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IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

CENTER FOR BIOLOGICAL DIVERSITY, Petitioner, vs. CALIFORNIA FISH AND GAME COMMISSION, and CALIFORNIA DEPARTMENT OF FISH AND GAME, Respondents, and, CALIFORNIA FORESTRY ASSOCATION, Intervenor-Respondent.	Case No.: CGC-10-505205 ORDER GRANTING PETITION FOR WRIT OF MANDATE Date Filed: November 9, 2010

The Petition for Writ of Mandate by Center for Biological Diversity (Petitioner) against the California Fish and Game Commission and Department of Fish and Game (Respondents), and the California Forestry Association (Intervenor-Respondent), came on regularly for hearing in Department 302 of the above court on April 24, 2012, the Honorable Harold E. Kahn presiding. The record of the administrative proceedings having been received into evidence and examined by the Court, and the Court having considered the parties' briefs opposing and supporting the petition, and

the oral argument of counsel for all parties,

IT IS ORDERED, ADJUDGED and DECREED:

1. The petition for writ of mandate is GRANTED for the following reasons:

   a. The Petition for Writ of Mandate challenged Respondent California Fish and Game Commission's (Commission) decision to deny Petitioner's petition, filed on January 23, 2008, to list the fisher as either threatened or endangered under the California Endangered Species Act (CESA; Fish & G. Code, § 2050 et seq.,) and Respondent Department of Fish and Game's (Department) failure to perform its non-discretionary duty to "solicit independent and competent peer review of the department's status report whenever possible." (Cal. Code. Reg., § 670.1, subd. (f)(2); Fish & G. Code, § 2074.6.)

   b. The Commission voted to reject Petitioner's petition on June 23, 2010, and adopted its Notice of Findings in support thereof on September 15, 2010.

   c. As set forth in the Notice of Findings, in reaching its decision, the Commission failed to proceed in a manner required by law by:

      Relying on a Status Report prepared by the Department that was not peer reviewed, as required by California Code of Regulations, Title 14, section 670.1(f)(2), and Fish and Game Code section 2074.6, or "based upon the best scientific information available," as required by Fish and Game Code section 2074.6. This violation constitutes a prejudicial abuse of discretion. (Code Civ. Proc., §1094.5, subd. (b).)

   d. In addition, the Department failed to perform its mandatory duty to "seek independent and competent peer review of the department status report whenever possible," as required by California Code of Regulations, Title 14, section 670.1(f)(2), and Fish and Game Code section 2074.6. This violation of law constitutes a failure to "perform[] an act which the law specifically enjoins." (Code Civ. Proc., § 1085, subd. (a).)

2. A writ of mandamus shall issue from this court, remanding the proceedings to

Respondents for further proceedings in accordance with this Order. Specifically, the writ shall order:

a. the Department to solicit independent and competent peer review of the Department's Status Report and recommendation whether listing the fisher is warranted; and

b. the Commission to set aside its Notice of Findings and to reconsider its decision in light of this Order, after receipt of the Department's properly peer reviewed Status Report.

3. Petitioner may submit a Memorandum of Costs and request for attorney's fees.

Petitioner's counsel should submit a proposed writ in accordance with this order.

IT IS SO ORDERED

Dated: July 20, 2012

HAROLD E. KAHN
Judge of the Superior Court