Danielle Fugere (State Bar No. 160873)
Lynne R. Saxton (State Bar No. 226210)
ENVIRONMENTAL LAW FOUNDATION
1736 Franklin Street, 9th Floor
Oakland, CA 94612
Tel: (510) 208-4555
Fax: (510) 208-4562
Email: dfugere@envirolaw.org
lsaxton@envirolaw.org

Attorneys for all Petitioners/Plaintiffs
[Counsel List Continued on the Following Page]

ENDORSED
FILED
ALAMEDA COUNTY
APR - 2 2012
CLERK OF THE SUPERIOR COURT
By Gina Parrino Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

KARUK TRIBE; CENTER FOR BIOLOGICAL DIVERSITY; PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS; INSTITUTE FOR FISHERIES RESOURCES; FRIENDS OF THE RIVER; CALIFORNIA SPORTFISHING PROTECTION ALLIANCE; FOOTHILL ANGLER'S COALITION; NORTH FORK AMERICAN RIVER ALLIANCE; UPPER AMERICAN RIVER FOUNDATION; and CENTRAL SIERRA ENVIRONMENTAL RESOURCE CENTER, Petitioners/Plaintiffs, vs. CALIFORNIA DEPARTMENT OF FISH AND GAME, CHARTLTON H. BONHAM, Director of the California Department of Fish and Game, and DOES 1-20, Respondents.	Case No. RG 12 622377 **PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** [Code Civ. Proc. §§ 1085 and 1094.5; Pub. Res. Code § 21000, *et seq*. (California Environmental Quality Act); Code of Civ Proc. §1060]

Jonathan Evans (State Bar No. 247376)
CENTER FOR BIOLOGICAL DIVERSITY
351 California ST., Suite 600
San Francisco, CA 94104
Tel: (415) 436-9682 x318
Fax: (415) 436-9683
Email: jevans@biologicaldiversity.org

For all Petitioners/Plaintiffs

Glen H. Spain (State Bar No. 88097)
PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS
and INSTITUTE FOR FISHERIES RESOURCES
Northwest Regional Office
PO Box 11170
Eugene, OR 97440-3370
Tel: (541) 689-2000
Fax: (541) 689-2500
Email: fish1ifr@aol.com

For PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS and INSTITUTE FOR FISHERIES RESOURCES

E. Robert Wright (State Bar No. 51861)
Carissa Andresen (State Bar No. 278118)
FRIENDS OF THE RIVER
1418 20th St Ste 100
Sacramento, CA 95811
Tel: (916) 442-3155
Fax: (916) 442-3396
Email: bwright@friendsoftheriver.org

For FRIENDS OF THE RIVER

INTRODUCTION

1. This action challenges the decision of the California Department of Fish and Game and its Director Charlton H. Bonham (collectively the "Department" or "Respondents") to approve the Suction Dredge Permitting Program ("suction dredge program") on March 16, 2012. The challenged suction dredge program would authorize mechanized, recreational, instream gold mining on waterways throughout California resulting in mercury discharges into waterways, harm to sensitive and protected wildlife, and the destruction of cultural resources. Because of these adverse environmental impacts, the United States Environmental Protection Agency, State Water Resources Control Board, the California Native American Heritage Commission, and several California Legislators, among others, recommend that the suction dredge program be rejected and the current moratorium on suction dredge mining be continued until the Department develops a program that reduces these recognized significant environmental impacts.

2. Once again the Petitioners and Plaintiffs (collectively "Petitioners"[1])—a coalition of tribal, environmental, and fisheries groups—have been forced to challenge the Department's authorization of a suction dredge program that violates the law. The current action is the progeny of a 2005 challenge to the Department's previous environmental review of the suction dredge program where the Department admitted, in sworn declarations filed with the Court, that suction dredging under the program's previous regulations caused deleterious impacts to endangered fish that had not been analyzed under the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq*., herein "CEQA").[2] Resolution of the 2005 action resulted in an Order and Consent Judgment requiring the Department to complete an updated environmental review and rulemaking by June 20, 2008. The Department, however, failed to abide by that Court-ordered deadline, making the filing of a followup

---

[1] Petitioners include the Karuk Tribe, Center for Biological Diversity, Pacific Coast Federation of Fishermen's Associations, Institute for Fisheries Resources, Friends of the River, California Sportfishing Protection Alliance, Foothill Angler's Coalition, North Fork American River Alliance, Upper American River Foundation, and Central Sierra Environmental Resource Center.

[2] *Karuk Tribe of California, et al. vs. California Department of Fish and Game et al.*, Alameda County Superior Court, No. RG05-211597 (complaint filed May 6, 2005).

case for equitable relief and obtaining an injunction necessary.[3] Almost four years after the court-ordered deadline, the Department has now finally adopted a Subsequent Environmental Impact Report ("SEIR") and revised suction dredge program regulations.

3. The Department acknowledges that the current 2012 suction dredge program would result in significant environmental impacts that are "not acceptable." Yet, the Department erroneously alleges that it is legally infeasible to adopt a suction dredge program that mitigates these adverse impacts to water quality, wildlife, cultural resources, and noise. This assertion flies in the face of the Department's regulatory authority over streambeds (Fish and Game Code §§ 1602, 1603), wildlife resources (Fish and Game Code §§ 711.7, 1600, 1802), water quality (Fish and Game §5650), and cultural resources (14 California Code of Regulations § 15126.4(b)). Similarly, the Department ignores the guidance of the California Legislature to analyze and adopt a program that would mitigate all significant impacts and implement a fee structure that pays for the program. (Fish & Game Code § 5653.1(b)(4)). The Department's 2012 regulations follow a consistent pattern that the Department has developed in the operation of its suction dredging program, in which it interprets its authority so narrowly that the Department's broader responsibilities as trustee of fish, wildlife, and other public trust resources are ignored.

4. Petitioners bring this challenge pursuant to CEQA, and several provisions of the Fish and Game Code, including section 5650 *et seq*. (authorizing the Department to issue suction dredge mining permits), section 5800 (prohibiting any mining operations in the Trinity and Klamath River Fish and Game Districts), and sections 711.7, 1600, 1602, 1802 (duty to protect public trust resources).

5. Petitioners accordingly request that this Court issue a writ of mandate under the California Code of Civil Procedure sections 1085 and 1094.5 directing Respondents to vacate and set aside their approval of the program and certification of the EIR. This request is based on the following allegations:

///

[3] *Hillman. et al. vs. California Dept. of Fish and Game et al.*, Alameda County Superior Court, No. RG09-434444 (complaint filed February 5, 2009).

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to sections 1085, 1094.5, 187, and 526 of the California Code of Civil Procedure, and sections 21168 and 21168.5 of the Public Resources Code.

7. Venue for this action properly lies in the Alameda County Superior Court because the Department is a California agency based in Sacramento County and the California Attorney General has an office in Alameda County. (Cal. Code Civ. Proc. §§ 395, 401(1), 403.) Alameda County Superior Court is also the venue for the related cases *Karuk Tribe et al. v. California Department of Fish and Game et al.*, Alameda County Superior Court, No. RG05-211597 (complaint filed May 6, 2005) and *Hillman et al. v. California Dept. of Fish and Game et al.*, Alameda County Superior Court, No. RG09-434444 (complaint filed February 5, 2009).

THE PARTIES

8. Petitioner KARUK TRIBE is a federally recognized Indian Tribe with a population of approximately 3,400 members. Its headquarters is located in Happy Camp, along the Klamath River and in the vicinity of the Salmon and Scott Rivers. The Karuk Tribe has lived in northern California since time immemorial and its ancestors are considered among the earliest inhabitants of aboriginal California. The stated mission of the Karuk Tribe is to promote the general welfare of all Karuk people; establish equality and justice for the Tribe; restore and preserve Tribal traditions, customs, language, and ancestral rights; and secure for themselves and their descendants the power to exercise the inherent rights of self-governance. Among the many goals of the Tribe is the protection and restoration of native fish and wildlife species that the Tribe has depended upon for traditional cultural, religious, and subsistence uses. The Karuk Tribe was also a co-plaintiff to both prior lawsuits.

9. Petitioner CENTER FOR BIOLOGICAL DIVERSITY ("Center") is a non-profit, public interest corporation with over 36,000 members, and offices throughout the United States. The Center and its members are dedicated to protecting the diverse native species and habitats of North America

through science, policy, education, and environmental law. Center members reside and own property in California and use waterways throughout California for recreational, wildlife viewing, scientific, and educational purposes. The Center is also a co-plaintiff in the *Hillman* case.

10. Petitioner PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS ("PCFFA") is the largest trade organization of commercial fishing men and women on the west coast. PCFFA is a federation of 15 different port associations and marketing associations in California, Oregon and Washington. Collectively, PCFFA's members represent over 1,200 commercial fishing families, most of whom are small and mid-sized commercial fishing boat owners and operators. PCFFA has been active for nearly 30 years in efforts to rebuild salmon populations and correct water pollution problems in Northern Coast salmon-bearing streams and rivers, as well as watersheds connected to these rivers. PCFFA is also a co-plaintiff in the *Hillman* case.

11. Petitioner INSTITUTE FOR FISHERIES RESOURCES ("IFR") is a non-profit organization responsible for meeting the fishery research and conservation needs of working men and women in the fishing industry by funding and executing PCFFA's expanding salmon habitat protection programs. From its inception, IFR has helped fishing men and women in California and the Pacific Northwest address salmon protection and restoration issues, with particular focus on improving water quality in salmon-bearing rivers and streams throughout California. IFR is an active leader in several salmon restoration programs affecting winter-run and spring-run chinook salmon and coho salmon, including the development of better water quality standards and enforcement. IFR has actively advocated for the protection and restoration of flows and improving water quality critical to the health of California's North Coast rivers and streams and their economically important salmon runs. IFR is also a co-plaintiff in the *Hillman* case.

12. Petitioner FRIENDS OF THE RIVER ("FOR") is a non-profit organization dedicated to preserving and restoring California's rivers, streams, and their watersheds as well as advocating for sustainable water management. FOR accomplishes this goal by influencing public policy and inspiring citizen action through grassroots organizing. FOR was founded in 1973 during the struggle to save the Stanislaus River from the New Melones Dam. Following that campaign, the group grew to become a

statewide river conservation organization. FOR currently has nearly 6,000 members. FOR is also a co-plaintiff in the *Hillman* case.

13. Petitioner CALIFORNIA SPORTFISHING PROTECTION ALLIANCE ("CPSA") is a non-profit public benefit conservation and research organization established in 1983 for the purpose of conserving, restoring, and enhancing the state's water quality and fishery resources and their aquatic ecosystems and associated riparian habitats. CSPA has approximately 2,500 members who live, recreate and work in and around waters of the State of California, including waterways throughout the Sierra Nevada, Central Valley and the Sacramento-San Joaquin River Delta Estuary. CSPA has actively promoted the protection of water quality and fisheries throughout California before state and federal agencies, the State Legislature, and Congress and regularly participates in administrative and judicial proceedings on behalf of its members to protect, enhance, and restore California's water quality and fisheries. CSPA is also a co-plaintiff in the *Hillman* case.

14. Petitioner FOOTHILLS ANGLERS COALITION is a fisheries and aquatic habitat non-profit conservation organization dedicated to the protection and restoration of Sierra Nevada trout, steelhead, and salmon resources, along with their habitat and the Sierra Nevada foothill watersheds that sustain those resources, as well as the enhancement of the sport of fishing. They support an ecosystem-based approach to watershed management, and the protection and preservation of all native species, including wildlife and plant populations.

15. Petitioner NORTH FORK AMERICAN RIVER ALLIANCE ("NFARA") is a non-profit organization created to protect and preserve the natural, cultural and historic beauties of the North Fork American River Canyon. NFARA is dedicated to the careful participation and planning of recreational along the North Fork of the American river.

16. Petitioner UPPER AMERICAN RIVER FOUNDATION ("UARF") is a member-based non-profit organization founded to conserve and protect the unique qualities of the Upper American River watersheds in Placer and El Dorado Counties. The objectives of UARF include identifying issues that need to be resolved, and developing cooperative involvement and funding that will be needed to help resolve them so that future generations will continue to be able to enjoy the same quality

experiences that we have enjoyed during our lifetimes in the Upper American River Watershed.

17. Petitioner CENTRAL SIERRA ENVIRONMENTAL RESOURCE CENTER is a non-profit center that works to protect the remaining water, wildlife, and wild places in the central Sierra Nevada. CSERC serves as the foremost environmental defender of more than 2,000,000 acres of forests, rivers, lakes, wetlands, roadless areas, old growth groves, scenic oak woodlands, and other precious areas within the northern Yosemite region of the central Sierra Nevada.

18. Members of the Petitioners presented both oral and written comments during the administrative process and hearings on the matters being challenged in this petition. The Petitioners and their members are directly, adversely and irreparably affected, and will continue to be prejudiced by the program and its components, as described herein, until and unless this Court provides the relief prayed for in this petition.

19. Respondent and Defendant CALIFORNIA DEPARTMENT OF FISH AND GAME is administered through its Director and is responsible for California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public. The Department maintains jurisdiction over river, stream, and lake beds, and fish, wildlife, native plants, and their habitat. The Department is the designated state trustee under Fish and Game Code §§ 711.7, 1600, and 1802 for fish and wildlife resources, and in this capacity has affirmative common law and statutory obligations to ensure the protection of public trust wildlife resources. The Department is responsible for the evaluation, review and approval of the suction dredge program and recommending actions based on that review.

20. Respondent and Defendant CHUCK BONHAM is the Director of the California Department of Fish and Game, charged with overseeing the Department and its duties.

21. Petitioners are currently unaware of the true names and capacities of Does 1 through 20, inclusive, and therefore sue those parties by such fictitious names. Does 1 through 20, inclusive, are agents of the County, state, or federal government who are responsible in some manner for the conduct described in this petition, or other persons or entities presently unknown to the Petitioners who claim some legal or equitable interest in the program that is the subject of this action. Petitioners will amend

this petition to show the true names and capacities of Does 1 through 20 when such names and capacities become known.

GENERAL ALLEGATIONS

22. Suction dredging is a method of mining for gold deposits in the beds of rivers, streams, and lakes. Suction dredges use motorized pumps to vacuum water and sediment into an intake pipe and pass it over a sluice box mounted on a floating pontoon. Dense particles, including gold, are trapped in the sluice box. The remainder of the vacuumed material is discharged into the waterway as "tailings" that can accumulate as piles of debris. Permits for suction dredge mining are primarily requested by recreational or hobbyist gold miners. For a nominal fee, the Department issues an annual permit that allows the miner to suction dredge in any California river, as allowed under the Department's regulations.

23. The Department originally promulgated regulations for its suction dredge program in 1994. The 1994 Environmental Impact Report and Biological Assessment concluded that rivers inhabited by threatened or endangered species and Species of Special Concern (hereinafter "Endangered Species") must be closed to suction dredge mining to prevent significant impacts to these species. The report stated that the Department's regulations would need to be reviewed periodically to account for future listings of Endangered Species.

24. In 1997, the Department considered proposed amendments to the regulations governing suction dredge mining, releasing a draft subsequent EIR for public review that same year. However, the 1997 Draft SEIR was never completed or certified, and the proposed amendments were not adopted.

25. In May of 2005, the Karuk Tribe and Leaf Hillman sued the Department under CEQA to challenge the Department's failure to review and update its regulations. (*Karuk Tribe of California et al. v. California Department of Fish and Game et al.*, Alameda County Superior Court, Case No. RG 05-211597 ("2005 Litigation").) The complaint's allegations were geographically limited to the Klamath, Scott and Salmon Rivers. Various mining interests and a number of individuals joined the lawsuit by court order as party interveners in February 2006.

26. During the course of 2005 Litigation, the Department submitted sworn declarations to the Court admitting that their suction dredge program violates CEQA and Fish and Game Code §§5653 and 5653.9. The Department's admission was based on its determination that suction dredge mining caused deleterious effects on the endangered coho salmon in the Klamath, Scott and Salmon Rivers.

27. On December 20, 2006, the court entered an Order and Consent Judgment requiring the Department to conduct a CEQA review of its regulations as to the impacts of suction dredging on Endangered Species in the Klamath, Scott and Salmon watersheds. The Judgment made the finding, *inter alia*, that there was "new information which was not reasonably available to the Department at the time it completed the 1994 EIR that issuing suction dredge mining permits under the current regulations could result in environmental effects different or more severe than the environmental impacts evaluated in the 1994 EIR." (Order and Consent Judgment in RG05-211597.) The Department was further ordered to promulgate any necessary regulations to implement the suction dredge program. The CEQA review and the regulations were to be completed by June 20, 2008.

28. In response to the Court directive to begin the CEQA review or risk contempt proceedings, the Department initiated, on October 19, 2007, publication in the California Regulatory Notice Register soliciting comments from interested public agencies and the public on whether suction dredge mining under the existing regulations resulted in adverse impacts to the environment. On or near December 18, 2007, Petitioners submitted detailed public comments to the Department describing adverse environmental and cultural impacts caused from suction dredge mining. The Department received technical analysis and commentary from federal, state, local and tribal governments, members of the public, environmentalists, miners, and members of the academic community. After reviewing the comments, the Department reported to the Court that it would prepare a SEIR on a statewide basis.

29. As of June 20, 2008 court-ordered deadline to complete environmental review, the Department had not yet issued a Notice of Preparation to begin the court-ordered Environmental Impact Report or rulemaking process and had no projected date when it would begin that process. The Court retained jurisdiction over the enforcement of the Order and Consent Judgment. The parties appeared in Court many times between 2006 and 2009 to address the Department's refusal to initiate the

Environmental Impact Report process. Throughout this time the Department continued issuing suction dredge permits, despite its prior admission that suction dredging harms endangered fish and its growing body of evidence of other adverse impacts.

30. In February 2009, the Karuk Tribe, along with a coalition of environmental and fisheries groups and individuals, sued to enjoin the Department from issuing suction dredge permits until such time that new regulations were operative and environmental review had occured. The complaint alleged that the Department's use of State General Fund monies to pay for the suction dredge program, which violated CEQA and Fish and Game Code §5653, was an unlawful activity under Code of Civil Procedure §526a. (*Hillman et al. v. California Dept. of Fish and Game*, Alameda County Superior Court, No. RG09434444, filed February 5, 2009.) In July of 2009, the court issued a preliminary injunction ordering the Department to cease and desist from using General Fund monies to issue suction dredge permits, effectively prohibiting any new permits from being issued. The injunction order found that the Department's "issuance of a suction dredge permit without a discretionary determination that the operation proposed by the license applicant is not deleterious to fish is a direct violation of the mandatory duty imposed on the [Department] by [Fish and Game] Code 5653(b) and is therefore unlawful." (Order Granting Plaintiffs' Motion for Preliminary Injunction Against Defendants Department of Fish and Game and Donald Koch, Director entered July 10, 2009.) The court order further found that the Department "must exercise its discretion each time it issues a suction dredge permit" triggering the CEQA process. (*Id*.)

31. After the court entered the 2009 Preliminary Injunction, the Department nevertheless continued to issue permits for suction dredge mining. On July 29, 2009, two weeks following entry of the Preliminary Injunction, Plaintiffs returned to Court seeking clarification of the Order. Although the Court did not issue a formal ruling, it directed the Department to immediately cease issuing permits or risk returning to court on contempt proceedings. The Department stopped issuing permits the following day.

32. On August 9, 2009, one month after entry of the Preliminary Injunction, Governor Arnold Schwarzenegger signed Senate Bill (SB) 670 that established a moratorium on suction dredge

mining in California until the Department complied with the December 2006 court order. The law prohibited suction dredge mining under existing permits and, as it was passed as urgency legislation, it went into effect the following day. SB 670, codified as Fish and Game Code §5653.1, also prohibited the Department from issuing any new permits until the Department completed the environmental review required by the December 2006 Court Order, adopted updates to the 1994 regulations, and the new regulations were operative.

33. On October 26, 2009, the Department finally issued a Notice of Preparation of a Draft SEIR. On or about December 3, 2009 Petitioners submitted comments during the public comment period for the Notice of Preparation that outlined the necessary standards for the regulatory program and environmental review in order to avoid significant impacts to the environment.

34. The Department issued a Draft SEIR and draft regulations for the suction dredge program in February 2011, over two and a half years after the Court Order to complete that process by June of 2008. The Draft SEIR recognized significant and unavoidable impacts to water quality and toxicology, biological resources, cultural resources, noise, and cumulatively significant impacts to water quality, and wildlife resources. The Department accepted public comment on those documents until May 2011 and received thousands of comments. Petitioners provided extensive comments regarding the significant environmental impacts of the draft regulations and the failure of the SEIR to adequately comply with CEQA. During the public comment period, numerous federal, state, and local agencies submitted comments critical of the program and environmental review. For example, the State Water Resources Control Board, California Native American Heritage Commission, and federal Environmental Protection Agency submitted comments that were critical of the regulations and recommended that the current moratorium be extended until and unless the Department adopted a suction dredge program that reduces the significant impacts of suction dredge mining. Several members of the California legislature also submitted comments recommending the moratorium continue until deficiencies in the regulatory suction dredge program and environmental review could be rectified.

35. In July 2011, Governor Jerry Brown signed Assembly Bill (AB) 120, amending Fish and Game Code §5653.1 to add two additional conditions that the Department must meet before the

moratorium on suction dredge mining would be lifted. First, any new regulations adopted by the Department governing suction dredge mining under the Fish and Game Code must "fully mitigate all identified significant environmental impacts." (Fish & Game Code § 5653.1(b)(4).) Second, a "fee structure" must be in place to "fully cover all costs to the [D]epartment related to the administration of the program." (Fish & Game Code § 5653.1,(b)(5).) In addition, the moratorium would remain in effect until June 30, 2016, unless the Department met the conditions of the statute before that time. (Fish and Game Code §5653.1, subd. (b).)

36. On December 28, 2011, the First Appellate District issued an unpublished opinion in which they dissolved the July 2009 Preliminary Injunction that prohibited the issuance of suction dredge permits on grounds that the adoption of Fish and Game Code §5653.1, legislatively extending the moratorium on the issuance of suction dredge mining permits, effectively provided Plaintiffs with the relief they sought. The Court concluded that the subsequent change in legal landscape rendered it unnecessary for the Appellate Court to review the trial court's ruling.

37. One year after issuing the 2011 draft suction dredge mining regulations the Department issued revised suction dredge mining regulations on February 17, 2012 and accepted public comments on those regulations until March 5, 2012. The revised regulations reduce the number of suction dredge permits to 1,500 annually, create density restriction on contemporaneous dredge operations, and limit suction dredge mining on certain streams and rivers throughout the state. The regulations would, however, still result in direct significant adverse impacts to water quality through the disturbance and resuspension of historic mercury in streams, and through impacts on special status bird species, cultural resources, and noise, and through cumulatively significant impacts to water quality and wildlife. The revised regulations also included a statement, without supporting analysis, that the suction dredge program would not be deleterious to fish.

38. On or about March 5, 2012, Petitioners once again submitted comments critical of the suction dredge program and its environmental review, emphasizing the Department's incorrect analysis of the suction dredge program's deleterious impacts to fish and the obligation of the Department to mitigate those impacts. The United States Environmental Protection Agency, State Water Resources

Control Board, and the California Native American Heritage Commission again submitted comments urging the Department to reject the program due to the significant and unmitigated environmental impacts. Several members of the California legislature also submitted comments noting, *inter alia*, that the regulations fail to comply with the requirements of AB 120 to develop a suction dredge program that reduces the program's significant impacts and provides adequate funding to administer the suction dredge program.

39. After the close of the comment period on the 2012 suction dredge regulations the Department released the Final SEIR for the suction dredge program on or about March 7, 2012. No public comment period was provided on the document.

40. On March 16, 2012, the Department adopted regulations that would permit suction dredge mining on streams and waterways in California after the existing moratorium expires in 2016.

41. On March 20, 2012, the Department released its Final Statement of Reasons and CEQA Findings of Fact.

42. As a result of the Department's approval of the program, Petitioners will suffer great and irreparable environmental harm as described herein. Petitioners have no adequate remedy at law for this irreparable harm.

43. Petitioners have exhausted all administrative remedies by submitting written comments to the Department prior to the program's approval and appearing at the public hearings on the program to request compliance with CEQA and the completion of full and adequate environmental review. All issues raised in this petition were raised before Respondents by Petitioners, other members of the public, or public agencies prior to approval of the program.

44. Petitioners have complied with Public Resources Code section 21167.5 by prior service of a notice upon the Department indicating its intent to file this Petition. Proof of Service of this notification, with the notification, is attached as Exhibit A.

45. The Petitioners have elected to prepare the record of proceedings in the above-captioned proceeding or to pursue an alternative method of record preparation pursuant to Public Resources Code Section 21167.6(b)(2). Notification of the Election to Prepare the Administrative Record is attached as

Exhibit B.

46. This petition is timely filed in accordance with Public Resources Code section 21167 and CEQA Guidelines section 15112.

47. Respondents have abused their discretion and failed to act as required by law in the following ways:

FIRST CAUSE OF ACTION

VIOLATION OF CEQA (Public Resources Code § 21000, *et seq*.)
EIR Does Not Comply With CEQA
(By All Petitioners Against All Respondents)

48. Petitioners hereby incorporate by reference each and every allegation set forth above.

49. CEQA requires a lead agency for a project to prepare an EIR that complies with the requirements of the statute. The lead agency must also provide for public review and comment on the project and associated environmental documentation. An EIR must provide sufficient environmental analysis such that decision-makers can intelligently consider environmental consequences when acting on proposed projects.

50. Respondents violated CEQA by certifying an EIR for the program that is inadequate and fails to comply with CEQA. Among other things, Respondents:

a. Failed to adequately disclose or analyze the program's impacts on the environment, including the program's impacts on water quality, biological resources, cultural resources, aesthetics, noise, recreational impacts, hazardous materials, hydrology, and cumulative impacts;

b. Failed to provide a stable, consistent, and adequate description of the program, which prohibited an accurate depiction of the program's impacts on the environment, including adopting a different regulatory suction dredge program than initially proposed without analyzing the impacts of that different program;

c. Failed to provide an adequate description of the existing environmental setting of the program, vicinity, and regional context;

d. Failed to adopt a consistent and appropriate environmental "baseline" for

analysis of the program's environmental impacts that contributed to the EIR's flawed analysis of environmental impacts;

e. Improperly relied upon regional and statewide plans to avoid full disclosure and mitigation of the program's impacts;

f. Improperly deferred impact analysis and mitigation measures in contravention of CEQA's requirements that mitigation measures be clearly defined and enforceable;

g. Failed to adopt feasible mitigation measures and alternatives to reduce or avoid significant impacts, in direct contravention of CEQA's substantive mandate that all feasible mitigation measures and alternatives be adopted to avoid or reduce a program's significant and potentially significant impacts;

h. Failed to consider a reasonable range of alternatives by improperly dismissing feasible alternatives suggested by the public, such as the alternative suggested by the California Legislature to analyze an alternative that fully mitigated significant impacts and was self-funding, improperly dismissing the Water Quality Alternative and Reduced Intensity Alternative, and relying upon an improperly narrow list of program objectives to justify the elimination of feasible alternatives;

i. Failed to properly disclose, analyze, or mitigate conflicts with existing local, state, and federal laws that would be impacted by opening waterways to suction dredge mining including, but not limited to, Wild and Scenic Rivers (Public Resources Code § 5093.50, 16 U.S. Code §§ 1271-1287), Wild Trout Streams (Fish and Game Code Section § 1725 *et seq*.), State and National Parks (Public Resources Code § 500 *et seq*, 16 U.S. Code § 1 *et seq*.), and Wilderness Areas (16 U.S. Code §§ 1131-1136).

j. Failed to adequately respond to comments submitted by the public and governmental agencies during review of the EIR;

k. Failed to recirculate the EIR, or any portion of the EIR, despite the availability of significant new information within the meaning of Public Resources Code section 21092.1 and CEQA Guidelines section 15088.5;

l. Failed to provide adequate public review and comment of the regulations and

the EIR;

m. Failed to provide the Final SEIR to the public and to other agencies during the comment period on the 2012 Revised Regulations so that the public and agencies did not have available the project description, informational context, and environmental impact assessment afforded by the Final SEIR to be able to have a meaningful understanding of the Regulations and be in position to provide informed comments on the Regulations. Instead, the Department closed the comment period on the Regulations on March 5, 2012, but did not issue the Final SEIR until March 7, 2012 and improperly segregated environmental review from program approval;

n. Failed to adopt an adequate Mitigation Monitoring or Reporting Program in order to assure that the mitigation measures and program revisions identified in the EIR are implemented;

o. Failed to adopt adequate findings related to the determination that certain impacts would be less than significant and/or that adopted mitigation measures would avoid or lessen the program's significant effects on the environment and failed to disclose the significant and irrevocable impacts that would result from the program;

p. Failed to adopt adequate findings that alternatives to the program and proposed mitigation measures and alternatives that would have avoided or lessened the significant impacts of the program were infeasible and failed to disclose the readily available mitigation measures and alternatives that would meet the basic program objectives;

q. Failed to properly determine that economic, legal, social, technological, or other benefits of the program were overriding considerations that permitted approval despite significant impacts on the environment.

51. As a result of the foregoing defects, Respondents prejudicially abused their discretion by certifying an EIR that does not comply with CEQA and by approving the program in reliance thereon. Accordingly, Respondents' certification of the EIR and approval of the program must be set aside.

SECOND CAUSE OF ACTION

VIOLATION OF FISH AND GAME CODE
(By All Petitioners Against All Respondents)

52. Petitioners hereby incorporate by reference each and every allegation set forth above.

53. Fish and Game Code §5653 requires the Department to make a determination that the issuance of each individual permit will not cause deleterious impacts to fish prior to issuing a permit for suction dredge mining. (Fish and Game Code § 5653(a), (b).) The Department has adopted a regulatory suction dredge program that improperly predetermines that the permit will not be deleterious to fish without adequately analyzing the impact of issuing each individual permit.

54. The Department has relied upon an improper definition and standard of "deleterious" to make a finding that the suction dredge program will not be deleterious to fish. The Department's findings that the suction dredge program will not be deleterious to fish is not supported by substantial evidence or the law.

55. The Department approved a regulatory suction dredge program that did not analyze or adopt a program that would mitigate all significant environmental impacts, or recommend or provide a mechanism for a fee increase so that the suction dredge program will be self-financed. (Fish and Game Code § 5653.1)

56. The Department adopted a regulatory suction dredge program that conflicts with the prohibition against any mining operations in the Trinity and Klamath River Fish and Game District between July 1st and November 30th. (Fish and Game Code §§ 5800, 11036, 11037.)

57. The Department adopted a suction dredge program in abrogation of its affirmative duty to protect public trust resources, including the fish and wildlife resources. (Fish and Game Code §§ 711.7, 1600, 5650 and 1802.)

58. The Department adopted a suction dredge program in abrogation of its affirmative duty to protect public trust resources, including the waters of the state, the beds of navigable waterbodies, and the state's fish and wildlife. (Fish and Game Code §§ 1602, 1603, 5650.)

59. The Respondents committed a prejudicial abuse of discretion in approving the suction dredge mining regulations in contravention of the Fish and Game Code. The program approvals must be set aside. (Code Civ. Proc. §§ 1085, 1094.5).

THIRD CAUSE OF ACTION

DECLARATORY RELIEF
(By All Petitioners Against All Respondents)

60. Petitioners hereby incorporate by reference each and every allegation set forth above.

61. The Petitioners contend that the Department's decision to approve the suction dredge program constitutes a prejudicial abuse of discretion under the California Fish and Game Code section 5650 *et seq*., and CEQA (Public Resources Code § 21000 *et seq*.) The Petitioners further contend that the Department prejudicially abused its discretion by failing to take actions required by law.

62. The Department contends that their decisions, actions, and findings with respect to approval of the suction dredge program were and are lawful.

63. An actual controversy has arisen and now exists between the Petitioners and the Respondents regarding their respective rights and duties under the Fish and Game Code and CEQA.

64. The Petitioners desire a judicial determination and declaration of the parties' respective rights and duties, including a declaration of whether the decisions, actions, and findings of the Department with respect to with the Fish and Game Code, CEQA, and other legal requirements comply with the law. Such a declaration is necessary and appropriate at this juncture.

///

///

///

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

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

(A) to vacate and set aside approval of the program and findings supporting the approval;

(B) to vacate and set aside certification of the Final SEIR for the program;

(C) to suspend any and all activity pursuant to Respondents' approval of the program that could result in an adverse change or alteration to the physical environment, including the issuance of suction dredge permits, until Respondents have complied with all requirements of CEQA and all other applicable state and local laws, policies, ordinances, and regulations as are directed by this Court pursuant to Public Resources Code section 21168.9.

2. For a stay, temporary restraining order, preliminary injunction, and permanent injunction prohibiting any actions by Respondents pursuant to Respondents' approval of the program and certification of the EIR for the program until Respondents have fully complied with all requirements of CEQA, the Fish and Game Code, and all other applicable state and local laws, policies, ordinances, and regulations;

3. For a declaration that the program is inconsistent with CEQA and the Fish and Game Code;

4. For costs of the suit;

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

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

DATED: April 2, 2012

ENVIRONMENTAL LAW FOUNDATION

Lynne Saxton

Lynne Saxton, Counsel for all Petitioners

CENTER FOR BIOLOGICAL DIVERSITY

Jonathan Evans, Counsel for all Petitioners

VERIFICATION

I have read the foregoing Petition for Writ of Mandate and know its contents.

I am the Conservation Director of the Center for Biological Diversity, which is a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing document and know its contents. The matters stated in it are true of my own knowledge except as to those matters that are stated on information and belief, and as to those matters I believe them to be true.

Executed on April 2, 2012 at Shelter Cove, CA.

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

Peter Galvin
Center for Biological Diversity