COUNSEL
CALIFORNIA DEPARTMENT OF FISH
AND WILDLIFE

Tina A. Thomas
Ashle T. Crocker
Amy R. Higuera
THOMAS LAW GROUP

By: _____
For Tina A. Thomas
Attorneys for Respondent and Appellant
CALIFORNIA DEPARTMENT OF FISH
AND WILDLIFE (formerly CALIFORNIA
DEPARTMENT OF FISH AND GAME)

CERTIFICATE OF WORD COUNT

The undersigned counsel certifies that, pursuant to rule 8.504(d)(1), of the California Rules of Court, the text of this brief contains 3,484 words. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: May 19, 2014

By: _____
for Tina A. Thomas

Center for Biological Diversity, et al., v. California Department of Fish and Game, et al. Supreme Court Case No. S217763, Court of Appeal Second Appellate District Division 5 Case No. B245131

PROOF OF SERVICE

I am a resident of the United States, employed in the City and County of Sacramento. My business address is 455 Capitol Mall, Suite 801, Sacramento, California 95814. I am over the age of 18 years and not a party to the above-entitled action.

On May 19, 2014, I served the following:

ANSWER TO PETITION FOR REVIEW

On the parties in this action by causing a true copy thereof to be electronically delivered via the internet to the following person(s) or representative at the address(es) listed below; and

On the parties in this action by causing a true copy thereof to be delivered via Federal Express to the following person(s) or their representative at the address(es) listed below:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct and that this Proof of Service was executed this 19th day of May 2014, at Sacramento, California

/s/
Stephanie Richburg

Center for Biological Diversity, et al., v. California Department of Fish and Game, et al. Supreme Court Case No. S217763, Court of Appeal Second Appellate District Division 5 Case No. B245131

SERVICE LIST

MARK J. DILLION DAVID P. HUBBARD DANIELLE K. MORONE Gatzke Dillon & Balance LLP 2762 Gateway Road Carlsbad, CA 92009 mdillon@gdandb.com	Attorneys for Real Party in Interest and Appellant By Federal Express
PATRICK G. MITCHELL Downey Brand LLP 621 Capitol Mall, 18th Floor Sacramento, CA 95814 pmitchell@downeybrand.com	Attorneys for Real Party in Interest and Appellant By Federal Express
ARTHUR G. SCOTLAND Neilson Merksamer Parinello Grss & Leoni LLP 1415 L Street, Suite 1200 Sacramento, CA 95814 ascotland@nmgovlaw.com	Attorneys for Real Party in Interest and Appellant By email
MIRIAM A. VOGEL Morrison & Forester LLP 707 Wilshire Blvd., Ste. 6000 Los Angeles, CA 90013-3543 mvogel@mofo.com	Attorneys for Real Party in Interest and Appellant By Federal Express
JOHN BUSE ADAM KEATS MATTHEW VESPA Center for Biological Diversity 351 California Street, Suite 600 San Francisco, CA 94104 jbuse@biologicaldiversity.org	Attorneys for Respondents and Petitioner By Federal Express
Sean B. Hecht Frank G. Wells Environmental Law Clinic UCLA School of Law 405 Hilgarrd Avenue Los Angeles, CA 90095 hecht@law.ucla.edu	Attorneys for Respondents and Petitioner By Federal Express

JASON WEINER Associate Director & Staff Attorney Ventura Coast Keeper/Wishtoyo Foundation 3875-A Telegraph Road #423 Ventura, CA 93003 Phone: 310.775.5281 Fax: 805.258.5135 jweiner.venturacoastkeeper@wishtoyo.org	Attorneys for Respondents and Petitioner By Federal Express
Jan Chatten-Brown Douglas P. Carstens Chatten-Brown & Carstens 2200 Pacific Coast Highway, Ste. 318 Hermosa Beach, CA 90254 Phone: 310-798-2400 jcb@cbcearthlaw.com dpc@cbcearthlaw.com	Attorneys for Respondents and Petitioner By Federal Express
Clerk, California Court of Appeal Second Appellate District 300 S. Spring Street 2nd Floor, North Tower Los Angeles, CA 90013	By e-mail
Clerk, Los Angeles County Superior Court 111 North Hill Street Los Angeles, CA 90012 (Los Angeles Superior Court No. BS131347)	By Federal Express