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 California Fish and Game Commission
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10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 11 **FOR THE COUNTY OF SACRAMENTO**

13 **CENTRAL COAST FOREST ASSOCIATION**
 and **BIG CREEK LUMBER CO.,**

14 Plaintiff and Petitioner,
 15

16 v.

17 **CALIFORNIA FISH & GAME**
COMMISSION,

18 Defendant and Respondent.
 19

CASE NO.: 05CS01617

**ANSWER TO PETITION FOR
 WRIT OF MANDAMUS AND
 COMPLAINT FOR
DECLARATORY JUDGMENT**

Dept.: 11

20 Defendant and Respondent the CALIFORNIA FISH & GAME COMMISSION hereby
 21 answers the Petition for Writ of Mandamus and Complaint for Declaratory Judgment (hereinafter,
 22 the "Petition") and admits, denies, and affirmatively alleges as follows:

23 **PARTIES AND INTERESTS**

- 24 1. Admits.
 25 2. Lacks sufficient information or belief to answer paragraph 2 and upon such lack
 26 denies, generally and specifically, any allegation contained in this paragraph.
 27 3. Lacks sufficient information or belief to answer paragraph 3 and upon such lack
 28 denies, generally and specifically, any allegation contained in this paragraph.

1 4. Admits that section 2076 of the Fish and Game Code provides that "[a]ny finding
2 pursuant to this section [sic] is subject to judicial review under Section 1094.5 of the Code of
3 Civil Procedure." Except as admitted, denies, generally and specifically any other allegation
4 contained in paragraph 4.

5 5. Admits.

6 6. Admits.

7 **BACKGROUND**

8 7. Admits that paragraph 7 appears to be a partial quotation from section 2070 of the
9 Fish and Game Code. Defendant and respondent alleges that the statute speaks for itself. In the
10 alternative, any allegation in this paragraph is a conclusion of law to which no response is
11 required.

12 8. Admits that paragraph 8 appears to be a partial quotation from section 2062 of the
13 Fish and Game Code. Defendant and respondent alleges that the statute speaks for itself. In the
14 alternative, any allegation in this paragraph is a conclusion of law to which no response is
15 required.

16 9. Admits that paragraph 9 appears to be a partial quotation from section 2067 of the
17 Fish and Game Code. Defendant and respondent alleges that the statute speaks for itself. In the
18 alternative, any allegation in this paragraph is a conclusion of law to which no response is
19 required.

20 10. Admits that paragraph 10 appears to be a partial quotation from section 2052 of
21 the Fish and Game Code. Defendant and respondent alleges that the statute speaks for itself. In
22 the alternative, any allegation in this paragraph is a conclusion of law to which no response is
23 required.

24 11. Denies.

25 12. Denies.

26 13. Denies.

27 14. Admits.

28 15. Denies.

1 16. Admits.

2 17. Admits. Affirmatively alleges that the current and expanded listing of Coho
3 Salmon (*Oncorhynchus kisutch*) was made pursuant to a petition received by the defendant and
4 respondent Commission in 2001 and that the findings of endangered and threatened status for all
5 of the Coho Salmon in California were made pursuant to section 2075.5 on, or about,
6 August 29, 2002. Defendant and respondent further affirmatively alleges that pursuant to section
7 2114 of the Fish and Game Code the regulatory change to add all of the Coho Salmon to the
8 respective endangered and threatened lists was solely delayed to allow preparation of a suitable
9 recovery strategy.

10 18. Lacks sufficient information or belief to respond to the first two sentences of
11 paragraph 18, and upon such lack denies, generally and specifically, any allegations contained in
12 such sentences. Denies the remainder of paragraph 18 of the Petition. Affirmatively alleges that
13 the Defendant and respondent Commission may list as endangered a species or subspecies in
14 danger of extinction "throughout all, or a significant portion, of the range" and, as such, may
15 take action to protect a group of animals comprising less than the full population the animals in
16 California.

17 19. Denies.

18 20. Admits.

19 **FIRST CAUSE OF ACTION**

20 21. To the extent paragraph 21 contains any allegations, defendant and respondent
21 answers and incorporates by references its responses to paragraphs 1 through 20.

22 22. Denies.

23 23. To the extent paragraph 23 contains any allegations, generally and specifically
24 denies.

25 **SECOND CAUSE OF ACTION**

26 24. To the extent paragraph 24 contains any allegations, defendant and respondent
27 answers and incorporates by reference its responses to paragraphs 1 through 23.

28 25. Denies.

- 1 26. Denies.
- 2 27. Denies.
- 3 28. Denies.

AFFIRMATIVES DEFENSES

5 1. The Petition and Complaint and every cause of action therein fail to state facts
6 sufficient to constitute a cause of action.

7 2. The claim for declaratory relief should be dismissed as an improper, non-
8 mandamus challenge to the Commission's quasi-judicial actions taken pursuant to sections 2050,
9 et seq. of the Fish and Game Code.

10 3. Plaintiffs and petitioners' claims regarding the findings of endangered status in
11 1995 for the Coho Salmon and findings made again in 2002 are barred by the statute of limitations
12 contained within section 338 of the Code of Civil Procedure.

13 4. To the extent Plaintiffs and Petitioners allege that the Commission impermissably
14 recognized a geographically distinct subset of Coho Salmon "south of San Francisco" in 1995 as
15 endangered, such claim has been rendered moot by the Commission actions in 2002 and 2004
16 listing as endangered or threatened all of California's Coho Salmon.

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WHEREFORE, Defendants and Respondents pray:

1. That the Petition be denied;
2. That the Complaint be dismissed;
3. That Plaintiffs and Petitioners take nothing by way of this action; and
4. For costs of suit and such other relief as the Court deems just and proper.

Dated: December 28, 2005

Respectfully submitted,

BILL LOCKYER
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 California Fish and Game Commission