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SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

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11 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF HUMBOLDT
13

14 CALIFORNIANS FOR ALTERNATIVES TO
TOXICS, a California non-profit corporation,

15 Petitioner,

16 v.

17 CALIFORNIA DEPARTMENT OF PARKS AND
18 RECREATION; DEPARTMENT OF AGRICULTURE
COUNTY OF HUMBOLDT; and DOES 1 through 30,

19 Respondents.
20 _____ /

CASE NO: **CV070745**

PETITION FOR WRIT OF
MANDATE AND INJUNCTIVE
RELIEF AND ATTORNEYS'
FEES

[Code Civ. Proc. § 1085; Pub.
Res. Code § 21168.5]

21
22 Petitioner alleges:

GENERAL ALLEGATIONS

23 1. Petitioner, in bringing this action, challenges the respective approvals by the
24 California Department of Parks and Recreation ("DPR") and Department of Agriculture County
25 of Humboldt ("County") of the Purple Loosestrife Project. Petitioner, Californians for
26 Alternatives to Toxics ("CATs") is a citizen group concerned with the protection of the
27 environment and compliance with environmental laws, including the California Environmental
28

1 Quality Act, Public Resources Code section 21000 et seq. (“CEQA”). DPR and the County
2 approved the Purple Loosestrife Project without required environmental review or public
3 involvement pursuant to CEQA, wrongly characterizing the project as categorically exempt from
4 CEQA. By doing so, these Respondents have failed to evaluate the significant environmental
5 effects associated with the Purple Loosestrife Project, including the short-term and long-term use
6 of herbicides to control the vegetation and the cumulative effects associated with such use.
7 Rather than consider and evaluate the impacts of the use of harmful and dangerous products,
8 DPR and the County failed to properly evaluate consider such use, thereby ignoring impacts to
9 water quality, soils, air quality and the human and natural environments.

10 **PARTIES**

11 2. Petitioner, CALIFORNIANS FOR ALTERNATIVES TO TOXICS (“CATs”) is a
12 nonprofit public interest group, which has advocated on behalf of its members regarding
13 herbicide use in forests and other uses of pesticides for twenty-five years. CATs seeks to advise
14 and advocate public concerns regarding toxic chemicals in the environment through organizing,
15 education, advocacy and building community leadership. This mission is grounded in a broader
16 concern about the sustainability of the environment. CATs and its members are actively
17 involved in local, regional, national and international government and regulatory processes
18 concerning the use of toxic chemicals, including pesticides and herbicides such as those used to
19 remove vegetation. CATs is located in Humboldt County, California.

20 3. Members of CATs depend for their livelihood, health, culture and well-being on
21 the viability of vegetation and land throughout California. Its members live throughout
22 California. Members also observe, study, recreate, gather or otherwise enjoy the biologic,
23 scientific and aesthetic benefits of clean water and land throughout California. Members use the
24 drinking water of and recreate within and along the South Fork and main stem of the Eel River
25 and in the areas where the Purple Loosestrife Project is being implemented. Members of CATs
26 have an interest in knowing that California remains alive with wildlife and natural wonders, still
27 beautiful and available to enjoy and utilize.

28 4. The above-described health, occupational, recreational, scientific, cultural,

1 Procedure section 1085 and California Public Resources Code sections 21167 and 21168.5.

2
3 **THE PROJECT AND ITS COURSE OF REVIEW**

4 11. This action challenges the legality of the decisions of Respondents to proceed
5 with the "Purple Loosestrife Removal Project," as named by DPR and the "Purple Loosestrife
6 Project," as named by the County, without complying with the California Environmental Quality
7 Act ("CEQA") (Public Resources Code sections 21000 et seq.) and the attendant guidelines
8 (California Code of Regulations, Title 14, sections 15000 et seq.). The project shall hereinafter
9 be referred to as "Purple Loosestrife Project" or simply "project." Respondents are subject to the
10 requirements of CEQA when evaluating a project that may have a significant effect on the
11 environment. The Purple Loosestrife Project is a "project," or part of a "project," as that term is
12 defined by CEQA.

13 12. The Purple Loosestrife Project is a project of both DPR and the County in which
14 these Respondents will use toxic chemicals to remove a plant species, Purple Loosestrife, within
15 and along the Eel River, annually for up to 8 to 10 years in duration. Purple Loosestrife is an
16 invasive aquatic plant that can crowd out native vegetation in marshes, wetlands and river
17 communities. It was first discovered in Humboldt County in 1997, and was successfully
18 eradicated using non-toxic measures. Over the past six years, a larger population of purple
19 loosestrife has developed in Southern Humboldt County. Respondents have known for years of
20 the need to stop the spread of purple loosestrife. The Purple Loosestrife Project seeks to
21 eradicate purple loosestrife along approximately 25 miles of the South Fork and main stem of the
22 Eel River over the course of the next two to ten years, using toxic chemicals rather than
23 biological weed control programs which have been used successfully to eradicate purple
24 loosestrife.

25 13. Respondents intend to use the herbicide imazapyr to remove purple loosestrife,
26 and add Competitor, a modified vegetable oil concentrate, to the herbicide as a spray adjuvant.
27 Imazapyr is very stable to hydrolysis reactions in the environment, with its persistence
28 increasing the likelihood that it may cause impacts long after it is sprayed. Imazapyr is also very

1 water soluble and mobile in the environment, which can lead to contamination of sites distant
2 from the treatment areas. Drift and/or runoff to non-target plants may affect nearby vegetation,
3 creating an area that can easily be colonized again by purple loosestrife seeds present in the soil.
4 Endangered plant species such as Beach layia (*Layia carnosia*), an endangered native plant found
5 in the Eel River watershed, may also be affected by drift or runoff from treatment sites. Potential
6 adverse effects of Competitor, the adjuvant being used in this project, were not evaluated. Oils
7 can block oxygen diffusion into surface waters and collect in shallow habitat areas that are
8 essential for growth and development of many aquatic organisms. Imazapyr is much more toxic
9 to vascular plants than non-vascular plants such as blue-green algae. The potential effects of
10 imazapyr treatments on the toxic algal blooms of *Microcystis meruginosa* that have plagued the
11 Eel River in recent years were not examined. Removal of vascular aquatic plants by imazapyr
12 runoff and/or spray drift could promote greater algal growth, as competition for nutrients would
13 be reduced.

14 14. These chemical treatments over time will accelerate the replacement of native
15 plant species by purple loosestrife. In the long term (> 5 years), chemical treatments fail to
16 provide control of loosestrife populations. Application methods can also limit the efficacy and
17 increase the adverse effects of the herbicide mixture, for example when herbicides are sprayed
18 from a boat, increasing the opportunity for applications to miss the target plant, harming non-
19 target plans, contaminating soil, and entering water.

20 15. DPR and the County each approved the Purple Loosestrife Project prior to July
21 10, 2007, without conducting any environmental review pursuant to CEQA, or engaging the
22 public in order to receive comment on significant environmental effects associated with the
23 project. On July 10, 2007 Respondents conducted an invitation-only meeting for the purpose of
24 announcing and soliciting support for their decisions and the project. On July 13, 2007,
25 Respondents conducted a public meeting in a remote location, announced only through an article
26 in the local newspaper one day earlier, in which they again announced and solicited support for
27 their decisions and the project. At no time did the DPR or the County solicit public comment to
28 inform environmental review for decision(s) approving the Purple Loosestrife Project. The

1 stated position of the agencies was that the decision had been made and spraying would
2 commence immediately. Respondents then claimed a categorical exemption from CEQA with
3 respect to Purple Loosestrife Project based on CEQA Guidelines sections 15304 and 15308.

4 16. Petitioner received the County's categorical exemption on August 15, 2007 and
5 learned of the DPR categorical exemption on August 24, 2007. Spraying commenced on August
6 14, 2007. Petitioner is now forced to proceed under Public Resources Code section 21167 to
7 preserve its right of action.

8 17. Petitioner was given no opportunity to articulate its concern over the Purple
9 Loosestrife Project and the Respondents' claims of CEQA exemption. Petitioner contends that
10 the Respondents prejudicially abused their discretion in that they violated CEQA and its
11 implementing Guidelines in that the Categorical Exemptions used for the decisions of approval
12 are wholly inadequate in the identification and analysis of specific and cumulative environmental
13 impacts. Such failure does not provide an adequate data base for the formulation of adequate
14 mitigation measures and alternatives. Such impacts include, but are not limited to, impacts to
15 endangered plant species, aquatic health, and loss of native plant species.

16 18. Petitioner contends that Respondents prejudicially abused their discretion in that
17 they have not considered and analyzed the ways in which the activities outlined herein
18 cumulatively will be adversely significant.

19 19. Petitioner has no plain, speedy, or adequate remedy at law in that if Respondents
20 are allowed to go forward with the Purple Loosestrife Project and unless the requested
21 mandatory and injunctive relief is granted, Petitioner will be irreparably harmed, for which harm
22 money and the other legal remedies cannot adequately compensate it.

23 20. In pursuing this action, Petitioner will confer a substantial benefit on the People
24 of the State of California and therefore is entitled to recover from Respondents reasonable
25 attorney's fees pursuant to Section 1021.5 of the Code of Civil Procedure.

26 21. Petitioner has provided notice of the commencement of this action to
27 Respondents.

28

FIRST CAUSE OF ACTION
(VIOLATION OF CEQA)

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2
3 22. Petitioner incorporates by reference all preceding paragraphs.

4 23. Respondents have not complied with CEQA with respect to the Purple Loosestrife
5 Project because the project is not exempt from CEQA pursuant to Guidelines section 15304,
6 which exempts minor alterations to the conditions of land. The Purple Loosestrife Project is not
7 a minor alteration to the condition of land, as it will introduce toxic chemicals into the
8 environment, on land and in the Eel River, which may have a significant effect on the
9 environment, including loss of native species over the long-term, impacts to endangered plant
10 species, introduction of herbicides into soils, impacts to aquatic organisms, and increase in algal
11 growth. It thus cannot qualify for an exemption.

12 24. Nor is the Purple Loosestrife Project exempt from CEQA pursuant to Guidelines
13 section 15308, which exempts actions taken by regulatory agencies to assure maintenance,
14 restoration, enhancement, or protection of the environment, because the Purple Loosestrife
15 Project will introduce toxic chemicals into the environment. These chemicals can have a
16 significant effect on and degrade the aquatic and plant environment of the Eel River watershed.

17 25. An exemption may not be claimed when the cumulative impact of successive
18 projects of the same type in the same place over time is significant or when there is a reasonable
19 possibility that the activity will have a significant effect on the environment due to unusual
20 circumstances. (CEQA Guidelines §15300.2 (b), (c).) The Purple Loosestrife Project will have
21 significant cumulative impact on plants and water from successive years of introduction of
22 herbicides, and will have significant effect on the environment due to unusual circumstances,
23 including from recolonization of purple loosestrife in treated areas more quickly than with native
24 species.

25 26. CEQA is intended to inform governmental decisionmakers and the public of the
26 environmental consequences of a proposed activity and to identify the ways environmental
27 damage can be avoided. (CEQA Guidelines §15002.) Respondents have abused their discretion
28 and failed to implement this basic purpose of CEQA by not engaging the public, not disclosing,

1 ignoring, and not addressing, the potential significant environmental effects of the Purple
2 Loosestrife Project, including impacts to endangered plant species, aquatic organisms, and native
3 plants.

4 27. Respondents are mandated to disclose significant adverse effects upon the
5 environment, and to discuss and adopt feasible alternatives and mitigation measures to eliminate
6 or substantially lessen all significant impacts upon the environment. (Pub. Res. Code §21081;
7 CEQA Guidelines §§15126, 15064 subds. (c), (h), and §15092.) Moreover, CEQA, its
8 implementing Guidelines and case law require an analysis of cumulative impacts or any long
9 term effects of the proposed project which adversely affect the state of the environment. In
10 enacting CEQA, the Legislature intended that “public agencies should not approve projects as
11 proposed if there are feasible alternatives or feasible mitigation measures available which would
12 substantially lessen the significant environmental effects of such projects . . .” (Pub. Res. Code
13 §21002.) CEQA requires government agencies “to consider alternatives to proposed actions
14 affecting the environment.” (Pub. Res. Code §21001, subd.(g).) Moreover, “CEQA establishes
15 a duty for public agencies to avoid or minimize environmental damage where feasible.”
16 (Guidelines, §15021, subd. (a); Pub. Res. Code §§21001, 21002.1.) The discussion of
17 alternatives must form an “alternative capable of eliminating any significant adverse
18 environmental effects or reducing them to a level of insignificance, even if these alternatives
19 would impede to some degree the attainment of the project objectives, or would be more costly.”
20 (CEQA Guidelines, §15126, subd.(d).)

21 28. Respondents prejudicially abused their discretion and failed to proceed in a
22 manner required by law in that they have not disclosed, analyzed, or mitigated significant
23 adverse effects of and considered and adopted feasible alternatives for the Purple Loosestrife
24 Project. Among those alternatives which should have been carefully considered and evaluated
25 within a public process are the use of biological weed control program as more effective than
26 manual or chemical removal as potentially one of the least-damaging control methods for purple
27 loosestrife.

28

1 will be irreparably damaged.

2 WHEREFORE, Petitioner requests judgment against Respondents as follows:

3 1. For an alternative and peremptory writ of mandate directing Respondents to set
4 aside their respective claimed exemptions from CEQA and invalidating the respective notices of
5 exemption issued by the Respondents;

6 2. For a temporary stay order, temporary restraining order, and preliminary and
7 permanent injunctions restraining Respondents, their agents, employees, officers, and
8 representatives from undertaking any action or issuing contracts to implement in any way the
9 above-described Purple Loosestrife Project pending proper compliance with CEQA;

10 3. For costs of suit;

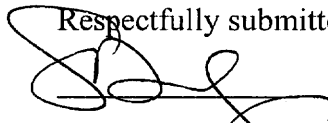
11 4. For attorney fees pursuant to section 1021.5 of the Code of Civil Procedure;

12 5. For such other and further relief as the court deems just and proper.

13

14 Dated September 13, 2007

Respectfully submitted,



Sharon E. Duggan
Julia A. Olson
Attorneys for Petitioner

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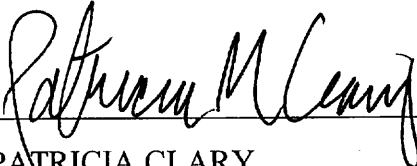
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1 VERIFICATION

2 I, PATRICIA CLARY, state:

3 CATs is the petitioner in this proceeding. I am the Programs Director for CATs and am
4 authorized to make this verification on behalf of CATs. I have read the foregoing petition and
5 the matters stated in it are true of our own knowledge.

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct and that this verification was executed on September 13, 2007 in
8 Eureka, California.

9 
10 PATRICIA CLARY

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LAW OFFICES OF SHARON E. DUGGAN

370 Grand Avenue Suite 5
Oakland, CA 94610
(510) 271-0825

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September 13, 2007

Director Ruth Coleman
California Department of Parks and Recreation
1416 Ninth Street
P.O. Box 942896
Sacramento, CA 94296-0001

John E. Falkenstrom, Agricultural Commissioner
Department of Agriculture
County of Humboldt
5630 South Broadway
Eureka, CA 95503

RE: Notices of Exemptions filed for Purple Loosestrife Removal Project and Purple Loosestrife Project

Dear Agency, Officers and Directors:

This is to advise you that this office has been retained to and will file an action against the above listed parties on behalf of Californians for Alternatives to Toxics your respective approvals of the above referenced Purple Loosestrife Removal Project and Purple Loosestrife Project. The action shall be filed as soon as possible, on or about September 14, 2007. This notice is sent to you pursuant to Public Resources Code 21167.5.

This action shall be premised upon, among other things, violations of the California Environmental Quality Act.

Very truly yours,


Sharon E. Duggan

sed/fw

Exhibit A

1 **DECLARATION OF SERVICE**

2 I, SHARON E. DUGGAN, declare:

3 I am, and was at the time of the service hereinafter mentioned over the age of eighteen
4 and not a party to the above-entitled cause. My business address is 370 Grand Avenue Suite 5,
Oakland, California 94610 and I am a resident of or employed in the County of Alameda,
California.

5
6 On September 14, 2007 I served the attached PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR INJUNCTIVE RELIEF AND ATTORNEYS FEES on the attorney
general addressed as follows:

7
8 Jerry Brown
California State Attorney General
455 Golden Gate Avenue Suite 11000
9 San Francisco, CA 94102

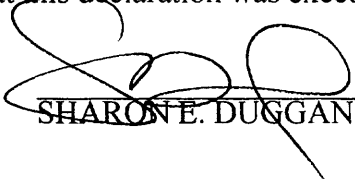
10 XXX **BY FIRST CLASS MAIL** by depositing a sealed envelope in the United States Postal
11 Service in the ordinary course of business on the same day it is collected in Oakland,
California postage fully prepaid.

12 **BY FACSIMILE MACHINE** by personally transmitting a true copy thereof via a
13 facsimile machine at approximately ____ a.m./p.m. on _____

14 **BY FEDERAL EXPRESS or UNITED PARCEL SERVICE** overnight delivery by
15 personally depositing in a box or other facility regularly maintained by Federal Express
or United Parcel Service, an express service carrier, or delivered to a courier or driver
authorized by said express service carrier to receive documents.

16 **BY HAND DELIVERY** by personally delivering a true copy thereof in an envelope
17 addressed to the parties identified above at the addresses given for those parties.

18 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct, and that this declaration was executed on September 14, 2007 in
Oakland, California.

19
20 
SHARON E. DUGGAN