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7 California State Lands Commission and California Department of Fish and Game

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF INYO**

11 SIERRA CLUB, and OWENS VALLEY  
12 COMMITTEE

13 Plaintiffs/Petitioners,

14 v.

15 CITY OF LOS ANGELES; LOS ANGELES  
DEPARTMENT OF WATER AND POWER;  
16 BOARD OF COMMISSIONERS OF THE  
DEPARTMENT OF THE DEPARTMENT OF  
WATER AND POWER; GERALD GEWE;  
17 GENE COUFAL; and DOES 1 - 50,

18 Defendants/Respondents

19 COUNTY OF INYO; CALIFORNIA  
20 DEPARTMENT OF FISH AND GAME; and  
CALIFORNIA STATE LANDS  
21 COMMISSION and DOES 51 - 100

22 Real Parties in Interest.  
23

**CASE NO. S1CVCV01-29768**

**CROSS-COMPLAINT OF CALIFORNIA  
STATE LANDS COMMISSION AND  
CALIFORNIA DEPARTMENT OF FISH  
AND GAME; PETITION FOR WRIT OF  
MANDATE (CODE OF CIV. PROC. §  
1085); COMPLAINT FOR  
DECLARATORY RELIEF**

**Action Date: 12/24/01**

**Trial Date: None set.**

24 The California State Lands Commission and the California Department of Fish and Game  
25 (hereafter “petitioners”) allege:

26 **INTRODUCTION**

27 1. This is an action to require the City of Los Angeles (the “City”) and its  
28 Department of Water and Power (“DWP”) to keep their longstanding, repeated promises to

1 implement the Lower Owens River Project (the “LORP”), which will restore about 60 miles of  
2 the Lower Owens River. The LORP is a mitigation measure for environmental damage caused by  
3 the City’s groundwater pumping in Inyo County, beginning in 1970. In 1973, the Court of  
4 Appeal held that the City and DWP were operating their groundwater project in violation of the  
5 California Environmental Quality Act (Pub. Resources Code § 21000 *et seq.*) and issued a writ of  
6 mandate. To cure their violation of CEQA, and to mitigate the damage that their groundwater  
7 pumping project caused, the City and DWP adopted several mitigation measures, the most  
8 important of which is the LORP. When several parties continued to argue that the City and DWP  
9 had not complied with CEQA, the City and DWP reiterated their commitment to implement the  
10 LORP in a 1997 Memorandum of Understanding (“MOU”), which specifies a series of deadlines  
11 for the project. But the City and DWP have missed all the deadlines. The project is nearly three  
12 years behind schedule. Meanwhile, the City and DWP continue to operate their groundwater  
13 pumping project without this mitigation.

14 2. The City and DWP have no discretion, legally, to continue to operate their  
15 groundwater pumping project without the promised mitigation. Petitioners seek a writ of  
16 mandate, declaratory relief, and other remedies to require the City and other named respondents  
17 to comply with CEQA and to keep the City’s commitment to implement the LORP.

## 18 PARTIES

19 3. Petitioner California State Lands Commission (the “Commission”) is a state  
20 agency. The Commission participated as an *amicus curiae* in litigation between Inyo County and  
21 the City to require the City to complete an EIR for its groundwater pumping project (*see County*  
22 *of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185), and it is a party to a MOU, which  
23 settled that litigation in 1997.

24 4. Petitioner California Department of Fish and Game (the “Department”) is a state  
25 agency. The Department participated as an *amicus curiae* in the litigation between Inyo County  
26 and the City to require the City to complete an EIR for its groundwater pumping project (*see*  
27 *County of Inyo, supra*, 71 Cal.App.3d 185), and it is a party to the MOU.

1           5.       Respondent City of Los Angeles is a municipal corporation organized under a city  
2 charter and the laws of the State of California. At all times relevant to this petition, the City  
3 exported, and continues to export, surface water and groundwater from the Owens Valley for use  
4 in the City of Los Angeles. The City is a party to the MOU.

5           6.       Respondent Los Angeles Department of Water and Power (“DWP”) is a  
6 department of the City. Under the City’s charter, DWP manages and controls the City’s assets in  
7 the Owens Valley, including the City’s facilities for pumping and exporting groundwater. DWP is  
8 a party to the MOU. DWP is governed by respondent Board of Water and Power Commissioners  
9 (“DWP Board”).

10          7.       Petitioner is informed and believes, and therefore alleges, that respondent Gerald  
11 Gewe is an employee of DWP and holds the position of Chief Operating Officer—Water System.  
12 Gewe, on information and belief, is responsible for implementing the LORP in compliance with  
13 CEQA, the 1991 resolutions adopted by DWP and the City (described below), and the MOU.

14          8.       Petitioner is informed and believes, and therefore alleges, that respondent Gene  
15 Coufal is an employee of DWP and holds the position of Manager, Aqueduct Business Group.  
16 Coufal, on information and belief, is responsible for implementing the LORP in compliance with  
17 CEQA, the 1991 resolutions adopted by DWP and the City (described below), and the MOU.

18          9.       Other interested parties are already joined in this litigation. The plaintiffs in the  
19 underlying litigation—the Owens Valley Committee (“OVC”) and the Sierra Club—are California  
20 nonprofit corporations that participated as *amici curiae* in the litigation between Inyo County and  
21 the City to require the City to complete an EIR for its groundwater pumping project (*see County*  
22 *of Inyo, supra*, 71 Cal.App.3d 185), and they are parties to the MOU. County of Inyo (the  
23 “County”), which is a real-party-in-interest in the underlying litigation, was the petitioner in  
24 *County of Inyo, supra*, 71 Cal.App.3d 185, and it is a party to the MOU.

25          10.       Petitioners are unaware of the true names and identities of DOES 1 through 50  
26 and sue such unnamed defendants by their fictitious names. Petitioners are informed and believe,  
27 and therefore allege, that these DOES also are responsible for all acts and omissions described in  
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1 this cross-complaint and petition. When the true identities and capacities of the DOES have been  
2 determined, petitioners will amend this complaint to include such identities and capacities.

3 11. Petitioners are unaware of the true names and identities of DOES 51 through 100  
4 and sue such unnamed real parties in interest by their fictitious names. Petitioners are informed  
5 and believe, and therefore allege, that these DOES have an interest in the subject of this cross-  
6 complaint and petition. When the true identities and capacities of these DOES have been  
7 determined, petitioners will amend this complaint to include such identities and capacities.

### 8 **JURISDICTION AND VENUE**

9 12. This Court has jurisdiction over the matters alleged in this cross complaint and  
10 petition under Code of Civil Procedure sections 526, 527 and 1060, and Code of Civil Procedure  
11 sections 1085-88. Venue is proper under Code of Civil Procedure section 394(a).

### 12 **GENERAL ALLEGATIONS**

13 13. The Owens Valley has been subject to adverse environmental effects of the City's  
14 water-gathering activities since 1913, when it completed its first aqueduct to export water from  
15 Inyo County to Los Angeles. Since 1913, the City's actions led to the drying up of Owens Lake,  
16 adversely affected parts of the Owens River, its tributary streams, and its associated vegetation  
17 and wildlife, adversely affected areas of groundwater-dependent vegetation, and dried up springs.  
18 The City and DWP acknowledged these effects in a 1991 environmental impact report.

19 14. In 1970, respondents City and DWP constructed a second aqueduct to export  
20 water from Inyo County to the City. The City and DWP proposed to supply the aqueduct, in part,  
21 by increasing the amount of groundwater that they pump in Inyo County (hereafter, the  
22 "groundwater pumping project").

23 15. In 1972, the County of Inyo sued the City and DWP, claiming that the City and  
24 DWP violated CEQA by failing to prepare an EIR prior to approving and carrying out their  
25 groundwater pumping project.

26 16. In 1973, the Court of Appeal agreed with the County and ordered the issuance of a  
27 preemptory writ of mandate that required the City and DWP to prepare an EIR that complies with  
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1 CEQA. The Court of Appeal also issued an injunction that limited the City's groundwater  
2 operations. This litigation continued until 1997.

3 17. To comply with the writ, in 1991, the City and DWP completed and certified an  
4 environmental impact report (the "1991 EIR"). Had they complied with CEQA in the first  
5 instance, the City and DWP would have certified an EIR prior to approving the groundwater  
6 pumping project, and thus the City and DWP would have identified measures to avoid or lessen  
7 significant environmental impacts *before* they occurred. Because the City and DWP did not do  
8 so, in violation of CEQA, the 1991 EIR described the environmental impacts of the groundwater  
9 pumping project *after* they occurred. The 1991 EIR also evaluated the potential environmental  
10 impacts of a modification of the project pursuant to an agreement with the County called the Inyo  
11 County/Los Angeles Long Term Water Agreement (the "Inyo-Los Angeles Agreement").

12 18. In the 1991 EIR, the City and DWP admitted that the groundwater pumping  
13 project had caused significant environmental impacts between 1970 and 1990, and it proposed  
14 numerous mitigation measures to lessen these impacts.

15 19. The City and DWP committed to implement the LORP, in part, to meet their  
16 obligation under CEQA to mitigate the significant environmental impacts of the groundwater  
17 pumping project. Specifically, the City and DWP adopted the LORP as a mitigation measure for  
18 significant environmental impacts of the groundwater pumping project to certain springs in the  
19 Owens Valley; for loss and reduction of marsh habitat; and for vegetation changes that were  
20 assumed to have had significant adverse impacts on certain wildlife species entirely dependent  
21 upon the impacted habitat. The LORP is a compensatory mitigation measure under CEQA  
22 Guidelines (title 14, Cal. Code of Reg.) section 15370(e).

23 20. The LORP would restore flows to about 60 miles of the lower Owens River,  
24 which has been partly dry since the City diverted the river into its first aqueduct in 1913, and it  
25 would enhance wildlife habitat in the Owens Lake delta and other areas.

26 21. On October 15, 1991, the DWP Board passed a resolution in which it certified the  
27 1991 EIR and made findings required by CEQA, and on October 18, 1991, the City Council  
28

1 passed a nearly identical resolution (together, the “1991 resolutions”). In the 1991 resolutions,  
2 the City Council and DWP Board took the following actions:

- 3 • They found that the mitigation measures proposed in the 1991 EIR would mitigate  
4 the significant environmental impacts of the groundwater pumping project as  
5 required by Public Resources Code section 12081(a).
- 6 • They found that the LORP would provide compensatory mitigation under CEQA  
7 for impacts difficult to quantify or directly mitigate.
- 8 • They adopted the mitigation measures proposed in the EIR, including the LORP.
- 9 • They found that, pursuant to Public Resources Code section 21081(a), the  
10 groundwater pumping project, as mitigated, will not have a significant effect on the  
11 environment.
- 12 • They adopted a mitigation “Monitoring Plan,” pursuant to Public Resources Code  
13 § 21081.6.

14 22. Petitioners are informed and believe, and therefore allege, that the City Council  
15 and DWP Board have not rescinded or modified these actions, and the 1991 resolutions remain in  
16 full force and effect. True and correct copies of the 1991 resolutions are attached as Exhibits A  
17 and B.

18 23. The City and DWP also committed to implement the LORP in the Inyo-Los  
19 Angeles Agreement, which the City Council approved, and the City and DWP executed, in 1991.  
20 The agreement described the LORP as both a mitigation measure and as a feature of the  
21 groundwater pumping project. The Inyo-Los Angeles Agreement stated that a management plan  
22 for the LORP was already in preparation and would be completed by June 1992.

23 24. Petitioners are informed and believe, and therefore allege, that the City and DWP  
24 have been planning the LORP since at least 1991.

25 25. In October 1991, the City and DWP submitted the 1991 resolutions, the Inyo-Los  
26 Angeles Agreement, and the 1991 EIR to the Court of Appeal and moved for an order  
27 discharging the writ.

1           26.     The Commission, the Department, the Owens Valley Committee and the Sierra  
2 Club, which had joined the proceedings as amici curiae, raised numerous objections to the 1991  
3 EIR. The Commission and the Department contended, *inter alia*, that the City and DWP had not  
4 made a binding and unequivocal commitment to implement the LORP.

5           27.     In 1997, the City and DWP made the following commitments:

- 6           •     DWP, as the lead agency under CEQA, would release a draft EIR for the LORP by  
7                 June 13, 2000;
- 8           •     DWP would present a final EIR to its Board of Commissioners for certification as  
9                 soon as possible following the draft EIR;
- 10          •     DWP would commence implementation of certain features of the project (the  
11                 Owens River Delta Habitat Area, Off-River Lakes and Ponds, and the Blackrock  
12                 Waterfowl Habitat Area) immediately after certifying the final EIR;
- 13          •     DWP would commence flows of 40 cubic feet per second (cfs) in the lower Owens  
14                 by June 13, 2003.

15          The City, DWP, the Commission, the Department, the Owens Valley Committee, the Sierra Club,  
16 and the County memorialized these commitments in the MOU.

17           28.     The MOU was submitted to the Court of Appeals. On June 13, 1997, the Court of  
18 Appeals discharged the writ.

19           29.     Respondents have repeatedly failed to meet deadlines for the LORP. Respondents  
20 have neglected the LORP, unreasonably delayed the LORP, failed to make timely decisions  
21 concerning the LORP and its design, and failed to give the LORP sufficient priority to meet the  
22 deadlines set forth in the MOU, other interim deadlines, their own work-schedules, and work-  
23 schedules and deadlines for their consultants.

24           30.     Respondents are aware, or should have been aware, that their failure to make  
25 timely decisions, complete a project design that complies with the MOU, and meet deadlines for  
26 the LORP could result in litigation or other disputes that could further delay the project.  
27 Nevertheless, they have failed, and continue to fail, to do so.

1           31.     The MOU provides that the June 13, 2003, deadline for baseflows in the river may  
2 be extended for specific circumstances beyond DWP's control, which have not occurred. The  
3 other MOU parties have not agreed to extend this deadline. DWP missed the deadline.

4           32.     Petitioners are informed and believe, and therefore allege that respondents City and  
5 DWP profit from the delay of the LORP and other delayed mitigation measures, including the  
6 Hines Spring project and other mitigation described in the MOU that require 1,600 acre-feet of  
7 water per year, by (1) diverting to their aqueduct and otherwise using the water that respondents  
8 would have committed to these projects; (2) generating electrical power from that water; and (3)  
9 avoiding the cost of replacing the portion of that water which DWP would not recover with a  
10 pumpstation.

11           33.     In compliance with a dispute resolution provision of the MOU, on September 24,  
12 2003, the Owens Valley Committee and the Sierra Club sent a letter to DWP, which was joined  
13 by the petitioners in a letter dated September 25, 2003. The letter contended that DWP had  
14 breached the MOU with respect to the LORP, a provision related to yellow-billed cuckoo habitat  
15 (MOU, section III, A, 1), a provision related to additional mitigation in the form of 1,600 acre-  
16 feet of water annually that DWP must provide at Hines Spring and other locations (MOU, section  
17 III, A, 3), and a requirement that DWP prepare an annual report (MOU, section III, H.) The  
18 MOU parties met but were unable to resolve the dispute.

19           34.     Petitioners have a clear, present, and beneficial right to the performance of  
20 respondents' duties. The Commission and the Department have been engaged in this matter since  
21 at least the early 1990s, as *amici* in the litigation concerning the EIR for the groundwater  
22 pumping project, as signatories to the MOU, as responsible agencies under CEQA, and as state  
23 agencies interested in ensuring, on behalf of the citizens of the State, that public agencies comply  
24 with CEQA and avoid or mitigate environmental damage where feasible. The Commission owns  
25 land on which part of the LORP will be implemented and expects to lease that land to DWP. The  
26 Department will have a regulatory role in the LORP. Petitioners have a clear, present, and  
27 beneficial interest in the environmental benefits that the LORP will provide.







1 mitigation measures or provide for effective enforcement measures of the mitigation. Rather, they  
2 have thwarted effective enforcement of the mitigation.

3 49. In their 1991 resolutions, the City and DWP committed to change the groundwater  
4 pumping project by incorporating the LORP into it, as a mitigation measure, in compliance with  
5 Public Resources Code section 21081(a)(1). But they have not done so.

6 50. In the Inyo-Los Angeles Agreement, the City and DWP agreed to commence  
7 construction of the LORP within three years after the Court approved the stipulation and order,  
8 i.e., by June 13, 2000. This provision was superceded, however, by the schedule in the MOU.

9 51. The MOU was intended to ensure that the LORP would be implemented  
10 expeditiously and according to the negotiated deadlines set forth in the MOU. But the City and  
11 DWP have now missed the deadlines, including the June 13, 2003 deadline for 40 cfs baseflows.  
12 There are no specific deadlines left to enforce. Moreover, respondents are using the MOU to  
13 block enforcement of their legal duties by arguing that the MOU excuses their failure to complete  
14 the LORP and to cure their ongoing violation of CEQA.

15 52. Under Public Resources Code § 21081.6(b), respondents City and DWP have a  
16 clear, present, and ministerial duty to provide effective measures to ensure that the LORP is fully  
17 enforceable.

18 **FIFTH CAUSE OF ACTION**  
19 **(Against respondents Gewe and Coufal;**  
20 **failure to comply with resolution by DWP Board of Directors)**

21 53. Petitioners incorporate by reference paragraphs 1 through 52, above.

22 54. On October 15, 1991, the DWP Board adopted a resolution in which it committed  
23 to implement the LORP and adopted the LORP as a mitigation measure under CEQA.

24 55. Respondents Gewe and Coufal have a clear, present, and ministerial duty to  
25 comply with the resolution by taking the necessary steps to implement the LORP.

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1 2. As to the second cause of action, petitioners pray that this Court issue a writ of mandate  
2 directing respondents City and DWP to comply with CEQA by implementing the LORP, a  
3 mitigation measure that they adopted, as follows:

4 (a) respondents shall take the necessary steps to implement the LORP, or take other  
5 such action as is necessary to comply with CEQA, by a specific date, or series of dates, to be  
6 determined by the Court;

7 (b) respondents shall provide detailed, interim progress reports to the MOU parties  
8 and meet with them in good faith to resolve their concerns in a manner that best avoids further  
9 delay of the LORP, and

10 (c) respondents shall refrain from carrying out their groundwater pumping project, to  
11 a degree determined by the Court, until they comply with the writ.

12 Petitioners further pray that the Court impose additional groundwater pumping limitations  
13 or other coercive sanctions, as the Court deems appropriate, until the respondents comply with  
14 the writ. Petitioners request that the Court retain jurisdiction by way of a return to the writ until  
15 the Court determines that the City and DWP have complied with the writ.

16 3. As to the third cause of action, Petitioners pray that the Court issue a writ of mandate  
17 directing respondents to implement an effective mitigation monitoring plan in compliance with  
18 Public Resources Code section 21081.6(a)(1) as follows:

19 (a) respondents shall fully comply with the mitigation Monitoring Plan adopted by the  
20 DWP Board and the City Council;

21 (b) respondents shall implement the mitigation Monitoring Plan in such a way as to  
22 ensure that the LORP is expeditiously completed as planned, in compliance with Public Resources  
23 Code Section 20181.6(a)(1) and tit. 14, California Code of Regulations, section 15097;

24 (c) Defendants Gewe and Coufal shall ensure that the monitoring report submitted to  
25 the DWP Board is accurate, complete, timely and sufficiently detailed so that the DWP Board can  
26 take the necessary actions to ensure that the LORP is expeditiously implemented as planned.

27 Petitioners further pray that the Court impose groundwater pumping limitations or other  
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1 coercive sanctions, as the Court deems appropriate, until the respondents comply with the writ.  
2 Petitioners request that the Court retain jurisdiction by way of a return to the writ until the Court  
3 determines that the City and DWP have complied with the writ.

4 4. As to the fourth cause of action, petitioners pray that the Court issue a writ of mandate  
5 directing respondents City and DWP to ensure that the LORP is effectively and fully enforceable  
6 under Public Resources Code section 21081.6 as follows:

7 (a) Respondents shall comply with their 1991 resolutions, and the findings in those  
8 resolutions that they adopted under Public Resources Code section 21081(a)(1), and the MOU,  
9 by taking the necessary steps to change their groundwater pumping project by incorporating the  
10 LORP into the groundwater pumping project by a specific date, or series of dates, to be  
11 determined by the Court; and

12 (b) respondents shall provide detailed, interim progress reports to the MOU parties and  
13 meet with them in good faith to resolve their concerns in a manner that best avoids further delay  
14 of the LORP.

15 Petitioners further pray that the Court impose groundwater pumping limitations or other  
16 coercive sanctions, as the Court deems appropriate, until the respondents comply with the writ.  
17 Petitioners request that the Court retain jurisdiction by way of a return to the writ until the Court  
18 determines that the City and DWP have complied with the writ.

19 5. As to the fifth cause of action, petitioners pray that the Court issue a writ of mandate  
20 directing respondents Gewe and Coufal to comply with DWP's 1991 resolution as follows:

21 (a) respondents shall take the necessary steps to implement the LORP by a specific  
22 date, or series of dates, to be specified by the Court unless and until DWP modifies or rescinds its  
23 adoption of the LORP as a mitigation measure in compliance with CEQA; and

24 (b) respondents shall provide detailed, interim progress reports to MOU parties and  
25 meet with them in good faith to resolve their concerns in a manner that best avoids further delay  
26 of the LORP.

27 Petitioners further pray that the Court impose groundwater pumping limitations or other  
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1 coercive sanctions, as the Court deems appropriate, until the respondents comply with the writ.  
2 Petitioners request that the Court retain jurisdiction by way of a return to the writ until the Court  
3 determines that the City and DWP have complied with the writ.

4 6. As to the sixth cause of action, petitioners pray that the Court issue a writ of mandate  
5 directing defendants Gewe and Coufal to comply with the City's 1991 resolution as follows:

6 (a) to take the necessary steps to implement the LORP by a specific date, or series of  
7 dates, to be specified by the Court unless and until the City modifies or rescinds its adoption of  
8 the LORP as a mitigation measure in compliance with CEQA; and

9 (b) respondents shall provide detailed, interim progress reports to MOU parties and  
10 meet with them in good faith to resolve their concerns in a manner that best avoids further delay  
11 of the LORP.

12 Petitioners further pray that the Court impose groundwater pumping limitations or other  
13 coercive sanctions, as the Court deems appropriate, until the respondents comply with the writ.  
14 Petitioners request that the Court retain jurisdiction by way of a return to the writ until the Court  
15 determines that the City and DWP have complied with the writ.

16 7. As to the seventh cause of action, petitioners pray that this Court declare, pursuant to  
17 Code of Civil Procedure section 1060, that: (1) The City and DWP have breached their duty to  
18 commence baseflows of 40 cfs in the lower Owens River; and (2) the City and DWP have  
19 breached their duty to commence the other features of the project. In addition, petitioners pray  
20 that this Court issue: (3) an order that requires DWP to implement the LORP by specific  
21 deadlines to be determined by the Court; and (4) preliminary and permanent injunctions  
22 restraining and enjoining the City and DWP from carrying out their groundwater pumping project,  
23 to a degree determined by the Court, until they comply with the order.

24 8. As to the eighth cause of action, petitioners pray that this Court declare, pursuant to Code  
25 of Civil Procedure section 1060, that: (1) the City and DWP have breached the MOU with respect  
26 to the evaluation of yellow-billed cuckoo habitat; (2) the City and DWP have breached the MOU  
27 with respect to the additional mitigation that DWP must implement at Hines Spring and other  
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1 locations with 1,600 acre-feet of water annually; and (3) the City and DWP have breached the  
2 MOU by failing to issue an annual report related to environmental conditions in the Owens  
3 Valley. In addition, petitioners pray that this Court: (4) issue an order that requires DWP to take  
4 the necessary steps to complete these projects in compliance with the MOU by specific deadlines  
5 to be determined by the Court.

6 9. Additionally, as to all causes of action, petitioners pray for costs of suit herein and for  
7 other such further relief as this Court may deem proper.

8 Dated: December 4, 2003

9 Respectfully Submitted,

10 BILL LOCKYER  
11 Attorney General of the State of California  
12 DANIEL L. SIEGEL  
13 Supervising Deputy Attorney General

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18 Commission and California Department of Fish  
19 and Game  
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