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10 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF SAN FRANCISCO  
12

13 LOS PADRES FORESTWATCH, a non profit  
corporation,

14 Petitioner,

15 v.

16 CALIFORNIA DEPARTMENT OF FISH AND  
17 GAME; and DOES 1 - 10,

18 Respondents.

19 NEAL DOW, and DOES 11 - 20,

20 Real Parties in Interest.  
\_\_\_\_\_ /

21 Petitioner alleges:  
22

23 **GENERAL ALLEGATIONS**

24 1. Petitioner, in bringing this action, challenges the Respondent California  
25 Department of Fish and Game's ("DFG") approval of "Grazing Lease Extension (Lease #  
26 CP2005-01-R3) for the Chimineas Unit, Carrizo Plains Ecological Reserve" ("Project"), which  
27 allows commercial livestock grazing in the Carrizo Plains Ecological Reserve. Petitioner, Los  
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1 Padres ForestWatch, is a citizen group concerned with the protection of the environment and  
2 compliance with environmental laws, including the California Environmental Quality Act,  
3 Public Resources Code section 21000 et seq. (“CEQA”). Respondent approved the Project  
4 without required environmental review or public involvement pursuant to CEQA, and with  
5 complete disregard for CEQA’s requirements to evaluate potential significant environmental  
6 impacts associated with the discretionary Project. By doing so, Respondent has failed to  
7 evaluate the significant environmental effects associated with the Project, including the short-  
8 term and long-term effect of livestock grazing on biological and natural resources and the  
9 cumulative effects associated with such use within the Carrizo Ecological Reserve in relation to  
10 the overall resource management and uses of the Reserve consistent with Respondent’s mission.  
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13 **PARTIES**  
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15 2. Petitioner, LOS PADRES FORESTWATCH, is a California nonprofit  
16 conservation organization working to protect the natural and cultural heritage of the Los Padres  
17 National Forest and adjacent publicly-owned lands, including the Carrizo Plain Ecological  
18 Reserve. ForestWatch is supported by more than 900 members who value the region's open  
19 spaces for wildlife habitat, scenic landscapes, and outdoor recreation opportunities.  
20

21 ForestWatch’s Range Restoration Program aims to reduce the environmental impacts of public  
22 lands livestock grazing on the Los Padres National Forest and Carrizo Plains by ensuring that  
23 adequate safeguards are in place to protect resources from damage caused by overgrazing,  
24 trampling, streambank erosion, and the spread of invasive weeds. Careful management of  
25 livestock grazing is particularly important on lands, such as these, that provide habitat for several  
26 species of endangered, threatened, or sensitive plants and wildlife as well as important wetlands  
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1 like riparian areas and vernal pools. Members of ForestWatch depend for their livelihood,  
2 health, culture and well-being on the viability of the natural resources of the Los Padres National  
3 Forest and the Carrizo Plains. Members live throughout California. Members also observe,  
4 study, recreate, gather or otherwise enjoy the biologic, scientific and aesthetic benefits of natural  
5 resources within the Los Padres National Forest and the Carrizo Plains. Members of  
6 ForestWatch have an interest in knowing that California remains alive with wildlife and natural  
7 wonders, still beautiful and available to enjoy and utilize.  
8  
9

10 3. The above-described health, occupational, recreational, scientific, cultural,  
11 inspirational, education, aesthetic and other interests of Petitioner will be adversely and  
12 irreparably injured by the respondent's failure to comply with CEQA and its implementing  
13 regulations. These are actual, concrete injuries to Petitioners and its members that would be  
14 redressed by the relief sought herein. Petitioner has no adequate remedy at law.  
15

16 4. Petitioner sues on behalf of itself and all others similarly situated. Petitioner is  
17 comprised of residents of the State of California who are united by the following common  
18 interests of law and fact: all are "interested persons" in the aesthetic enjoyment and continued  
19 productivity of the land, in the preservation of wildlife species at self-perpetuating population  
20 levels, in environmental protection, and in the protection of domestic water supplies and water  
21 quality.  
22

23 5. Petitioners for whom this action is commenced are so numerous that it is  
24 impractical at this time to bring them all into this action individually as parties hereto. Proof of a  
25 common or single state of facts and law will establish the right of each member wronged by the  
26 acts of Respondent as more particularly alleged herein.  
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1 **THE PROJECT AND ITS COURSE OF REVIEW**

2 11. This action challenges the legality of DFG’s approval of the “Grazing Lease  
3 Extension (Lease # CP2005-01-R3) for the Chimineas Unit, Carrizo Plains Ecological Reserve,  
4 without complying with the California Environmental Quality Act (“CEQA”) (Public Resources  
5 Code sections 21000 et seq.) and the attendant guidelines (California Code of Regulations, Title  
6 14, sections 15000 et seq.). The challenged project shall hereinafter be referred to as “Project.”  
7 Respondent is subject to CEQA requirements when authorizing a discretionary project that may  
8 have a significant effect on the environment. The Project is such a “project,” or part of a  
9 “project,” as that term is defined by CEQA.  
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12 12. The Carrizo Plains Ecological Reserve (“Reserve”) is managed by DFG and  
13 includes more than 30,000 acres of ecologically sensitive habitat linking the Los Padres National  
14 Forest and the Carrizo Plains National Monument. This includes an area described as the 15,355  
15 acre Chimineas Ranch. (Cal.Code Regs., tit. 14, §630(b)(33).) Ecological reserves are  
16 established to provide protection for rare, threatened or endangered native plants, wildlife,  
17 aquatic organism and specialized terrestrial or aquatic habitat types. The primary purpose of  
18 DFG’s ownership and operation of the Reserve is for wildlife conservation, and specifically to  
19 conserve grasslands, blue oak and juniper woodlands, tule elk, and at least 26 sensitive,  
20 threatened or endangered species, including the burrowing owl and San Joaquin kit fox. The  
21 grazing of livestock is expressly prohibited on any ecological reserve, except that grazing may  
22 be allowed for habitat or vegetation management purposes under permit from DFG. (Cal.Code  
23 Regs., tit. 14, §630(a)(15).)  
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1           13.     In October 2006 DFG entered into a three year Grazing Lease Agreement with  
2 Real Party Neal Dow for the Carrizo Plains Ecological Reserve Chimineas Unit North  
3 Chimineas Ranch Addition, Lease No. CP2005-01-R3 (“2006 Grazing Lease”), allowing cattle  
4 grazing on approximately 12,000 acres of the Reserve for a three-year term. The 2006 Grazing  
5 Lease provides that the Lessee’s use of the premises must be compatible with protection of the  
6 biological resources of the Reserve property. The 2006 Grazing Lease states that its purpose is  
7 to provide maintenance of existing facilities, site security, management of grazing, and a single  
8 grazing operator common to the Reserve and adjacent federal lands. The 2006 Grazing Lease  
9 does not state that the grazing is for the purpose of habitat or vegetation management. The 2006  
10 Grazing Lease is conditioned on numerous mitigation measures intended to ensure that grazing  
11 is compatible with protection of the Reserve. DFG did not conduct any public notice or  
12 environmental review pursuant to CEQA for the 2006 Grazing Lease. By its terms, the Lease  
13 expired on October 16, 2009 unless extended or sooner terminated in accordance with its terms.

17           14.     Under the authorization of the 2006 Grazing Lease, livestock grazing has caused  
18 and is causing significant environmental degradation to the Reserve, including but not limited to  
19 severe overgrazing, broken and inadequate fencing, trampled wetlands and springs, and cattle  
20 trespass into areas where grazing is expressly prohibited. Much of the grazed area is bare soil or  
21 nearly bare, with residual dry matter estimated at 100 pounds per acre or less, well below the  
22 1,000 pound standards required by the lease agreement. DFG has acknowledged that operations  
23 under the 2006 Grazing Lease has resulted in portions of the Carrizo Plains Ecological Reserve  
24 being over-utilized by the livestock grazing, and these detrimental conditions have been  
25 exacerbated by a multi-year drought.

1           15. Fish and Game Code section 1019 requires DFG to develop a Land Management  
2 Plan for the Reserve within 18 months of recorded ownership. Management plans are written to  
3 provide the necessary information for consistent and effective management of DFG lands, fulfill  
4 environmental analysis requirements, and support operational and infrastructural funding. DFG  
5 has failed to timely develop a Land Management Plan as required by law.  
6

7           16. On August 26, 2009 DFG extended the 2006 Grazing Lease to October 1, 2012  
8 (“Project”), and granted the right to conduct grazing on the Reserve without conducting or  
9 acknowledging the need for environmental review pursuant to CEQA, and without engaging the  
10 public in order to receive comment on significant environmental effects associated with the  
11 project. DFG further conditioned the Project on mitigation requirements.  
12

13           17. Petitioner was given no opportunity to articulate concerns over the 2006 Grazing  
14 Lease or the 2009 Grazing Project and Respondent’s failure to follow CEQA. Petitioner  
15 contends that Respondent prejudicially abused its discretion by not providing environmental  
16 review for the Project in accordance with CEQA and its implementing Guidelines.  
17

18           18. Petitioner contends that Respondent prejudicially abused its discretion in that  
19 DFG has not considered and analyzed the ways in which the grazing activities outlined herein  
20 are cumulatively adversely significant.  
21

22           19. Petitioner has no plain, speedy, or adequate remedy at law in that if Respondent is  
23 allowed to authorize the Project and the Real Party is allowed to conduct activity pursuant to the  
24 Project, and unless the requested mandatory and injunctive relief is granted, Petitioner will be  
25 irreparably harmed, for which harm money and the other legal remedies cannot adequately  
26 compensate it.  
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1           26.     Respondent prejudicially abused its discretion by failing to act in accordance with  
2 CEQA and conduct environmental review for the Project. Respondent prejudicially abused its  
3 discretion by failing to implement a basic purpose of CEQA by not engaging the public, and by  
4 not disclosing, ignoring, and not addressing, the potential significant environmental effects of the  
5 Project, including impacts to endangered plant and wildlife species, and natural ecosystems.  
6

7           27.     Respondent is mandated to disclose significant adverse effects upon the  
8 environment, and to discuss and adopt feasible alternatives and mitigation measures to eliminate  
9 or substantially lessen all significant impactst. (Pub. Res. Code §21081; Cal.Code Regs., tit. 14,  
10 §§15126, 15064 subds. c, h, and §15092.) Moreover, CEQA, its implementing Guidelines and  
11 case law require an analysis of cumulative impacts or any long term effects of the proposed  
12 project which adversely affect the state of the environment. In enacting CEQA, the Legislature  
13 intended that “public agencies should not approve projects as proposed if there are feasible  
14 alternatives or feasible mitigation measures available which would substantially lessen the  
15 significant environmental effects of such projects . . .” (Pub. Res. Code §21002.) CEQA requires  
16 government agencies “to consider alternatives to proposed actions affecting the environment.”  
17 (Pub. Res. Code §21001, subd. g.) Moreover, “CEQA establishes a duty for public agencies to  
18 avoid or minimize environmental damage where feasible.” (Cal.Code Regs., tit. 14, §15021,  
19 subd. a; Pub. Res. Code §§21001, 21002.1.) The discussion of alternatives must form an  
20 “alternative capable of eliminating any significant adverse environmental effects or reducing  
21 them to a level of insignificance, even if these alternatives would impede to some degree the  
22 attainment of the project objectives, or would be more costly.” (Cal.Code Regs., tit.14, §15126,  
23 subd. d.)  
24  
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1           28.     CEQA requires an EIR when there is a fair argument supported by substantial  
2 evidence in the record that a proposed project has the potential for significant impact on the  
3 environment. An EIR is required when, inter alia, a project has the potential to substantially  
4 degrade the quality of the environment, or has possible environmental effects which are  
5 individually limited but cumulatively considerable. (Cal.Code Regs., tit. 14, §15065.)  
6

7           29.     The Project has the potential for significant environmental impacts, including, but  
8 not limited to, impacts from overgrazing, fencing disrepair, trampled wetlands and springs, and  
9 cattle trespass into areas not designated for grazing. Respondent approved the Project without  
10 CEQA review, even though Respondent was aware of these potential impacts. Respondent  
11 prejudicially abused its discretion and failed to proceed according to the law by not conducting  
12 environmental review under CEQA and by not developing an EIR for the Project.  
13

14           30.     Respondent prejudicially abused its discretion and failed to proceed in a manner  
15 required by law in that it has not disclosed, analyzed, or mitigated significant adverse effects of,  
16 and considered and adopted feasible alternatives for, the Project, and has proceeded with the  
17 Project in the absence of a required Land Management Plan.  
18

19  
20                                   **SECOND CAUSE OF ACTION**

21                                   **(DECLARATORY RELIEF)**

22           31.     Petitioner incorporates by reference all preceding paragraphs  
23

24           32.     An actual and present controversy exists between Petitioner and Respondent as to  
25 whether Respondent may continue to authorize livestock grazing activity on the Carrizo Plains  
26 Ecological Reserve without any review of environmental impacts under CEQA, and without  
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1 having completed the Land Management Plan for the Reserve, as is required by Fish and Game  
2 Code section 1019.

3  
4 33. Petitioner contends that Respondent is required by CEQA and by its statutory and  
5 regulatory obligations in managing the Carrizo Plains Ecological Reserve to assess the impacts  
6 of livestock grazing under CEQA before it authorizes any future grazing on the Reserve, and to  
7 ensure that livestock grazing does not have significant cumulative impacts on the Reserve  
8 through the completion of the required Land Management Plan.

9  
10 34. Respondent claims that it is not required to conduct CEQA review for livestock  
11 grazing authorization on the Reserve and further may continue to authorize livestock grazing  
12 activity despite the absence of the required Land Management Plan.

13  
14 35. Petitioner seeks a judicial determination on the current controversy existing  
15 between Petitioner and Respondent, and a declaration that Respondent may not authorize  
16 livestock grazing activity in the absence of the required CEQA review and completion of the  
17 Land Management Plan.

18  
19 36. Such a declaration is necessary and appropriate at this time in order that Petitioner  
20 may ascertain the right to have Respondent act in accordance with CEQA and its obligations to  
21 manage the Reserve.

22  
23 37. Unless restrained by this Court, Respondent will continue to act as if it may  
24 authorize livestock grazing on the Reserve in the absence of CEQA review and without having  
25 completed the required Land Management Plan. Absent a declaration from this Court,  
26 Respondent's approach is likely to lead to repetitive litigation and a waste of public resources.

1 Thus Petitioner seeks declaratory relief that Respondent's approach is unlawful based on the  
2 actual and present controversy that has arisen. (*See* Code Civ. Proc. § 1060.)

3 WHEREFORE, Petitioner requests judgment against Respondent as follows:  
4

5 1. For a peremptory writ of mandate directing Respondent DFG to set aside its  
6 August 26, 2009 approval and authorization of Grazing Lease Extension (Lease # CP2005-01-  
7 R3) for the Chimineas Unit, Carrizo Plains Ecological Reserve;

8 2. For a temporary stay order, temporary restraining order, and preliminary and  
9 permanent injunctions restraining Respondent and Real Party In Interest, its agents, employees,  
10 officers, and representatives from undertaking any action or issuing contracts to implement or  
11 continue in any way the above-described Grazing Lease Extension (Lease # CP2005-01-R3) for  
12 the Chimineas Unit, Carrizo Plains Ecological Reserve pending proper compliance with CEQA;  
13

14 3. For a declaratory judgment that Respondent DFG may not authorize livestock  
15 grazing on the Reserve in the absence of CEQA review and completion of the Land Management  
16 Plan;  
17

18 4. For costs of suit;

19 5. For attorney fees pursuant to section 1021.5 of the Code of Civil Procedure;

20 6. For such other and further relief as the court deems just and proper.  
21  
22

23 Dated February 22, 2010

Respectfully submitted,

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26 \_\_\_\_\_  
Sharon E. Duggan  
Michael W. Graf  
Attorneys for Petitioner  
27  
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1 **VERIFICATION**

2 I, Sharon E. Duggan do declare:

3  
4 1. I am an attorney at law duly admitted and licensed to practice before all courts of  
5 this State. I have my professional office at 370 Grand Avenue Suite 5 in Oakland, California,  
6 94610.

7 2. I am an attorney of record for Petitioner. The Petitioner does not have its have its  
8 place of business in Alameda County in which I have my office. For that reason, I make this  
9 verification on its behalf.

10 3. I have read the foregoing Verified Petition for Writ of Mandate; the factual  
11 allegations therein are true of my own knowledge, except as to those matters which are therein  
12 stated upon my information or belief, and as to those matters I believe them to be true.

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

15 Executed on the 22<sup>nd</sup> day of February 2010 at Oakland, California.

16 \_\_\_\_\_  
17 Sharon E. Duggan.  
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1 **DECLARATION OF SERVICE**

2 I, SHARON E. DUGGAN, declare:

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

8  
9 On February 22, 2010 I served the attached VERIFIED PETITION FOR WRIT OF  
10 MANDATE on the attorney general addressed as follows:

11  
12 Edmund G. Brown Jr.  
13 California State Attorney General  
14 455 Golden Gate Avenue Suite 11000  
15 San Francisco, CA 94102

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

19 \_\_\_\_\_ **BY FACSIMILE MACHINE** by personally transmitting a true copy thereof via a  
20 facsimile machine at approximately \_\_\_\_\_ a.m./p.m. on \_\_\_\_\_.

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

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

27  
28 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 February 22, 2010 in  
Oakland, California.

\_\_\_\_\_  
SHARON E. DUGGAN

Exhibit "B"