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8  
9 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO

10 CENTER FOR BIOLOGICAL DIVERSITY, ) Case No.:  
11 a non-profit organization, )  
12 Petitioner, ) VERIFIED PETITION FOR  
13 vs. ) WRIT OF MANDATE  
14 )  
15 CALIFORNIA FISH AND GAME COMMISSION, )  
16 a state agency, )  
17 Respondent. )

18 **INTRODUCTION**

19 1. This lawsuit is the latest chapter in an ongoing effort to ensure that American pikas  
20 are afforded protection under the California Endangered Species Act (“CESA”). The story begins  
21 on August 21, 2007, when the Center for Biological Diversity (“Center”) petitioned the California  
22 Fish and Game Commission (“Commission”) to list pikas as “threatened” under CESA. The  
23 Center’s petition described in detail pikas’ unique sensitivity to global warming, and it referenced  
24 numerous scientific studies indicating that pika populations are declining in tandem with rising  
25 temperatures.

26 2. On April 10, 2008, the Commission concluded that the Center’s petition did not  
27 present sufficient scientific information to indicate that listing pikas as threatened may be warranted.  
28 The Commission adopted cursory findings in support of its conclusion on June 27, 2008.

1           3.       The Center brought suit in this Court on August 19, 2008, on the grounds that the  
2 Commission had applied an erroneous and unduly burdensome legal standard and had otherwise  
3 abused its discretion in rejecting the Center’s listing petition. (See *Center for Biological Diversity v.*  
4 *California Fish & Game Comm’n*, Case No. CPF-08-508759.) Briefing on the merits of the Center’s  
5 claims concluded on March 9, 2009, and the case was heard by the Honorable Peter S. Busch on  
6 April 16, 2009. At the conclusion of oral argument, the Court held that the Commission had failed  
7 to proceed in the manner required by law by demanding evidence that pikas “will” be listed, rather  
8 than simply evidence that pikas “could” qualify for listing following more rigorous scientific review,  
9 which is the proper legal standard at this stage of the listing process. (See *Natural Resources*  
10 *Defense Council v. California Fish and Game Comm’n* (1994) 28 Cal. App. 4th 1104, 1125.) The  
11 Court therefore entered judgment in favor of the Center on May 11, 2009 and remanded to the  
12 Commission with instructions to vacate its findings and to reconsider whether pikas may warrant  
13 listing in light of the correct legal standard.

14           4.       During remand, the Center provided the Commission with additional information  
15 indicating that pikas may warrant listing under CESA. This included a study published in the  
16 journal *Science* on October 8, 2008 entitled “Impact of a Century of Climate Change on Small  
17 Mammal Communities in Yosemite National Park, USA,” which found that high-elevation  
18 mammals, including pikas, have “typically experienced range contractions” in accordance “with the  
19 predicted impacts of climate warming.” In addition, the Center advised the Commission that on  
20 May 7, 2009, the United States Fish and Wildlife Service announced that pikas may warrant listing  
21 under the federal Endangered Species Act due to global warming. (See 74 Fed. Reg. 21301.)

22           5.       The latest chapter in this story begins on June 24, 2009, when the Commission voted  
23 to reject the pika petition once again, ostensibly on the grounds that there is insufficient information  
24 to indicate that listing pikas as threatened may be warranted. The Commission adopted written  
25 findings in support of this determination on October 1, 2009. According to the Commission, these  
26 findings “corrected the erroneous statement of the legal standard, but are otherwise substantially  
27 identical to the [findings] adopted in June 2008.” The “new” findings essentially ignore the  
28 additional information provided by the Center during remand. Indeed, it is readily apparent that the

1 Commission did not genuinely “reconsider” at all whether pikas may warrant listing in keeping with  
2 this Court’s judgment and writ. Instead, the Commission simply directed its counsel to revise its  
3 earlier findings to state the correct listing standard, without actually reconsidering the scientific  
4 information in light of that standard.

5 6. As set forth below, the Commission has once again prejudicially abused its discretion  
6 in rejecting the Center’s petition to list pikas as threatened under CESA. Because the evidence in the  
7 administrative record would lead any reasonable person to conclude that there is a substantial  
8 possibility that pikas could be listed following further scientific review, the Center seeks, among  
9 other things, a writ of mandate directing the Commission to determine forthwith whether listing the  
10 species as threatened throughout all or a significant portion of its range is indeed warranted.

#### 11 **JURISDICTION AND VENUE**

12 7. The Commission’s decision to reject the Center’s petition to list pikas as threatened  
13 under CESA is subject to judicial review under Section 1094.5 of the Code of Civil Procedure. (Fish  
14 & G. Code § 2076.)

15 8. Venue remains proper in the Superior Court for the County of San Francisco, because  
16 the Commission is a state agency based in Sacramento County and the California Attorney General  
17 has an office in San Francisco. (Code Civ. P. §§ 395(a), 401(1).)

#### 18 **PARTIES**

19 9. Petitioner Center for Biological Diversity is a non-profit 501(c)(3) corporation with  
20 offices in San Francisco, Joshua Tree, and San Diego, California; Phoenix and Tucson, Arizona;  
21 Pinos Altos, New Mexico; Portland, Oregon; and Washington, D.C. The Center has over 40,000  
22 members throughout the United States and the world and works through science, law, and policy to  
23 secure a future for all species hovering on the brink of extinction. The Center is actively involved in  
24 species and habitat protection throughout the western United States, including protection of the  
25 American pika. The Center brings this action on its own behalf and on behalf of its adversely  
26 affected members and staff.

27 10. The Center’s members and staff include individuals with a wide variety of interests in  
28 pikas and their alpine habitat, ranging from scientific, professional and educational to recreational,

1 aesthetic, moral and spiritual interests. The Center authored and submitted the petition to protect  
2 pikas under CESA, and its members and constituents are adversely affected and aggrieved by the  
3 Commission's refusal to make the pika a candidate for protection under the statute. Without the  
4 substantial protections of CESA, pikas are more likely to continue to decline and become extinct.  
5 The Center and its members are therefore injured because their use and enjoyment of pikas is  
6 threatened by the species' decline and possible extinction. These are actual, concrete injuries to the  
7 Center, caused by the Commission's failure to comply with the CESA. The relief requested will  
8 fully redress those injuries.

9 11. Respondent California Fish and Game Commission is a five member State board,  
10 appointed by the Governor, charged with final decision making authority for the designation of  
11 candidate, threatened and endangered species under CESA. This lawsuit challenges the  
12 Commission's decision to reject a petition to list the American pika as threatened under CESA.

#### 13 **FACTUAL BACKGROUND**

14 12. American pikas (*Ochotona princeps*) belong to the order *Lagomorpha*, which also  
15 includes rabbits and hares. Pikas are alpine specialists, found primarily in talus fields fringed by  
16 meadows on the rocky slopes of high mountains. Adults weigh less than a half pound, but their  
17 dense fur retains heat efficiently, and pikas remain active year-round without hibernating. They  
18 spend the short alpine summer collecting and caching the vegetation that will sustain them in their  
19 burrows during the long, harsh winters that follow.

20 13. There are 36 recognized subspecies of American pika, five of which inhabit  
21 California. The Taylor pika (*O. princeps taylori*) inhabits Modoc, Lassen and Siskiyou counties  
22 from 5,000 to 9,000 feet in elevation. The gray-headed pika (*O. princeps schisticeps*) inhabits the  
23 northern Sierra Nevada from Mount Shasta south to Donner Pass also at elevations from 5,000 to  
24 9,000 feet. The Yosemite pika (*O. princeps muiroi*) ranges from El Dorado County to Inyo County  
25 further south in the Sierra Nevada from 7,700 to 12,000 feet in elevation. The White Mountain pika  
26 (*O. princeps sheltoni*) inhabits Mono and Inyo counties at 8,000 to 13,000 feet in elevation to the  
27 east of the Sierra Nevada. Finally, the Mount Whitney pika (*O. princeps albata*) inhabits Tulare,  
28

1 Fresno, and Inyo Counties in the southern Sierra, from Kearsarge Pass to the headwaters of the Tule  
2 and Kern Rivers from 8,500 to 13,000 feet in elevation.

3 14. For a number of reasons, scientists have identified the American pika as a species that  
4 is particularly vulnerable to global warming. First, pikas succumb to hyperthermia – heat stroke – at  
5 relatively low temperatures compared to most other animals. The same thick fur that allows pikas to  
6 endure harsh winters above the tree line inhibits evaporative cooling and limits the species’ ability to  
7 dissipate heat. When ambient air temperatures reach just 78° Fahrenheit, pikas must search out  
8 cooler spaces under rocks, which curtails their ability to forage and results in decreased fecundity  
9 and increased mortality.

10 15. Second, much like the Arctic, the pika’s alpine habitat in western North America has  
11 been impacted more severely by global warming than other regions. Western temperatures have  
12 increased by 2 to 5° Fahrenheit during the past century, exceeding the average global temperature  
13 rise by more than double in many locations. Average winter temperatures in the West are projected  
14 to rise by 8.6 to 12.7° Fahrenheit by the end of this century; summer temperatures by 4.8 to 7.7°  
15 Fahrenheit. Western snowpacks have already decreased significantly as a result of global warming,  
16 and the snowline is projected to rise by approximately 500 feet for each additional 1.8° Fahrenheit  
17 increase in temperature. The loss of snowpack insulation exposes pikas to unbearable conditions in  
18 the winter.

19 16. Finally, while some animals may be able to adapt to global warming by moving north  
20 or upslope with the changing climate, most pika populations are already effectively marooned atop  
21 high mountains and have nowhere to go. Thus, scientists project that by 2100, even assuming  
22 relatively modest future emissions of greenhouse gases, suitable habitat for the American pika in  
23 California will be virtually eliminated except for a fragment of habitat in the central Sierra Nevada.

24 17. Several recent studies have confirmed that global warming is taking a heavy toll on  
25 American pikas. For example, researchers at the U.S. Geological Survey examined 25 historic pika  
26 populations in the Great Basin and found that seven (28%) have disappeared with increasing  
27 temperatures. Along the same lines, researchers at Santa Monica College surveyed 50 talus patches  
28 in the Bodie Hills of California and found that pika populations at 48 of these sites (96%) had been

1 rendered extinct in recent decades. In the adjacent region of Bodie State Historic Park in California,  
2 the number of patches occupied by pikas had declined by more than half between 1972 and 2008.

### 3 **STATUTORY BACKGROUND**

4 18. In 1970, California became one of the first states in the Union to enact a statutory  
5 scheme to protect endangered and rare animals. Fourteen years later, this original scheme was  
6 replaced with a new one modeled after the federal Endangered Species Act and known as the  
7 California Endangered Species Act (“CESA”).

8 19. In enacting CESA, the Legislature recognized that numerous species have been  
9 rendered extinct as a result of human activities; that other species are in danger of extinction; that  
10 California’s native species are of substantial ecological, educational, historical, recreational,  
11 aesthetic, economic and scientific value to the people of the state; and that the protection and  
12 enhancement of such species and their habitat is of statewide concern. (Fish & G. Code § 2051(c).)

13 20. CESA contains a number of procedural and substantive provisions that are designed  
14 to protect imperiled species and prevent further extinctions. However, with few exceptions, these  
15 protections do not apply unless a species is first listed by the Fish and Game Commission as either  
16 “endangered” or “threatened.” (Fish & G. Code § 2052.)

17 21. CESA defines a species as “endangered” if it is “in serious danger of becoming  
18 extinct throughout all, or a significant portion, of its range due to one or more causes, including loss  
19 of habitat, change in habitat, overexploitation, predation, competition, or disease.” (Fish & G. Code  
20 § 2062.) A species is defined as “threatened” if it is not presently threatened with extinction but “is  
21 likely to become an endangered species in the foreseeable future” in the absence of special  
22 protection and management efforts. (Fish & G. Code § 2067.)

23 22. Pursuant to CESA, an interested person may petition the Commission to list a species  
24 as threatened or endangered. (Fish & G. Code § 2071). The statute specifies certain information  
25 that must be included in the petition: for example, information regarding the species’ range,  
26 distribution, abundance, and life history. (Fish & G. Code § 2072.3.) The Commission returns  
27 petitions that do not contain the statutorily specified information to the petitioner within 10 days of  
28 receipt. (Tit. 14, Cal. Code Reg. § 670.1(b).)

1           23.     Within 10 days after receiving a listing petition that has been deemed complete, the  
2 Commission must refer the petition to the California Department of Fish and Game (“Department”).  
3 (Fish & G. Code § 2073.) The Department then has 90 days to prepare a report to the Commission  
4 that evaluates whether the petition contains sufficient information indicating that listing “may be  
5 warranted.” (Fish & G. Code § 2073.5.) During this review period, any interested person may  
6 submit relevant information to the Department. (Fish & G. Code § 2073.4.)

7           24.     Upon receiving the Department’s report, the Commission must determine at its next  
8 public meeting whether the petition – when considered together with the Department’s report and  
9 any comments received – provides sufficient information to indicate that listing the species may be  
10 warranted. (Fish & G. Code § 2074.2.) This “sufficient information” standard has been interpreted  
11 by a California Appellate Court as that which would “lead a reasonable person to conclude there is a  
12 substantial possibility the requested listing could occur.” (*Natural Resources Defense Council,*  
13 *supra*, 28 Cal. App. 4th at 1125.)

14           25.     If the Commission finds that a petition does not provide sufficient information to  
15 indicate that listing may be warranted, it must “publish a notice of finding that the petition is  
16 rejected, including the reasons why the petition is not sufficient.” (Fish & G. Code § 2074.2(a)(1).)

17           26.     If, on the other hand, the Commission finds that listing may be warranted, it must  
18 accept the petition and designate the species as a “candidate” for listing. (Fish & G. Code  
19 § 2074.2(a)(2).) Then begins a more exacting level of review. The Department has 12 months to  
20 complete a thorough evaluation of the species’ status and recommend to the Commission whether  
21 listing is indeed warranted. (Fish & G. Code § 2074.6.) Following receipt of the Department’s  
22 status review, the Commission holds an additional public hearing and determines finally whether to  
23 list the species as threatened or endangered. (Fish & G. Code § 2075.5.)

24           27.     Once a species is listed as threatened or endangered, state agencies may not approve  
25 projects that would jeopardize the species’ continued existence or result in the destruction or adverse  
26 modification of its essential habitat. (Fish & G. Code § 2053.) In addition, CESA directs all state  
27 agencies, boards and commissions to exercise their respective authorities to “conserve” threatened  
28 and endangered species. (Fish & G. Code § 2055.) The term “conserve” is defined broadly to

1 include all actions that are necessary to bring the species to the point at which protection under  
2 CESA is no longer necessary. (Fish & G. Code § 2061.)

### 3 **PROCEDURAL BACKGROUND**

4 28. The Center petitioned the Commission to list American pikas as “threatened” under  
5 CESA on August 21, 2007. Pursuant to Fish and Game Code section 2073, the Commission referred  
6 the Center’s petition to the Department for its review and evaluation on August 30, 2007.

7 29. In the course of its review, the Department sought input from four pika researchers,  
8 three of whom responded in support of the petition. Dr. Lyle Nichols confirmed that the Center’s  
9 petition “is essentially correct in all important aspects” and “all available evidence strongly supports  
10 the proposition that American pikas merit protection.” Dr. Edward West advised the Department  
11 that the petition “identifies a genuine potential problem with regard to the potential impacts of  
12 climate change on thermally sensitive species such as the pika,” and he confirmed that “lower  
13 elevation populations . . . would likely go extinct with increased temperatures.” Dr. Erik Beaver  
14 apparently advised the Department that he too supported the petition.

15 30. Only one of the four researchers approached by the Department, Dr. James Patton,  
16 took issue with the petition. Specifically, Dr. Patton faulted the petition for relying upon a  
17 preliminary analysis of pika populations in Yosemite National Park that he had co-authored. Dr.  
18 Patton agreed that the Yosemite data showed that pikas no longer inhabit their lowest known  
19 historical site in the central Sierra. However, he cautioned that the preliminary analysis of this data  
20 cited by the Center had been “rather awkwardly cobbled together” and was “not peer-reviewed (or  
21 even internally reviewed).”

22 31. On December 21, 2007, the Department provided the Commission with its written  
23 evaluation of the Center’s listing petition. In short, the Department confirmed that pikas in  
24 California are “biogeographically isolated in habitat patches referred to as ‘islands’ in areas having  
25 short summers, long winters with most days below freezing temperatures, and high annual rainfall”  
26 and that pikas are “vulnerable to even slight changes in climate.” The Department also  
27 acknowledged implicitly that climate is changing rapidly throughout the pika’s high-elevation  
28 habitat as a result of global warming. The Department nevertheless found that it is inconclusive



1 whether pika are declining in California as a result of global warming, and it therefore recommended  
2 that the Commission reject the petition.

3 32. On March 4, 2008, the Center submitted additional information to the Commission  
4 detailing the various factual and legal shortcomings in the Department’s evaluation and report and  
5 further demonstrating that listing the pika under CESA may be warranted. The Commission then  
6 held a public hearing on March 7, 2007, at the conclusion of which the Commission voted to  
7 continue its consideration of the petition at its next meeting.

8 33. On April 8, 2008, the Center submitted to the Commission two additional scientific  
9 studies indicating that California’s pika are at serious risk from global warming. One study  
10 employed state-of-the-art ecological models to conclude that – even assuming future greenhouse gas  
11 emissions are curtailed substantially – “suitable habitat for the American pika in California will be  
12 virtually eliminated except for a tiny fragment of habitat in the central Sierra Nevada.”

13 34. On April 10, 2008, the Commission held another public hearing, at the conclusion of  
14 which it voted to reject the Center’s petition. The Commission adopted cursory findings in support  
15 of this decision on June 27, 2008. The findings ultimately concluded that the Center’s petition  
16 “provided insufficient information range-wide regarding population trends and abundance and  
17 immediacy of threat for the Commission to adequately assess the threat and conclude that there was  
18 a substantial possibility that the species will qualify for listing.”

19 35. The Center brought suit in this Court challenging the Commission’s determination  
20 and findings on August 19, 2008, on the grounds that the Commission’s conclusion was premised on  
21 an erroneous legal standard and otherwise unsupported by substantial evidence in the record. (See  
22 *Center for Biological Diversity v. California Fish & Game Comm’n*, Case No. CPF-08-508759.)  
23 Briefing on the merits of the Center’s claims concluded on March 9, 2009.

24 36. On April 16, 2009, at the conclusion of oral argument, the Hon. Peter S. Busch held  
25 that the Commission had failed to apply the correct legal standard in rejecting the Center’s listing  
26 petition. The Court found that the relevant inquiry at the first stage of the listing process is whether  
27 the available information “would lead a reasonable person to conclude that there is a substantial  
28 possibility that the requested listing *could* occur.” (See *Natural Resources Defense Council, supra*,

1 28 Cal. App. 4th at 1125, emphasis added.) By contrast, the findings adopted by the Commission on  
2 June 27, 2008 stated erroneously that “the Commission is required to determine that it has  
3 information to persuade a reasonable person that there is a substantial possibility that the American  
4 pika *will* be listed.” Without reaching the merits of the Center’s additional claims, the Court  
5 concluded that the Commission had abused its discretion by failing to proceed in the manner  
6 required by law.

7 37. On May 11, 2009, the Court entered judgment in favor of the Center and remanded to  
8 the Commission with instructions to vacate its June 27, 2008 findings and to reconsider whether  
9 pikas may warrant listing in accordance with the correct legal standard.

10 38. On May 15, 2009, the Center provided the Commission with additional information  
11 indicating that pikas may warrant listing under CESA. For example, the Center provided the  
12 Commission with the final analysis of the Yosemite data discussed above, which was co-authored by  
13 Dr. Patton and published in the journal *Science* on October 8, 2008. The final study confirms that  
14 numerous high-elevation mammals, including pikas, have “experienced range contractions,” which  
15 “accords with the predicted impacts of climate warming.” In short, the final study resolves the  
16 uncertainty identified by Dr. Patton in his earlier correspondence with the Department.

17 39. In addition, the Center advised the Commission that on May 7, 2009, the United  
18 States Fish and Wildlife Service announced that pikas may warrant listing under the federal  
19 Endangered Species Act due to global warming. (See 74 Fed. Reg. 21301.) This and other  
20 information provided by the Center on May 15, 2009 further compelled the conclusion that pikas  
21 may warrant listing due to global warming.

22 40. The Commission did not direct the Department to prepare a new report and  
23 evaluation analyzing the available scientific information in accordance with the correct listing  
24 standard identified in this Court’s writ of mandate. Nor did the Commission’s own staff evaluate the  
25 Center’s listing petition in light of the correct listing standard and the additional evidence provided  
26 by the Center on May 15, 2009. Ultimately, the Commission never considered the available  
27 scientific information in light of the proper legal standard to determine whether listing pikas may be  
28 warranted.

1           41.     On June 24, 2009, the Commission voted to reject the Center’s listing petition once  
2 again. The Commission adopted written findings in support of this decision on October 1, 2009.  
3 The Commission’s findings are essentially identical to its earlier findings, revised to state the correct  
4 legal standard identified by this Court in its writ of mandate. With one minor exception, the new  
5 findings do not discuss the scientific evidence submitted by the Center on May 15, 2009.

6           42.     The Commission filed its Return to Writ of Mandate on October 13, 2009. The  
7 Center filed objections to the Return to Writ of Mandate on October 22, 2009, on the grounds that  
8 the Commission failed to reconsider whether pikas may warrant listing in accordance with this  
9 Court’s writ of mandate.

10          43.     By letter dated October 22, 2009, the Center notified the Commission that its decision  
11 to reject the pika listing petition violated CESA, and that the Center intended to file suit unless the  
12 Commission took immediate steps to remedy the violations. A true and correct copy of the Center’s  
13 October 22, 2009 letter is attached hereto as Exhibit 1. The Commission did not respond to the  
14 Center’s October 22, 2009 letter, and the Center has now exhausted its administrative remedies.

#### **FIRST CAUSE OF ACTION**

##### **(Failure to Proceed in the Manner Required by Law)**

17          44.     The Center re-alleges, as if fully set forth herein, each and every allegation contained  
18 in the preceding paragraphs.

19          45.     As detailed above, the Commission must designate a species as a candidate for  
20 possible listing under CESA if a listing petition, when considered together with the Department’s  
21 report and any public comments received by the Commission, provides sufficient information to  
22 indicate that listing may be warranted. (Fish & G. Code § 2074.2.) The courts have interpreted this  
23 standard to mean “that amount of information . . . that would lead a reasonable person to conclude  
24 there is a substantial possibility the requested listing could occur.” (*Natural Resources Defense*  
25 *Council, supra*, 28 Cal. App. 4th at 1125; see also *Center for Biological Diversity v. California Fish*  
26 *& Game Comm’n* (2008) 166 Cal. App. 4th 597, 611.)

27          46.     The evidence before the Commission clearly would lead a reasonable person to  
28 conclude that there is a substantial possibility that pikas could qualify for listing throughout all or a

1 significant portion of their range in California. The Commission therefore abused its discretion and  
2 failed to proceed in the manner required by law by rejecting on June 24, 2009 the Center’s petition  
3 to list the pika under CESA.

4 47. In rejecting the Center’s listing petition, the Commission also failed to give  
5 “meaningful consideration” to substantial evidence indicating that listing pikas may be warranted, as  
6 CESA requires. (*Natural Resources Defense Council, supra*, 28 Cal. App. 4th at 1126.) For  
7 example, the findings adopted by the Commission on October 1, 2009 fail to address evidence  
8 provided to the Commission showing that pikas may be threatened by global warming.

9 48. Finally, the Commission failed to consider whether any one of the five pika  
10 subspecies in California may warrant listing as threatened or endangered “throughout all throughout  
11 all, or a significant portion, of its range.” (Fish & G. Code §§ 2062, 2067.) Instead, the Commission  
12 concluded only that there was insufficient evidence “to warrant listing pikas within the Sierra  
13 Nevada ecoregion in California.” In this respect and in other respects, the Commission prejudicially  
14 abused its discretion by failing to proceed in the manner required by law.

## 15 SECOND CAUSE OF ACTION

### 16 (Failure to Adopt a Decision that Is Supported by the Findings)

17 49. The Center re-alleges, as if fully set forth herein, each and every allegation contained  
18 in the preceding paragraphs.

19 50. Under CESA, if the Commission determines that a listing petition does not provide  
20 sufficient information to indicate that the requested listing may be warranted, it must “publish a  
21 notice of finding that the petition is rejected, *including the reasons why the petition is not sufficient.*”  
22 (Fish & G. Code § 2074.2(a)(1), emphasis added.)

23 51. The findings adopted by the Commission on October 1, 2009 fail to bridge the  
24 analytic gap between the evidence before the Commission and the Commission’s decision to reject  
25 the Center’s petition to list pikas as threatened under CESA.

26 52. The Commission prejudicially abused its discretion by failing to adopt a decision that  
27 is supported by the findings.

1 **THIRD CAUSE OF ACTION**

2 **(Failure to Adopt Findings that Are Supported by Substantial Evidence)**

3 53. The Center re-alleges, as if fully set forth herein, each and every allegation contained  
4 in the preceding paragraphs.

5 54. To the extent that the Commission did adopt limited findings on October 1, 2009 in  
6 support of its decision to reject the Center’s petition to list California’s pika as threatened, those  
7 findings are unsupported by substantial evidence in the record.

8 55. The Commission prejudicially abused its discretion by adopting findings that are  
9 unsupported by substantial evidence in the record.

10 **FOURTH CAUSE OF ACTION**

11 **(Declaratory Relief)**

12 56. The Center re-alleges, as if fully set forth herein, each and every allegation contained  
13 in the preceding paragraphs.

14 57. The Center contends that the Commission’s decision to reject the petition to list  
15 California’s pika under CESA, its decision to deny the pika candidacy status, and its failure to  
16 prepare adequate findings in support of that decision constitute a prejudicial abuse of the  
17 Commission’s lawful discretion under CESA.

18 58. The Commission contends that its decision to reject the Center’s petition and deny  
19 California’s pika candidacy status was and is lawful.

20 59. An actual controversy has arisen and now exists between the Center and the  
21 Commission regarding their respective rights and duties under CESA.

22 60. The Center desires a judicial determination and declaration of the parties’ respective  
23 rights and duties, including a declaration of whether the Commission’s findings and conclusions  
24 with respect to the Center’s pika petition comport with CESA and other legal requirements. Such a  
25 declaration is necessary and appropriate at this juncture.

26 //

27 //

28 //

1 **REQUEST FOR RELIEF**

2 Wherefore, the Center respectfully requests relief as follows:

3 1. On the First, Second and Third Causes of Action, that the Court issue a writ of  
4 mandate commanding the Commission to set aside its prejudicial actions of June 24, 2009 and  
5 October 1, 2009, and directing the Commission to reconsider whether listing pikas may be warranted  
6 or, in the alternative, to issue a new decision accepting the Center's petition to list pikas as  
7 threatened and advancing pikas to candidacy in accordance with CESA;

8 2. On the Fourth Cause of Action, that the Court declare the parties' respective rights  
9 and duties under CESA and other legal requirements;

10 3. On all Causes of Action, for costs incurred herein, including reasonable attorneys'  
11 fees; and

12 4. For all such other equitable or legal relief that the Court considers just and proper.

13 Respectfully submitted,

14 Dated: October \_\_\_\_, 2009

15 \_\_\_\_\_  
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24 *Counsel for Petitioner*  
25 *Center for Biological Diversity*  
26  
27  
28

1 **VERIFICATION**

2 I, Kassia R. Siegel, hereby declare:

3 I am a staff attorney at the Center for Biological Diversity and the director of the Center's  
4 climate, air and energy program. The facts alleged in the above petition for writ of mandate are true  
5 to my personal knowledge.

6 I declare under penalty of perjury under the laws of the State of California that the above is  
7 true and correct and that this verification is executed on this \_\_\_ day of October, 2009 at Joshua  
8 Tree, California.

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10 \_\_\_\_\_  
11 Kassia R. Siegel  
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