

1 Anchun Jean Su (State Bar No. 285167)
2 Brendan Cummings (State Bar No. 193952)
3 Justin Augustine (State Bar No. 235561)
4 Lisa Belenky (State Bar No. 203225)
5 CENTER FOR BIOLOGICAL DIVERSITY
6 1212 Broadway, Suite 800
7 Oakland, CA 94612
8 T: (510) 844-7100; F: (510) 844-7150
9 jsu@biologicaldiversity.org
10 bcummings@biologicaldiversity.org
11 jaugustine@biologicaldiversity.org
12 lbelenky@biologicaldiversity.org

13 *Attorneys for Petitioners*

14
15 **IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
16 **IN AND FOR THE COUNTY OF ALAMEDA**

17 CENTER FOR BIOLOGICAL DIVERSITY and
18 PROJECT COYOTE/EARTH ISLAND INSTITUTE,
19 non-profit organizations,

20 *Petitioners/Plaintiffs,*

21 v.

22 CALIFORNIA FISH AND GAME COMMISSION,
23 a State-appointed board, and CALIFORNIA
24 DEPARTMENT OF FISH AND WILDLIFE, a State
25 agency; and DOES 1 through 10, inclusive,

26 *Respondents/Defendants.*

Case No.:

**VERIFIED PETITION FOR
WRIT OF MANDATE AND
COMPLAINT FOR INJUNCTIVE
RELIEF**

(Code Civ. Proc. §§ 526, 1085)

1 Petitioners and Plaintiffs Center for Biological Diversity (“the Center”) and Project Coyote/
2 Earth Island Institute (“Project Coyote,” and collectively with the Center, “Petitioners”), on behalf of
3 themselves, their members, and the general public, respectfully allege as follows:

4 INTRODUCTION

5 1. This case challenges the failure of the California Fish and Game Commission (“the
6 Commission”) and the California Department of Fish and Wildlife (“the Department,” and collectively
7 with the Commission, “Respondents”) to comply with an unambiguous statutory mandate of the
8 California Fish and Game Code (“the Code”).¹ In 2012, the Legislature enacted section 4006(c) of the
9 Code through Senate Bill Number 1148 (Stats. 2012, ch. 565, p. 91, § 17) (“SB 1148”) to ensure that
10 any State commercial trapping program is financially self-sustaining. Specifically, section 4006(c) of
11 the Code, enacted in 2012 and effective in 2013, requires the Commission to adjust the fee charged for
12 commercial trapping licenses in California “to fully recover” the “administrative and implementation
13 costs” of the Commission’s and the Department’s management of the commercial fur trapping
14 program.

15 2. Notwithstanding this clear statutory mandate, the Commission has failed to adjust
16 trapping license fees to the level necessary to recover program costs, while the Department has
17 continued to issue unlawfully underpriced licenses to commercial trappers. Respondents’ actions and
18 inactions have resulted in violations of their statutory duties, a breach of their public trust obligations to
19 manage and conserve wildlife for all Californians, and the unlawful taxpayer subsidization of a
20 program required by law to be cost-neutral. Respondents’ noncompliance with the requirements of
21 section 4006(c) are not subject to reasonable dispute, as both the Commission and Department have
22 publically acknowledged at meetings of the Commission that they have not attempted to comply with
23 this statutory mandate.

24 3. Additionally, while neither the Commission nor the Department has calculated or
25 released to the public the actual total costs of administering and implementing the commercial trapping
26 program, it is self-evident that trapping license fees have not been set to the levels required by section

27 ¹ All further undesignated statutory references are to the California Fish and Game Code unless
28 otherwise indicated.

1 4006(c). The Department’s own data on revenue generated from commercial trapping licenses
2 demonstrates that current license fees are set far below the level necessary to even come close to
3 recovering the costs of the program. For example, for the 2016-2017 trapping season, the Department
4 reported a total revenue of \$13,500 generated from the sale of approximately 120 licenses for fur
5 trapping. In contrast, in 2015, the Department estimated that the costs of overseeing a commercial
6 trapping program for a *single* species, the bobcat, would exceed \$160,000 per year. Conservatively
7 assuming a comparable cost for overseeing a trapping program for the *dozen* or so species still subject
8 to commercial trapping, commercial trapping license fees would need to be raised from their current
9 level of approximately \$114 to well over \$1,000 in order to approach compliance with the cost-
10 recovery mandate of section 4006(c). The actual trapping license fee amount, to be compliant with
11 section 4006(c), is likely far higher.

12 4. Prior to filing this lawsuit, Petitioners pursued multiple administrative avenues to
13 compel Respondents’ compliance with section 4006(c). Since the 2013 effective date of section
14 4006(c), Petitioners have submitted numerous letters to and conducted several meetings with
15 Respondents requesting that Respondents impose trapping license fees that meet statutory requirements
16 by recouping the trapping program’s costs. Additionally, in December 2015, in response to a newly
17 enacted regulation allowing the public to submit petitions for regulatory changes to the Commission
18 under section 662 of title 14 of the California Code of Regulations (“CCR”), Petitioners submitted a
19 regulatory petition (“the Administrative Petition”) to the Commission seeking to compel its compliance
20 with section 4006(c). Commission staff accepted the Administrative Petition in December 2015, and
21 the Commission in April 2016 referred the Administrative Petition to the Department for further
22 consideration. However, more than 20 months after the Administrative Petition’s acceptance, the
23 Commission has neither added the Administrative Petition to its rulemaking schedule in accordance
24 with 14 CCR section 662(d)(3), nor taken any meaningful action to commence the rulemaking process
25 sought by the Administrative Petition.

26 5. Overall, Petitioners bring this action to challenge: (1) the Commission’s past and
27 ongoing failure to raise the State’s trapping license fees to levels necessary to achieve full cost recovery
28 of the State’s commercial trapping program, as required under section 4006(c); (2) the Department’s

1 this case, throughout California and across the United States and abroad. The Center brings this action
2 on its own behalf and on behalf of their adversely affected members and staff, as well as the general
3 public.

4 8. Petitioner PROJECT COYOTE/EARTH ISLAND INSTITUTE includes Project Coyote,
5 which is a fiscally sponsored project of the national non-profit 501(c)(3) corporation Earth Island
6 Institute (“Earth Island”). Earth Island is located in Berkeley, California and has approximately 50,000
7 supporters, including over 8,100 in California. Earth Island’s mission is to develop and support
8 projects that counteract threats to the biological and cultural diversity that sustains the environment.
9 Project Coyote is based in Marin County, California and has over 9,000 supporters throughout the
10 United States, including approximately 700 in California. In addition, Project Coyote as an
11 organization and many of its California members are assessed and pay various State taxes every year.
12 Project Coyote’s mission is to promote compassionate coexistence between people and wildlife through
13 education, science, and advocacy, and to protect North America’s native carnivores from abuse and
14 mismanagement. Earth Island and Project Coyote bring this action on their own behalf and on behalf
15 of their adversely affected members and staff, as well as the general public.

16 9. Petitioners have interests that are adversely affected by Respondents’ failure to comply
17 with their mandatory duties under law and thus have beneficial interest standing to bring this action.
18 Petitioners’ members and staff include individuals with a wide variety of beneficial interests—
19 including scientific, professional, educational, recreational, aesthetic, moral, and spiritual—in targeted
20 “furbearer” and “nongame” mammals, as well as non-target species, impacted by California’s
21 commercial trapping program. Reflecting these beneficial interests, the Center and Project Coyote
22 authored and submitted the Administrative Petition in December 2015 to the Commission requesting it
23 to raise commercial trapping license fees in order to comply with section 4006(c). Petitioners and their
24 members are adversely affected and aggrieved by Respondents’ inaction on implementing the Code’s
25 cost recovery provision as well as in responding to their Petition. Without the statutorily mandated
26 license fee increase, Respondents cannot carry out their mandatory duty to “effectively” implement the
27 State trapping program “and to manage the wildlife resources held in [the public] trust,” leading to
28 inadequate enforcement and management of the commercial trapping program and California’s wildlife

1 resources. (§ 710.5.) Petitioners and their members regularly view and enjoy the species targeted by
2 the trapping program, as well as other non-target species that may be incidentally trapped and the
3 species' habitats and greater ecosystems impacted by the trapping program, for recreational, aesthetic,
4 scientific, and spiritual purposes. Respondents' failure to raise fees results in inadequate management
5 of the trapping program and wildlife resources, which directly diminishes Petitioners' and their
6 members' overall enjoyment of the targeted, as well the non-targeted but incidentally affected species,
7 their habitats, and other recreational and aesthetic pursuits. Further, Respondents' action of raising
8 trapping fees will likely result in fewer issued licenses due to the increased license cost, which will
9 likely lead to the trapping of fewer animals and directly enhance Petitioners' and their members'
10 overall enjoyment of the targeted and non-targeted but incidentally affected species, their habitats, and
11 other recreational and aesthetic pursuits. The relief requested will redress these injuries to Petitioners'
12 beneficial interests.

13 10. In addition or in the alternative, Petitioners have taxpayer standing to bring this action.
14 Petitioners, as non-profit corporations, and many of their members in California are annually assessed
15 and pay various State taxes, including but not limited to income, property, and sales taxes. Since
16 Respondents have failed to enforce section 4006(c) such that trappers' license fees fully recover the
17 commercial trapping program's costs since 2013 to present, Respondents have been and are illegally
18 diverting public taxpayer funds to subsidize the costs of the State's commercial trapping program in the
19 absence of adequately high user fees. The State's subsidization of the commercial trapping program,
20 thus, constitutes an unlawful expenditure of public funds. Petitioners exercise their rights as California
21 taxpayers to bring this action against Respondents to enjoin and prevent any further illegal expenditure
22 of public funds.

23 11. Respondent CALIFORNIA FISH AND GAME COMMISSION ("the Commission") is
24 a five-member State board, appointed by the governor, with broad responsibilities for fish and wildlife
25 management and protection in California. The Commission is charged with specific statutory duties
26 under the Code to manage California's diverse wildlife, as well as fish and plant resources, and the
27 habitats upon which they depend, for their intrinsic and ecological values and for their use and
28 enjoyment by the public. As a State body, the Commission is a State trustee for fish and wildlife

1 Attorney General has an office in Oakland. (Code Civ. Proc. §§ 395, 401(1).)

2 **LEGAL BACKGROUND**

3 ***Trapping License Fees under the Fish and Game Code***

4 16. Under California law, it is unlawful to intentionally kill wildlife absent specific statutory
5 exceptions or compliance with licensing requirements. (§ 2000(a), 3007.) One such requirement is that
6 anyone killing mammals for the sale of their fur must first procure a trapping license. (§ 4005(a).)

7 17. Possessing a trapping license does not, however, provide a trapper with carte blanche to
8 kill any species of mammal. California prohibits the trapping of game mammals while allowing,
9 subject to regulation, the trapping of certain furbearing and nongame mammals, as defined in the Code.
10 (§§ 3950, 4000, 4002, 4150.) Among the mammal which licensed trappers may kill for commercial fur
11 purposes are badger, beaver, coyote, gray fox, raccoon, spotted and striped skunk, mink, muskrat,
12 opossum, and long and short-tailed weasel. (14 Cal. Code Regs. §§ 461-464, 472.) For many of these
13 species, the Commission has set seasonal restrictions and/or bag limits. (*Ibid.*) By regulation, the
14 Commission has previously banned the trapping of fisher, marten, river otter, desert kit fox, red fox,
15 and, most recently in 2015, bobcat. (14 Cal. Code Regs. §§ 460, 478(c).)

16 18. While a license is required for commercial fur trapping in California, a license is also
17 required for the trapping of mammals by anyone “providing trapping services for profit” (§ 4005(c))—
18 or “pest control operators,” as referenced by the Department in its trapping license application forms
19 and reports.² Pest control operators are prohibited from selling the furs of any animals they kill. (§
20 4005(d).) Consequently, trapping licenses are required for two very different categories of activities:
21 (1) commercial fur trapping and (2) pest control trapping. (§ 4005.) To note, the Code narrowly
22 exempts the licensing requirement for any persons trapping furbearers and nongame mammals that are
23 found injuring crops or property. (§§ 4005(c), 4152, 4180.)

24 19. Given that the management regimes, ecological impacts, enforcement concerns and
25

26 ² See, e.g., CA Department of Fish and Wildlife, *2017-2018 Trapping License Applications* (2017),
27 <https://www.wildlife.ca.gov/licensing/trapping>; CA Department of Fish and Wildlife, *Special*
28 *Permits: Items Reported by License Year* (last updated June 30, 2017), [https://nrm.dfg.ca.gov/
FileHandler.ashx?DocumentID=59827&inline](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=59827&inline).

1 consequent administrative and implementation costs of commercial fur trapping and pest control
2 trapping are very different, the fee recovery mandate of section 4006(c) can and should be applied
3 separately to the two different classes of activities requiring a trapping license. Through this writ
4 petition, Petitioners seek compliance with section 4006(c) only with regards to commercial fur
5 trapping.

6 20. While the Department currently uses the same application and charges the same fee for
7 both commercial fur trappers and pest control trappers, the Department tracks both the issuance of and
8 the revenue generated from the sale of these licenses separately. Specifically, license applicants may
9 apply for either or both of the two categories of trapping licenses: (1) commercial fur trapping (called
10 “recreation/intent to sell fur” on the license application form and “recreational” in Department reports);
11 or (2) pest control (called “pest control operator” on the license application form).³

12 21. Trapping licenses are sold year-round and authorize a license holder to take designated
13 species during the species’ designated trapping season. (§ 4007.) Trapping license terms are valid for
14 one year from July 1 through June 30 of the following year. (*Ibid.*) Accordingly, license prices are
15 adjusted and established annually, typically in April of any given year, prior to the commencement of
16 new license sales and issuance by the Department to license applicants.

17 22. Trapping license fees are governed by section 4006, supplemented by license fee
18 provisions related to inflation in section 713. Section 4006(a) sets a base level fee for trapping licenses
19 and requires the Department to increase that fee based on federal inflation statistics pursuant to section
20 713. Under this fee regime, trapping license fees have increased from \$45 several decades ago to \$114
21 for resident trappers for the 2017-2018 trapping season.⁴ Since 2013, when the cost recovery

23 ³ See, e.g., CA Department of Fish and Wildlife, *2017-2018 Trapping License Applications* (2017),
24 <https://www.wildlife.ca.gov/licensing/trapping>; CA Department of Fish and Wildlife, *Special*
25 *Permits: Revenue Reported by License Year* (last updated June 30, 2017), [https://nrm.dfg.ca.gov/File](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=59828&inline)
26 [Handler.ashx?DocumentID=59828&inline](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=59828&inline).

27 ⁴ There is a slight discrepancy in the license fee amounts reported by the Department in its summary
28 reports and the amount listed on the license application. The 2017-2018 application lists the fee as
\$117.42 while the Department reports the fee as \$114. The difference is presumably accounted for
by the 3% processing fee charged by license vendors. For consistency purposes, Petitioners cite the
license prices listed in the Department’s table of “Special Permits: Fees Reported by License Year,”
(Cont’d next page)

1 requirements of section 4006(c) took effect, to present, the Department has increased trapping license
2 fees to account for inflation by three dollars.

3 23. In addition to the inflation-related increases required by sections 4006(a) and 713,
4 section 4006(c) requires the Commission to adjust fees to recover the costs of both the Department and
5 Commission in managing the State trapping program. Specifically, section 4006(c) states:

6 The commission shall adjust the amount of the fees specified in subdivision
7 (a), as necessary, to fully recover, but not exceed, all reasonable administrative
8 and implementation costs of the department and the commission relating to
those licenses.

9 (§ 4006(c).) This provision was added to the Code in 2013 as a direct result of the passage of SB 1148
10 in 2012. (Stats. 2012, ch. 565, p. 91, § 7.) SB 1148 specifically required the Commission to recoup
11 Respondents’ costs through fee-based programs as part of its efforts “to enhance the ability of the
12 department to focus on the management and administration of its lands, its enforcement
13 responsibilities, the conservation programs entrusted to it, and enhancing the scientific basis of
14 conservation decisions made in California.” (*Id.* § 1(e).)

15 24. While the Commission, pursuant to section 4006(c), has the mandatory duty to *set*
16 trapping license fees in accordance with the cost recovery mandate, the Department, as a practical
17 matter, *provides* the economic analysis and quantitative inputs required to calculate the adequate
18 license fee that can recoup the full program costs. The Department possesses both the information for
19 the quantitative inputs—namely, the total commercial trapping program costs borne by the Department
20 and Commission divided by the number of commercial licensed trappers to shoulder the total program
21 costs—and the economists and other human resources to calculate the cost-recovering fee per license.

22 25. Thus, the Commission, as orally stated by Commission staff at the Rohnert Park
23 Commission meeting on February 8, 2017, is operationally reliant on the Department to provide the
24 actual program costs and proposed license fees so that the Commission may adjust and set the license
25 fee in accordance with the cost recovery mandate under section 4006(c).

26 _____
27 as opposed to the license prices stated on the annual license application forms of each trapping
28 season. See CA Department of Fish and Wildlife, *Special Permits: Fees Reported by License Year*
(last updated June 30, 2017), <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=59826&inline>.

1 26. Further, while the Commission is responsible for *setting* the revised trapping license fees
2 pursuant to section 4006(c), the Department has the mandatory legal duty to *issue* trapping licenses that
3 are lawfully priced in accordance with the cost recovery mandate in section 4006. (§ 4006(a).)

4 ***Respondents’ Public Trust Duties to Protect and Conserve California’s Wildlife***

5 27. California’s public trust doctrine with respect to wildlife is grounded in both statutory
6 and common law. The State’s “wildlife resources are held in the trust for the people of the [S]tate” (§
7 711.7(a)), and their “protection and conservation . . . are of the utmost public interest.” (§ 1600.)
8 Because wildlife is “the property of the people” and has inestimable value to the community, “their
9 conservation is a *proper responsibility of the [S]tate*.” (§ 1600 (emphasis added); see also *Center for*
10 *Biological Diversity, Inc. v. FPL Group, Inc.* (2008) 167 Cal.App.4th 1349.)

11 28. The Commission, as a State-appointed body, possesses public trust responsibilities,
12 which include “encouraging the conservation and maintenance of wildlife resources, maintaining
13 sufficient populations for the beneficial use and enjoyment of wildlife by all citizens of the State,
14 perpetuating all species of wildlife for their intrinsic and ecological values and for their direct benefit to
15 man, and contributing to the economic welfare of state citizens through the recognition that wildlife is a
16 productive, renewable resource, if managed in a manner consistent with the maintenance of healthy and
17 thriving wildlife resources and the public ownership status of wildlife resources.” (§ 1801.)

18 29. The Department, as a State agency, is designated as the State’s “trustee for fish and
19 wildlife resources,” and has “jurisdiction over the conservation, protection, and management of . . .
20 wildlife . . . and habitat necessary for biologically sustainable populations of those species.” (§ 1802.)
21 The Department, as a State agency, is also bound by the state’s public trust policy and objectives. (§
22 1801.)

23 30. Adequate licensing fees, which the Commission is required to set under section 4006(c),
24 are intended to support the Commission’s and Department’s activities and, specifically, the
25 Department’s ability to fulfill its public trust obligations. As declared by the Legislature in the Code,
26 the “failure to maximize user fees” and “inadequate non-fee related funding” have “prevented [the
27 Department’s] proper planning and manpower allocation” and “restrict[ed] warden enforcement” to
28 carry out its “public trust responsibilities” with respect to wildlife programs. (§§ 710-710.5.) The lack

1 of adequate user-fee funds has led to the Department’s “inability . . . to effectively provide all of the
2 programs and activities required under this [C]ode [including the State trapping program] and to
3 manage the wildlife resources held in trust by the people of California.” (§ 710.5.)

4 ***Petitions for Regulation Change under the California Code of Regulations***

5 31. The Commission “receive[s] and consider[s] petitions for regulation changes” submitted
6 by the public (and other agencies) pursuant to the process established under 14 CCR section 662.
7 (Commission, Final Statement of Reasons for Regulatory Action re: Cal. Code Regs., tit. 14, § 662
8 (2015), p. 2 (“FSOR”).) This regulation was enacted in October 2015 in order to “outline[] the process
9 under which petitions will be evaluated and *scheduled for receipt and Commission action.*” (*Id.* at p. 4.)

10 32. Under this regulation, once an administrative petition is submitted to the Commission,
11 the petition must be either accepted or rejected by Commission staff based on whether the petition
12 contains the necessary information required by the standard petition form and whether the petitioned
13 change is within the scope of the Commission’s regulation authority. (Cal. Code Regs., tit. 14, §
14 662(b).) If accepted, the petition is scheduled for consideration at the “next available” Commission
15 meeting, at which the Commission will consider the petition and take one of three actions: (i) deny the
16 petition if it finds the petition provides insufficient information that the petitioned change is warranted;
17 (ii) deny the petition if it finds that another petition requesting a functionally equivalent regulation
18 change was considered within the previous 12 months, and the more recent petition contains no new
19 information or data; or (iii) grant the petition for further consideration and add the regulatory change
20 requested in the petition to the Commission’s rulemaking schedule. (Cal. Code Regs., tit. 14 §,
21 662(d)(1)-(3).) Any further proceedings on the petitioned change will be held in accordance with the
22 California Administrative Procedure Act. (Cal. Code Regs., tit. 14, § 662.)

23 33. According to the Commission’s FSOR, the sole purpose of the petition process is to
24 “increase[] transparency and understanding of the Commission’s regulatory process and consistency in
25 the processing of public requests for regulation change.” (FSOR, at p. 3.) Without this administrative
26 petition process, “the public would continue to be confused regarding the scheduling and timing of
27 Commission action on regulation change requests, and petitions for regulation changes would continue
28 to be presented in inconsistent formats, often lacking critical information.” (*Id.* at p. 2.)

1 ***Taxpayer Actions against State’s Illegal Expenditure of Public Funds***

2 34. Section 526a of the CCP confers standing upon State taxpayers, including individuals
3 and corporations, to bring actions against State agencies to “obtain a judgment, restraining and
4 preventing any illegal expenditure of, [or] waste of” public funds. Petitioners may seek a writ of
5 mandate to enforce their taxpayer cause of action. (*Van Atta v. Scott*, 27 Cal. 3d 424, 449-50 (1980)).
6 In addition, section 526a “makes plaintiffs eligible to seek a range of remedies beyond mandamus,”
7 *Weatherford v. City of San Rafael* (2017) 2 Cal. 5th 1241, 1249, including the injunction of illegal State
8 expenditures and “enforce[ment of] the government’s duty to collect funds due the State.” (*Vasquez v.*
9 *State of California* (2003) 105 Cal. App. 4th 849, 854.)

10 **FACTUAL AND PROCEDURAL BACKGROUND**

11 ***Commercial Trapping in California***

12 35. In California, the number of licensed commercial fur trappers, and consequently the
13 number of animals killed, has risen and fallen over the years, based largely on the price of pelts in the
14 international fur market, driven largely by domestic markets in Russia, China, and Korea. For example,
15 in the 2013-2014 license year, over 9,000 animals were killed by commercial fur trappers in the State,
16 with a fur value estimated at over \$460,000. Two years later, in the 2015-2016 season the number of
17 animals killed dropped to 1,829 animals, with a total fur value of just over \$10,000. In that season, the
18 last for which data is available, the market value of a coyote’s pelt averaged \$33, a gray fox’s pelt \$13,
19 and a muskrat’s pelt \$2.⁵

20 36. In 2012, a spike in international demand—and hence price—for bobcat pelts led to a
21 substantial increase in bobcat trapping and the local near-extirpation of the species on the boundary of
22 Joshua Tree National Park, California. This prompted the State Legislature to pass Assembly Bill
23 Number 1213, The Bobcat Protection Act of 2013 (Stats. 2013, ch. 748, p. 91) (“AB 1213”), and the
24 Commission to subsequently ban all commercial trapping of bobcats throughout the State in 2015. (See
25 § 4155; 14 Cal. Code Regs. § 478(c).)

26 37. As the Legislature recognized in passing AB 1213, commercial trapping of species can

27 ⁵ Meshriy, M., California Department of Fish and Wildlife, *Licensed Fur Trappers’ and Dealers’*
28 *Report* (2016), <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=135975&inline>.

1 result in numerous adverse ecological consequences. Commercial trapping can significantly impact a
2 target species' populations at local and regional levels and severely affect the local and regional
3 ecosystems of which these target animals are a vital component. Commercial trapping is also
4 indiscriminate and can lead to the incidental killing of non-target species, including mountain lions,
5 bald eagles, and pets.

6 38. In addition, commercial trapping raises important ethical issues of humaneness with
7 respect to the trapped animal. To ensure an undamaged pelt, commercial trappers often resort to neck-
8 breaking, hanging, gassing, and anal electrocution to kill the trapped animal.

9 *Trapping License Sales, Fees and Revenue*

10 39. Since section 4006(c) took effect in January 2013, trapping license fees have increased
11 only slightly, from \$111 in 2013 to \$114 in 2017 for adult resident licenses.⁶ Similarly, junior licenses
12 increased by only \$1 and non-resident adult licenses by \$5.50 since 2013.

13 40. For the 2016-2017 trapping season,⁷ the Department issued a total of 709 trapping
14 licenses, which consisted of: (i) 49 for commercial fur trapping purposes, (ii) 589 for pest control
15 purposes, and (iii) 71 for both commercial fur trapping and pest control purposes. Consequently, a total
16 of 120 commercial fur trappers were licensed that year.

17 41. Notably, the number of commercial fur trapping licenses issued in the 2016-2017
18 trapping season dropped significantly from the previous two trapping seasons, from 251 in 2014-2015
19 to 193 in 2015-2016 to only 120 in 2016-2017. This drop can largely be attributed to the
20 Commission's ban on the commercial trapping of bobcats passed in August 2015.

21 42. For the 2016-2017 trapping season, license fees were set at \$113.75 for resident adult
22 licenses, \$570 for non-resident adult licenses, and \$38.25 for junior licenses.

23 43. For the 2016-2017 trapping season, the Department reported that the 49 licenses for
24

25 ⁶ See CA Department of Fish and Wildlife, *Special Permits: Fees Reported by License Year* (last
updated June 30, 2017), <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=59826&inline>.

26 ⁷ Data from the 2016-2017 trapping season is the most recent, complete data on license sales and
27 revenue made publicly available by the Department, last updated on June 30, 2017. The license sales
28 statistics for the 2017-2018 trapping season are incomplete and, thus, are not cited in this writ
petition.

1 commercial fur trapping alone generated a total revenue of \$5,574. The 71 licenses issued for both
2 commercial fur trapping and pest control accounted for an additional \$7,926, while the remaining 589
3 licenses for pest control only generated \$68,824. In sum, for the 120 licenses issued to trappers for
4 commercial fur trapping purposes as well as for both commercial trapping and pest control purposes,
5 the Department reported an aggregate revenue of \$13,500. And for all 709 trapping licenses issued that
6 season, the Department reported total revenue of \$82,324.⁸

7 44. Though Respondents have not publicly provided the estimated cost incurred by both the
8 Commission and Department to implement and administer California’s entire commercial trapping
9 program, the Department in 2015 estimated that its own costs (excluding the Commission’s costs) to
10 manage the commercial trapping program for just *one* species—the bobcat—amounted to \$161,000.
11 (Commission, Initial Statement of Reasons for Regulatory Action re: Implementation of the Bobcat
12 Protection Act of 2013, AB 1213 (2015), p. 16.) Assuming the accuracy of the Department’s cost
13 estimate of the commercial bobcat trapping program, the program costs incurred by both the
14 Department and Commission to implement and administer the entire commercial trapping program
15 targeting over one dozen species are almost certainly substantially higher than \$161,000.

16 45. Given that the commercial trapping program for a *single* species is estimated at
17 \$161,000, the commercial trapping license revenue of the 2015-2016 trapping season, amounting to
18 \$13,500, clearly fails to recoup the costs of California’s entire commercial trapping program involving
19 over one *dozen* species. Moreover, the aggregate trapping license revenue of \$82,324, which includes
20 fees from both commercial trapping and pest control operator licenses, is also insufficient to recoup the
21 cost of the commercial trapping program for a single species, let alone all species currently subject to
22 commercial fur trapping. In short, the current commercial trapping license fees do not come close to
23 recouping the costs of the commercial fur trapping program.

24 46. Due to Respondents’ failure to raise commercial trapping license fees to recover the
25 commercial trapping program’s costs as mandated by section 4006(c), Respondents have been diverting

26 _____
27 ⁸ CA Department of Fish and Wildlife, *Special Permits: Revenue Reported by License Year* (June
28 30, 2017), <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=59828&inline>.

1 and continue to divert public taxpayer funds to finance the State’s commercial trapping program in
2 order to account for the revenue shortfall in user fees.

3 ***Commission Rulemaking Petition Process under California Code of Regulations***

4 47. Since section 4006(c) took effect in January 2013, the Center submitted multiple letters
5 in 2013, 2014, and 2015 to both the Department and Commission urging them to take steps to raise
6 trapping fees in compliance with section 4006(c). Neither Respondent took any action to comply with
7 this statutory mandate in response to the Center’s letters.

8 48. In the fall of 2015, at an on-record public Commission meeting, in response to testimony
9 from Petitioners, the then-president of the Commission encouraged Petitioners to submit to the
10 Commission an administrative petition for regulation change, pursuant to the newly enacted 14 CCR
11 section 662, in order to facilitate the Commission coming into compliance with section 4006(c).

12 49. Prior to the subsequent Commission meeting, on December 4, 2015, Petitioners
13 submitted to the Commission a petition (“the Administrative Petition”) (see Exhibit A) pursuant to 14
14 CCR section 662(a), which requested that the Commission adopt a regulation raising trapping license
15 fees for commercial fur trapping in order to comply with its statutory mandate under section 4006(c), or
16 in the alternative, to issue regulations ending commercial fur trapping in California. As the
17 Administrative Petition and Petitioners’ subsequent letters have stated, the Commission’s fee-setting in
18 accordance with section 4006(c) is a non-discretionary statutory duty that must be implemented
19 through administrative means regardless of whether the Commission adopts an implementing
20 regulation. However, Petitioners submitted the Administrative Petition under the regulatory petition
21 process pursuant to 14 CCR section 662 in order to ensure that the issue would be placed on the
22 Commission’s agenda to address and implement in a timely manner.

23 50. On December 15, 2015, Petitioners received notification that Commission staff had
24 reviewed and accepted the Administrative Petition.

25 51. At the February 11, 2016 Commission meeting in Sacramento, California, the
26 Commission formally received the Administrative Petition. At that meeting, Petitioners provided
27 public oral testimony as well as submitted a letter to the Commission, in which Petitioners urged the
28 Commission to comply with the cost recovery mandate prior to the Department’s commencement of

1 new licenses sales in April 2016.

2 52. At the April 14, 2016 Commission meeting in Santa Rosa, California, the Commission
3 approved the Commission staff recommendation of referring the Administrative Petition to the
4 Department for further consideration. At that meeting, Petitioners provided public oral testimony as
5 well as submitted a letter to the Commission, in which Petitioners urged the Commission's expeditious
6 compliance with the cost recovery mandate to avoid a fourth year of noncompliance with section
7 4006(c). Petitioners also discussed alternative remedies of emergency regulation, a temporary halt on
8 the issuance of unlawfully-priced licenses, and a statewide ban on commercial trapping.

9 53. On May 18, 2016, during a meeting with Petitioners regarding the Administrative
10 Petition, Department staff conveyed that it would aim to introduce a rulemaking package for the
11 Administrative Petition to the Commission in the spring of 2017. Written meeting notes from
12 Department staff from this May 18, 2016 meeting, obtained by Petitioners under the California Public
13 Records Act, also confirm and indicate that the Department had aimed to commence work on this
14 rulemaking package in August or September 2016.

15 54. At the June 23, 2016 Commission meeting in Bakersfield, California, the Commission
16 requested an update from the Department on its analysis regarding the regulatory changes sought in the
17 Administrative Petition. In response, the Department claimed that, due to purported capacity
18 constraints, it could not present a rulemaking package regarding section 4006(c) to the Commission
19 until early 2017. The Commission requested periodic updates from the Department on the rulemaking
20 process in response to the Administrative Petition. At the June 23, 2016 meeting, Petitioners provided
21 a lengthy oral presentation on the Administrative Petition. Petitioners also submitted substantial
22 written public comments, detailing economic analyses on estimated programmatic costs and adjustment
23 to license fees in order to support the Department's analysis, and outlined other legal and administrative
24 options for meeting the statutory mandate.

25 55. At subsequent Commission meetings in 2016, neither the Commission nor the
26 Department provided any updates on the progress of the rulemaking package in response to the
27 Administrative Petition. Petitioners continued to submit written comments and provide oral testimony
28 in support of the regulations sought through the Administrative Petition.

1 56. On December 5, 2016, during a meeting with Petitioners regarding the Administrative
2 Petition, Department staff conveyed that it had made no progress on the rulemaking sought through the
3 Administrative Petition due to purported capacity constraints. The Department conveyed that it would
4 aim to present a rulemaking package in the summer of 2017 but could not commit to the idea that the
5 rulemaking process would be completed in 2017.

6 57. On September 9, 2016, the Center submitted a Public Records Act request (No. 16-09-
7 345) to the Department for all documents generated or received by the Department related to (i) the
8 implementation of the trapping fee requirements under section 4006(c) since the provision's effective
9 date of January 2013; and (ii) Petitioners' submission of the Administrative Petition in December 2015,
10 including any documents related to the development of the petitioned regulation change. From
11 November 7, 2016 through January 1, 2017, the Department provided only seven records on behalf of
12 itself and the Commission. These responsive documents included an internal Department memo about
13 an initial implementation plan of SB 1148, as well as Department staff notes from internal meetings on
14 SB 1148 in 2012 and the May 18, 2016 meeting with the Center. The request did not yield any
15 documents demonstrating substantive work, beyond initial discussion, on implementing section 4006(c)
16 or the rulemaking package for the Administrative Petition.

17 58. On December 28, 2016, the Center submitted a Public Records Act request to the
18 Commission for all documents generated or received by the Commission related to (i) the
19 implementation of the trapping fee requirements under section 4006(c) since the provision's effective
20 date of January 2013; and (ii) Petitioners' submission of the Administrative Petition in December 2015,
21 including any documents related to the development of the petitioned regulation change. On January 5,
22 2017, Commission staff responded that no further documents beyond those already provided by the
23 Department were responsive to the Center's request.

24 59. At the February 8, 2017 Commission meeting in Rohnert Park, California, the
25 Department once again claimed that internal resource capacity constraints had precluded any progress
26 on the Administrative Petition and that the Department could not provide any timeline as to when the
27 rulemaking package might be produced. Commission staff also conveyed their view that they are
28 reliant on the Department to provide the calculations necessary for the Commission to set the license

1 fees under the trapping program in compliance with section 4006(c)—including the administrative and
2 implementation costs incurred by both the Commission and Department, in implementing the trapping
3 program and the estimated number of licenses to be issued to recoup program costs. At the meeting,
4 Petitioners and supporters also provided extensive oral testimony in support of the Administrative
5 Petition, as well as written comments outlining additional legal and administrative options for
6 expeditious action for the Commission to comply with the statutory mandate.

7 60. At the April 26, 2017 Commission meeting in Van Nuys, California, Petitioners and
8 supporters again provided extensive oral testimony in support of the Administrative Petition. The
9 Commission did not offer any timeline with respect to making progress on the rulemaking process
10 sought through the Administrative Petition or otherwise complying with the statutory mandates.

11 61. As of the date of this petition for writ of mandate’s filing, the Commission has issued a
12 projected timetable, updated on August 18, 2017, for the Commission’s anticipated regulatory actions
13 through July 2018. The Administrative Petition is listed as a pending action and has not been added to
14 the Commission’s rulemaking schedule.⁹ (See Exhibit B.)

15 **FIRST CAUSE OF ACTION**

16 **(Against the Commission: Writ of Mandate Pursuant to CCP § 1085 for**

17 **Failure to Comply with Fish & Game Code § 4006(c))**

18 62. Petitioners hereby re-allege, as if fully set forth herein, each and every allegation
19 contained in the preceding paragraphs.

20 63. The Commission has a non-discretionary duty under the Fish and Game Code to raise
21 trapping license fees to the levels necessary to fully recover the Commission’s and Department’s
22 reasonable administrative and implementation costs related to the State trapping program. (§ 4006(c).)

23 64. Since section 4006(c) took effect in 2013, the Commission has failed to carry out this
24 statutory mandate. As discussed *supra*, there is a significant revenue shortfall between the

25 _____
26 ⁹ CA Fish and Game Commission, “California Fish and Game Commission – Perpetual Timetable
27 for Anticipated Regulatory Actions” (Last updated August 18, 2017), *Meeting Documents for*
28 *September 13, 2017 Wildlife Resources Committee*, available for download at <http://www.fgc.ca.gov/meetings/2017/index.aspx>.

1 Department’s revenue collected from commercial trapping licenses and the estimated costs of the
2 commercial trapping program, evidencing that current fees legally inadequate to comply with section
3 4006(c).

4 65. As a result, trapping licenses over the course of five trapping seasons—the past four
5 trapping seasons (2013-2014, 2014-2015, 2015-2016, 2016-2017) as well as licenses currently sold on
6 an ongoing basis for the current 2017-2018 trapping season—were unlawfully issued because they
7 were not appropriately priced to recover the total costs of the commercial trapping program, as
8 mandated under section 4006(c).

9 66. By failing to raise fees in accordance with the statutory cost recovery mandate, the
10 Commission has failed to perform, and has violated, its mandatory non-discretionary duty under section
11 4006(c). The Commission’s failure to comply with section 4006(c) constitutes a prejudicial abuse of
12 the Commission’s discretion subject to a writ of mandate under CCP section 1085 “to compel the
13 performance of an act which the law specially enjoins.”

14 67. Petitioners are irreparably harmed from such a violation of law amounting to the
15 inadequate implementation and management of the State trapping program, which may cause the loss
16 of both target and non-target species that would not otherwise be trapped and adverse impacts to the
17 greater ecosystems of which they are a vital part, which are resources held in trust for the public interest
18 by the State.

19 68. Petitioners have no plain, speedy and adequate remedy at law other than the relief
20 sought herein.

21 69. No administrative remedies exist which were required to be exhausted by Petitioners
22 because the statutory duties imposed by section 4006(c) are self-executing.

23 70. However, in the alternative, Petitioners have exhausted all available administrative
24 remedies by taking every available and reasonable step to put the Commission on notice of their claims
25 and give the Commission an adequate opportunity to correct the violations identified in this Petition
26 prior to litigation. Such steps include the submission of numerous comment letters, public testimony,
27 and meetings with Commission staff, as well as engaging in the petition process under 14 CCR section
28 662. Since the Administrative Petition’s submission in December 2015, the Commission has failed to

1 take any meaningful action toward legal compliance with section 4006(c).

2 71. Because Petitioners seek to compel the Commission to act on the affirmative legal duties
3 set out by statute and common law as described above, Petitioners bring this action under CCP section
4 1085 to direct the Commission to remedy these legal violations.

5 **SECOND CAUSE OF ACTION**

6 **(Against the Commission: Writ of Mandate Pursuant to CCP § 1085 for**
7 **Failure to Comply with Statutory Public Trust Duties)**

8 72. Petitioners hereby re-allege, as if fully set forth herein, each and every allegation
9 contained in the preceding paragraphs.

10 73. At all times mentioned herein, the Commission was charged with statutory law duties to
11 protect public trust wildlife resources, including both the target and non-target species killed and
12 impacted by California’s trapping program, for the benefit of the people of California. As a State
13 board, the Commission is charged with promoting public trust policies and objectives, which include,
14 among others, “encouraging the conservation and maintenance of wildlife resources.” (§ 1801.)

15 74. As specifically declared by the Legislature in the Code, inadequate user fees, including
16 the license fees at issue here, diminish the State’s ability “to effectively provide all of the programs and
17 activities required under this code [including the State trapping program] and to manage the wildlife
18 resources held in trust by the people of California.” (§ 710.5.)

19 75. As such, the Commission’s failure to raise license fees in accordance with section
20 4006(c) adversely impacts its ability to effectively manage and implement the State trapping program,
21 thus violating the Commission’s public trust obligations to responsibly manage, conserve, and protect
22 the wildlife killed and adversely impacted by the State’s trapping program, any non-target animals
23 incidentally trapped, and the greater ecosystem in which such animals play a critical role. The
24 Commission may be compelled to take the required action to fulfill its public trust responsibilities
25 under CCP section 1085.

26 76. In sum, the Commission’s failure to comply with its public trust duties under Section
27 710.5 constitutes a prejudicial abuse of the Commission’s discretion subject to a writ of mandate under
28 CCP section 1085 “to compel the performance of an act which the law specially enjoins.”

1 77. No administrative remedies exist which were required to be exhausted by Petitioners
2 because the public trust statutory law duties under Section 710.5 are self-executing.

3 78. However, in the alternative, Petitioners have exhausted all available administrative
4 remedies by taking every available and reasonable step to put the Commission on notice of their claims
5 and give the Commission an adequate opportunity to correct the violations identified in this petition
6 prior to litigation. Such steps include the submission of numerous comment letters, public testimony,
7 and meetings with Commission staff, as well as engaging in the petition process under 14 CCR section
8 662. Since the Administrative Petition's submission in December 2015, the Commission has failed to
9 take any meaningful action toward legal compliance with section 4006(c) in order to fulfill their
10 statutory public trust duties.

11 79. Because Petitioners seek to compel the Commission to act on the affirmative legal duties
12 set out by statute as described above, Petitioners bring this action under CCP section 1085 to direct the
13 Commission to remedy this legal violation.

14 **THIRD CAUSE OF ACTION**

15 **(Against the Commission: Writ of Mandate Pursuant to CCP § 1085 for**
16 **Failure to Comply with 14 CCR § 662)**

17 80. Petitioners hereby re-allege, as if fully set forth herein, each and every allegation
18 contained in the preceding paragraphs.

19 81. The Commission has a non-discretionary mandatory duty under 14 CCR section 662, to
20 follow a specific and transparent process for receiving, evaluating, and acting on rulemaking petitions.
21 Once a petition has been accepted and the Commission finds that the petitioned change may be
22 warranted, the Commission grants the petition for further consideration and "add[s] the petitioned
23 change to its rulemaking schedule." (Cal. Code Regs., tit. 14 § 662(d)(3).) As stated in the ISOR for
24 14 CCR section 662, the primary purposes of the petition process are to increase transparency of the
25 Commission's regulatory process and to eliminate a petitioner's confusion regarding the scheduling and
26 timing of Commission action on petitions for regulatory changes.

27 82. The Commission's treatment of the Administrative Petition, submitted by Petitioners
28 over 20 months from the date of filing of this petition for writ of mandate, violates the requirements of

1 14 CCR section 662(d)(3). The Administrative Petition, submitted in December 2015, was formally
2 accepted by Commission staff that same month, received by the Commission at the February 2016
3 Commission meeting, and referred to the Department for further consideration at the April 2016
4 Commission meeting. However, since then, the Commission has failed to add the Administrative
5 Petition to its rulemaking schedule—including the date by which the Department is required to submit
6 the rulemaking package to the Commission, and the dates of the Commission’s public hearings on the
7 proposed rulemaking package—in violation of the plain language of 14 CCR section 662(d)(3).
8 Moreover, as of the filing date of this petition for writ of mandate, the Commission has issued a
9 projected timetable for the Commission’s anticipated regulatory actions through August 2018 that fails
10 to list any rulemaking schedule for the Administrative Petition to be advanced by the Commission and
11 Department. The Commission’s lack of action on the Administrative Petition and deferral to the
12 Department undermines the very purpose of the petition regulation process, which is to enhance
13 Commission transparency and decrease confusion on the part of the public seeking regulation change.

14 83. In sum, the Commission’s failure to comply with 14 CCR section 662 constitutes a
15 prejudicial abuse of the Commission’s discretion subject to a writ of mandate under CCP section 1085
16 “to compel the performance of an act which the law specially enjoins.”

17 84. Petitioners are irreparably harmed from such violations of law amounting to the
18 inadequate implementation and management of the State trapping program, which may cause the loss
19 of both target and non-target species that would not otherwise be trapped and adverse impacts to the
20 greater ecosystems of which they are a vital part, which are resources held in trust for the public interest
21 by the State. Petitioners are also directly harmed by the Commission’s denial of their rights to have
22 their Petition processed and responded to in a timely manner as required by the Commission
23 regulations.

24 85. Petitioners have no plain, speedy and adequate remedy at law other than the relief
25 sought herein.

26 86. Petitioners have exhausted all available administrative remedies by taking every
27 available and reasonable step to put the Commission on notice of their claims and give the Commission
28 an adequate opportunity to correct this violation prior to litigation. Such steps include the submission

1 of numerous comment letters, public testimony, and meetings with Commission staff to urge
2 advancement of the petition process under 14 CCR section 662.

3 87. Because Petitioners seek to compel the Commission to act on the affirmative legal duties
4 set out by statute, Petitioners bring this action under CCP section 1085 to direct the Commission to
5 remedy this legal violation.

6 **FOURTH CAUSE OF ACTION**

7 **(Against the Department: Writ of Mandate Pursuant to CCP § 1085 for**
8 **Failure to Comply with Fish and Game Code § 4006(a))**

9 88. Petitioners re-allege, as if fully set forth herein, each and every allegation contained in
10 the preceding paragraphs.

11 89. The Department has a mandatory, non-discretionary duty to only issue trapping licenses
12 that are properly priced according to the requirements of section 4006(a). (§§ 702, 4006(a).) The
13 pricing of those licenses must account for the cost recovery mandate of section 4006(c), which requires
14 that the Commission “adjust the amount of the fees specified in subdivision (a)” as necessary to provide
15 full recovery of costs incurred in implementing the trapping program.

16 90. The Department is in violation of section 4006(a) because it issued, for the past four
17 trapping seasons, and continues to issue for the current 2017-2018 trapping season, licenses that are
18 inadequately priced in accordance with the fee recovery mandate of section 4006(c).

19 91. Section 710.5 plainly states the Legislature’s intent that the Department issue licenses at
20 the adjusted higher rate in order to enable the Department’s ability “to effectively provide all of the
21 programs and activities required under this [C]ode [including the State trapping program] and to
22 manage the wildlife resources held in trust by the [D]epartment for the people of the [S]tate.” (§ 710.5.)
23 Section 710(a)(1) specifically provides: “It is the intent of the Legislature to *ensure adequate funding*
24 *from appropriate sources for the [D]epartment.* To that end, the [L]egislature finds and declares: (1)
25 the costs of nongame fish and wildlife program [, such as the trapping program,] shall be provided
26 annually in the Budget Act . . . *through nongame user fees* and sources other than The Fish and Game
27 Preservation Fund to the department for these purposes.” (Emphases added).

28 92. The Department’s issuance of trapping licenses that fail to comply with the cost

1 recovery provisions of section 4006(c) clearly violates the agency’s non-discretionary mandatory duty
2 under section 4006(a) to issue legally compliant trapping licenses.

3 93. Under CCP section 1085, the Department may be enjoined from issuing any further
4 trapping licenses that fail to comply with the cost recovery provision of section 4006(c), and compelled
5 to only issue licenses that are legally compliant with the cost recovery mandate in order to fulfill its
6 statutory duty under section 4006(a).

7 94. Petitioners are irreparably harmed from such violation of law amounting to the
8 inadequate implementation and management of the State trapping program and the loss of both target
9 and non-target species that would not otherwise be trapped—wildlife which are held in trust for the
10 people of the State.

11 95. Petitioners have no plain, speedy and adequate remedy at law other than the relief
12 sought herein.

13 96. No administrative remedies exist which were required to be exhausted by Petitioners
14 because the statutory duty under section 4006(a) is self-executing.

15 97. In the alternative, Petitioners allege that they have exhausted all available administrative
16 remedies by taking every available and reasonable step to put the Department on notice of their claims
17 and give the Department an adequate opportunity to correct the violations identified in this petition
18 prior to litigation. Such steps include the submission of numerous comment letters and meetings with
19 Department staff since 2013 regarding license issuance as well as continual engagement with the
20 Department through the petition process under 14 CCR section 662. Since the Administrative
21 Petition’s submission in December 2015, the Department has failed to take any effective action in
22 implementing or responding to the Administrative Petition or towards effectuating the cost recovery
23 mandate of section 4006(c) and has continued to issue licenses that do not comply with the fee recovery
24 mandate in violation of section 4006(a).

25 98. Because Petitioners seek to compel the Department to act on the affirmative legal duty
26 set out by section 4006(a), and to enjoin the Department from issuing unlawful trapping licenses,
27 Petitioners bring this action under CCP section 1085 to direct the Department to remedy this legal
28 violation.

1 **FIFTH CAUSE OF ACTION**

2 **(Against the Department: Writ of Mandate Pursuant to CCP § 1085 for**
3 **Failure to Comply with Statutory and Common Law Public Trust Duties)**

4 99. Petitioners re-allege, as if fully set forth herein, each and every allegation contained in
5 the preceding paragraphs.

6 100. At all times mentioned herein, the Department is charged with being the designated
7 “trustee for fish and wildlife resources” and “has jurisdiction over the conservation, protection, and
8 management of . . . wildlife . . . and habitat necessary for biologically sustainable populations of those
9 species.” (§ 1802.)

10 101. As set forth above, the Legislature has found that inadequate user fees, including the
11 license fees at issue here, diminish the Department’s ability to fulfill its public trust duties because they
12 impinge upon the Department’s ability “to effectively provide all of the programs and activities
13 required under this [C]ode [including the State trapping program] and to manage the wildlife resources
14 held in trust by the people of California.” (§ 710.5.) Specifically, the Department “has in the past not
15 been adequately funded to meet its mandates,” due partly to both the “the fixed nature of the
16 [D]epartment’s revenues” and the “increased burden on the department to carry out its public trust
17 responsibilities.” (§ 710.) “This lack of funding for fish and wildlife conservation activities other than
18 sport and commercial fishing and hunting activities [(e.g., trapping activities)] has resulted in
19 inadequate wildlife and habitat conservation and wildlife protection programs.” (*Ibid.*) In order to
20 remedy this inadequate funding and the Department’s resulting failure to carry out its public trust
21 duties, the Legislature required that user fees be raised. (§ 710(a)(1).)

22 102. Here, the Department violated its public trust duties in two related ways. First, by
23 issuing unlawfully underpriced trapping licenses, the Department has exacerbated the very problem the
24 Legislature enacted section 4006(c) to address: the Department’s insufficient funding to carry out its
25 public trust duties to better manage and protect wildlife.

26 103. Second, because the Commission as a practical matter depends on the Department to
27 provide the economic analysis and other information needed to set trapping license fees at a level
28 necessary to comply with the cost recovery mandate of section 4006(c), the Department’s continued

1 failure to prioritize and execute the needed analysis further subverts the Department's public trust
2 responsibilities by perpetuating the Commission's inability to remedy the lack of funding that is
3 undermining the Department's ability to manage the State trapping program. As such, the
4 Department's failure to take meaningful actions to support the Commission in raising the license fees in
5 accordance with section 4006 directly contributes to the mismanagement and ineffective
6 implementation of the State trapping program, thus also violating the Department's public trust
7 obligations to the wildlife directly killed and adversely impacted by the trapping program.

8 104. In sum, the Department's failure to comply with its statutory and common law public
9 trust obligations violates the law, and the Department may be enjoined or compelled to take action to
10 fulfill its public trust duties as the trustee for wildlife under CCP section 1085.

11 105. Petitioners are irreparably harmed from such violations of law amounting to the
12 inadequate implementation and management of the State trapping program and the loss of species that
13 would not otherwise be trapped—wildlife which are held in trust for the people of the State.

14 106. Petitioners have no plain, speedy and adequate remedy at law other than the relief
15 sought herein.

16 107. No administrative remedies exist which were required to be exhausted by Petitioners
17 because the common law and statutory public trust duties are self-executing. In the alternative,
18 Petitioners allege that they have exhausted all available administrative remedies by taking every
19 available and reasonable step to put the Department on notice of their claims and give the Department
20 an adequate opportunity to correct the violations identified in this petition prior to litigation. Such steps
21 include the submission of numerous comment letters and meetings with Department staff since 2013
22 regarding license issuance as well as continual engagement with the Department through the petition
23 process under 14 CCR section 662. Since the Administrative Petition's submission in December 2015,
24 the Department has failed to take any effective action in implementing or responding to the
25 Administrative Petition or towards effectuating the cost recovery mandate of section 4006(c) and has
26 continued to issue licenses that do not comply with the fee recovery mandate.

27 108. Because Petitioners seek to compel the Department to act on the affirmative legal duties
28 set out by statute and common law as described above, and to enjoin the Department from issuing

1 unlawful trapping licenses, Petitioners bring this action under CCP section 1085 to direct the
2 Department to remedy these legal violations.

3 **SIXTH CAUSE OF ACTION**

4 **(Against Both Respondents: Taxpayer Action under CCP § 526a**
5 **to Halt and Prevent Illegal Expenditure of Public Funds)**

6 109. Petitioners re-allege, as if fully set forth herein, each and every allegation contained in
7 the preceding paragraphs.

8 110. Respondents' failure to raise and issue commercial trapping license fees that meet
9 section 4006(c)'s cost recovery mandate has resulted in a revenue shortfall of the State's commercial
10 trapping program.

11 111. In order to account for the user fee revenue shortfall, Respondents have been illegally
12 diverting and continue to divert public taxpayer funds to subsidize the State's commercial trapping
13 program.

14 112. Therefore, Respondents' subsidization of the commercial trapping program for the past
15 four trapping seasons and the current 2017-2018 trapping season constitutes an illegal expenditure of
16 taxpayer funds in violation of section 526a of the CCP.

17 113. Petitioners, as non-profit corporations, and many of their California members are State
18 taxpayers and bring this suit, pursuant to CCP section 526a, against Respondents for their unlawful
19 diversion and expenditure of public funds to finance and subsidize the State's commercial trapping
20 program, which is mandated to be self-sustaining through user fees pursuant to section 4006(c).

21 114. Petitioners have no plain, speedy and adequate remedy at law other than the relief
22 sought herein.

23 115. No administrative remedies exist which were required to be exhausted by Petitioners.

24 116. In the alternative, Petitioners allege that they have exhausted all available administrative
25 remedies by taking every available and reasonable step to put Respondents on notice of their claims and
26 give Respondents an adequate opportunity to correct the violations identified in this Petition prior to
27 litigation. Such steps include the submission of numerous comment letters and meetings with
28 Department staff since 2013 regarding license issuance as well as continual engagement with the

1 Department through the petition process under 14 CCR section 662.

2 117. Because Petitioners seek to halt and prevent Respondents from unlawfully expending
3 public funds to finance and subsidize the State’s commercial trapping program and enforce
4 Respondents’ duty to collect funds due to the State under section 4006(c), Petitioners bring this action
5 as California taxpayers under CCP section 526a to enjoin the Department from any further issuance of
6 commercial trapping licenses until such time as Respondents have fulfilled their duties to ensure that
7 commercial trapping license user fees meet the cost recovery mandate of section 4006(c).

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Petitioners pray for entry of judgment as follows:

10 1. For a writ of mandate directing the Commission to raise trapping license fees and to take
11 any other necessary actions required pursuant to section 4006(c) and its public trust duties;

12 2. For a writ of mandate directing the Commission to immediately establish a definitive
13 rulemaking schedule for the Administrative Petition pursuant to 14 CCR section 662;

14 3. For a writ of mandate directing the Department to take all necessary actions to assist the
15 Commission in fulfilling the cost recovery mandate of section 4006(c) and its statutory and common
16 law public trust duties, including providing the Commission with the economic analysis required to set
17 license fees in compliance with the cost recovery mandate of section 4006(c);

18 4. For preliminary and permanent injunctive relief restraining Respondents and their
19 agents, servants, and employees, and all others acting in concert with them or on their behalf, from
20 taking any action to approve or issue any commercial fur trapping licenses under section 4006(a) until
21 such time as Respondents have fulfilled their duties to ensure fees meet the cost recovery mandate of
22 section 4006(c);

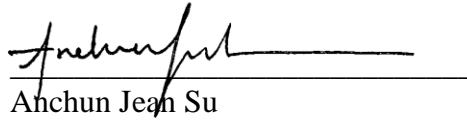
23 5. That this Court retains jurisdiction until the writs of mandate have been complied with
24 and such compliance has been approved by the Court;

25 6. That Petitioners be awarded costs of litigation, including attorneys’ fees and expenses as
26 authorized by CCP section 1021.5 and any other applicable provisions of law; and

27 7. For such other and further relief as the Court finds just and proper.
28

1 DATED: September 13, 2017

Respectfully submitted,

2
3 

4 Anchun Jean Su
5 Brendan Cummings
6 Justin Augustine
7 Lisa Belenky

Attorneys for Petitioners
CENTER FOR BIOLOGICAL DIVERSITY

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

Commissioners
Jack Baylis, President
Los Angeles
Jim Kellogg, Vice President
Discovery Bay
Jacque Hostler-Carmesin, Member
McKinleyville
Eric Sklar, Member
Saint Helena
Anthony C. Williams, Member
Huntington Beach

STATE OF CALIFORNIA
Edmund G. Brown Jr., Governor

Sonke Mastrup, Executive Director
1416 Ninth Street, Room 1320
Sacramento, CA 95814
(916) 653-4899
www.fgc.ca.gov

Fish and Game Commission



Wildlife Heritage and Conservation
Since 1870

December 15, 2015

Ms. Jean Su
Petitioners Center for Biological Diversity
And Project Coyote
1212 Broadway Street, Suite 800
Oakland, CA 94612

Dear Ms. Su:

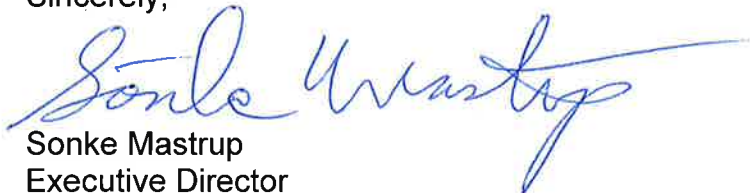
Thank you for submitting your petition for regulation change regarding commercial trapping fees (Tracking Number 2015-009) to the Fish and Game Commission (Commission).

Commission staff reviewed your petition for completeness and it has been accepted. Your request will be provided to the Commission at its February 10-11, 2016, meeting. Commission action on your request (deny or grant for further consideration) will be scheduled for the Commission's April 13-14, 2016, meeting. While it is not necessary for you to attend either of those meetings, you may attend if you desire.

Please see our website <http://www.fgc.ca.gov> for the exact times and locations for the above-referenced meetings.

If you have any further questions or concerns about the petition you submitted, please feel free to contact me at (916) 653-4899 or fgc@fgc.ca.gov.

Sincerely,


Sonke Mastrup
Executive Director



Tracking Number: (Click here to enter text.)

To request a change to regulations under the authority of the California Fish and Game Commission (Commission), you are required to submit this completed form to: California Fish and Game Commission, 1416 Ninth Street, Suite 1320, Sacramento, CA 95814 or via email to FGC@fgc.ca.gov. Note: This form is not intended for listing petitions for threatened or endangered species (see Section 670.1 of Title 14).

Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission's authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or FGC@fgc.ca.gov.

SECTION I: Required Information.

Please be succinct. Responses for Section I should not exceed five pages

1. Person or organization requesting the change (Required)

Name of primary contact person: Jean Su on behalf of Petitioners Center for Biological Diversity and Project Coyote
Address: 1212 Broadway St, Suite 800, Oakland, CA 94612
Telephone number: (510) 844-7139
Email address: jsu@biologicaldiversity.org

2. Rulemaking Authority (Required) - Reference to the statutory or constitutional authority of the Commission to take the action requested: FGC §§ 200, 202, 203, 4006(c) and 4009..

3. Overview (Required) - Summarize the proposed changes to regulations: Petitioners submit this petition to the California Fish and Game Commission ("the Commission") to raise commercial trapping license fees to the levels necessary for full recovery of the Commission's and Department's reasonable administrative and implementation costs of the trapping program so as to comply with section 4006(c) for the California Fish and Game Code ("FGC") and SB 1148 (Pavley). In the alternative, in the event that program costs are determined unlikely to be fully recovered by license fee revenue, Petitioners request the Commission to ban commercial fur trapping of fur-bearing and nongame mammals. .

4. Rationale (Required) - Describe the problem and the reason for the proposed change: Based on information readily available on the Commission's and Department's websites, public statements by the Commission and Department, as well as from Public Record Act responses from the Department, it is undisputable that the Commission has failed to comply with the mandates of FGC § 4006(c) when setting trapping license fees. Prior to the Department's issuing trapping licenses for the 2016-2017 season, the Commission must either raise fees to legally-required levels, or, alternatively, implement a ban on commercial fur trapping in order to meet this legal mandate. See attached for more details.

SECTION II: Optional Information



5. Date of Petition: Dec 4, 2015

6. Category of Proposed Change

- Sport Fishing
- Commercial Fishing
- Hunting
- Other, please specify: Trapping

7. The proposal is to: *(To determine section number(s), see current year regulation booklet or <https://govt.westlaw.com/calregs>)*

Amend Title 14 Section(s): Proposal is to enforce FGC § 4006(c), or in the alternative, ban commercial trapping of all fur-bearing and nongame mammals.

- Add New Title 14 Section(s): *Click here to enter text.*
- Repeal Title 14 Section(s): *Click here to enter text.*

8. If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition NA

Or Not applicable.

9. Effective date: If applicable, identify the desired effective date of the regulation. If the proposed change requires immediate implementation, explain the nature of the emergency: Immediate.

10. Supporting documentation: Identify and attach to the petition any information supporting the proposal including data, reports and other documents: See attached..

11. Economic or Fiscal Impacts: Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing: None.

12. Forms: If applicable, list any forms to be created, amended or repealed:

NA.

SECTION 3: FGC Staff Only

Date received: *Click here to enter text.*

FGC staff action:

- Accept - complete
 - Reject - incomplete
 - Reject - outside scope of FGC authority
- Tracking Number

Date petitioner was notified of receipt of petition and pending action: _____

Meeting date for FGC consideration: _____

FGC action:



State of California – Fish and Game Commission

PETITION TO THE CALIFORNIA FISH AND GAME COMMISSION FOR REGULATION CHANGE

FGC 1 (NEW 10/23/14) Page 3 of 3

- Denied by FGC
- Denied - same as petition _____
Tracking Number
- Granted for consideration of regulation change

BEFORE THE CALIFORNIA FISH AND GAME COMMISSION

**PETITION TO RAISE TRAPPING LICENSE FEES IN COMPLIANCE WITH FEE
RECOVERY MANDATE PURSUANT TO FGC § 4006(c) and SB 1148**

**CENTER FOR BIOLOGICAL DIVERSITY and PROJECT COYOTE
December 4, 2015**

I. NOTICE OF PETITION

Pursuant to Title 14, Section 662 of the California Code of Regulations (“CCR”) (*Petitions for Regulation Change*), the Center for Biological Diversity (“the Center”) and Project Coyote (collectively “Petitioners”) submit this petition to the California Fish and Game Commission (“the Commission”) to raise commercial trapping license fees to the levels necessary for full recovery of the Commission’s and Department’s reasonable administrative and implementation costs of the trapping program so as to comply with section 4006(c) for the California Fish and Game Code (“FGC”) and SB 1148 (Pavley). In the alternative, in the event that program costs are determined unlikely to be fully recovered by license fee revenue, Petitioners request the Commission to ban commercial fur trapping of fur-bearing and nongame mammals.

A. LEGAL AUTHORITY

The Commission possesses the authority to make such amendments pursuant to FGC §§ 200, 202, 203, 4006(c) and 4009.

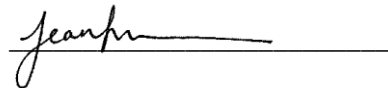
B. PETITIONERS

The Center for Biological Diversity is a non-profit, public interest environmental organization dedicated to the protection of species and their habitats through science, policy and environmental law. The Center has over 900,000 members and online activists worldwide, including over 100,000 members and supporters in California.

Project Coyote is a national nonprofit wildlife conservation organization with more than 25,000 advocates dedicated to promoting coexistence between people and wildlife through education, science and advocacy.

Authors: Jean Su, Brendan Cummings, Center for Biological Diversity
Address: 1212 Broadway St, Suite 800, Oakland, CA 94612
Phone: (510) 844-7139
Email: jsu@biologicaldiversity.org

I hereby certify that, to the best of my knowledge, all statements made in this petition are true and complete.



Jean Su
Staff Attorney
Center for Biological Diversity

Submitted on behalf of Petitioners
Date submitted: December 4, 2015

II. INTRODUCTION AND RECOMMENDED ACTION

Pursuant to Title 14, Section 662 of the California Code of Regulations (“CCR”) (*Petitions for Regulation Change*), the Center for Biological Diversity (“the Center”) and Project Coyote (collectively, “Petitioners”) submit this petition to the California Fish and Game Commission (“the Commission”) to raise existing fur trapping license fees to levels necessary to fully recover the Commission’s and the California Department of Fish and Wildlife’s (“the Department”) reasonable administrative and implementation costs of commercial fur trapping programs for fur-bearing and nongame mammals, as required under FGC § 4006(c). In the alternative, in the event that program costs are determined unlikely to be fully recovered by license fee revenue, Petitioners request the Commission to ban all commercial trapping of fur-bearing and nongame mammals.

Based on information readily available on the Commission’s and Department’s websites, public statements by the Commission and Department, as well as from Public Record Act responses from the Department, it is undisputable that the Commission has failed to comply with the mandates of FGC § 4006(c) when setting trapping license fees. Prior to the Department’s issuing trapping licenses for the 2016-2017 season, the Commission must either raise fees to legally-required levels, or, alternatively, implement a ban on commercial fur trapping in order to meet this legal mandate.¹

III. TRAPPING IN CALIFORNIA

In California, trapping of certain furbearing and nongame mammals is permitted, subject to license requirements. FGC §§ 4005, 4006. Among the most commonly trapped species are badger, beaver, coyote, gray fox, mink, muskrat, opossum, raccoon, spotted skunk, striped skunk and weasel. By regulation, the Commission has previously banned the trapping of fisher, marten, river otter, desert kit fox and red fox. *See* 14 CCR § 460. Earlier this year, the Commission banned all commercial trapping of bobcats. 14 CCR § 478(c).

Currently, a trapping license is required for both trapping for commerce in fur as well as for those engaged in trapping for depredation purposes. FGC § 4005. For administrative purposes, the Department classifies commercial fur trapping as “recreational”, and for depredation purposes as “pest control”. In 2014, the Department sold 860 trapping licenses, with the overwhelming majority being for pest control purposes.² In 2015, the Department sold 675 trapping licenses, with the overwhelming majority again being for pest control purposes. Of the 2015 licenses, 506 were for pest control purposes, 99 were for commercial fur trapping, while 70 were for both purposes.

¹ Given the fee-recovery mandatory of FGC § 4006 is a non-discretionary provision of law, Petitioners believe that a petition for rulemaking prior to the Commission implementing this provision should not be required. Additionally, the fee increase can be implemented administratively rather than through regulation. Nevertheless, because Plaintiffs believe that the existing fur trapping program is highly unlikely to be fiscally viable even with a mandated fee increase, Petitioners submit this petition seeking regulations prohibiting commercial fur trapping. By submitting this petition, Petitioners do not waive their right to seek immediate judicial relief to compel compliance with the requirements of FGC § 4006 and other provisions of law.

² Generally, data on license sales and revenues is available at <http://www.dfg.ca.gov/licensing/statistics/>. *See* California Department of Fish and Wildlife, “Special Permits: Fees Reported by License Year.” *Available at:* <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=59826&inline>.

IV. JUSTIFICATION FOR RECOMMENDED ACTION

A. The Commission is legally mandated to adjust license fees to fully recover trapping program costs

Trappers in California are required to procure a trapping license. FGC § 4005. Trapping license fees are governed by FGC § 4006. FGC § 4006(a) sets a base level fee for trapping licenses and requires the Department to increase that fee based on federal inflation statistics pursuant to FGC § 713. Under this regime, trapping license fees have increased from \$45 several decades ago to \$117.16 for the 2015-2016 license year.

However, in addition to the inflation-related increases contemplated by FGC §§ 4006(a) and 713, FGC § 4006(c) requires that fees also be adjusted to recover the costs of the Department and Commission in managing the trapping program. Specifically, FGC § 4006(c) states:

(c) The commission shall adjust the amount of the fees specified in subdivision (a), as necessary, to fully recover, but not exceed, all reasonable administrative and implementation costs of the department and the commission relating to those licenses.

FGC § 4006(c). This provision was added to the FGC as a result of the passage of SB1148 (Pavley) and should have been operative in California commencing with the 2013-2014 trapping season. SB 1148 specifically required the Commission to recoup program and implementation costs from fee-based programs in an effort to “enable the Department and the Commission to do a better job as public trustees for the state’s fish and wildlife, and for the people they serve.”³

As detailed below, the reality that the existing trapping program is not self-financing plainly violates SB 1147, as codified in FGC § 4006(c). The legal arguments aside, the practical implications of perpetuating an unsustainable trapping program presents an equally compelling reason to either raise fees or eliminate the program: insufficient financial resources will inevitably lead to the program’s inadequate implementation. As noted by the Legislature in enacting F&G Code §§ 710-711, the Department has failed to adequately meet its regulatory mandates due, in part, to “a failure to maximize user fees and inadequate non-fee related funding”, which has “prevented proper planning and manpower allocation” to carry out its “public trust responsibilities” and the “additional responsibilities placed on the Department by the Legislature.” F&G Code § 710-710.5. As a result, the Department is burdened with “the inability . . . to effectively provide all of the programs and activities required under this code and to manage the wildlife resources held in trust by the Department for the people of the state.” F&G Code § 710.5. As a matter of public policy, the Commission should ensure that fees are raised sufficiently to cover the trapping program’s costs, or if it is determined that such costs cannot realistically be recovered, to eliminate the program.

³ See “Legislature Passes Huffman and Pavley Bills to Improve Fish & Wildlife Conservation” (Sep. 6, 2012). Available at: <http://sd27.senate.ca.gov/news/2012-09-06-legislature-passes-huffman-and-pavley-bills-improve-fish-wildlife-conservation>.

B. Current and past license fees have been woefully inadequate to recover trapping program costs and thus violate SB 1148 and FGC § 4006(c)

In spite of the cost recovery mandate of SB1148, the Commission has failed to implement FGC § 4006(c) for the past three trapping seasons, resulting in unlawfully low license fees that have failed to recoup the actual costs of the Department and Commission. As is clear from the 2015-2016 trapping license application, the Department is charging \$117.16 for the resident trapping fee for the current year.⁴ While the marginal increase of \$3.91 over the 2014-2015 season fee may be consistent with the inflation adjustment requirements of FGC §§ 4006(a) and 713, clearly, these fee adjustments do not comply with FGC § 4006(c).

According to the 2014-15 trapping license data available, the Department issued 671 resident licenses (at \$113.75/license), 3 junior licenses (at \$38.25/license), and 1 non-resident license (at \$570/license), recouping a total revenue of around \$77,000 for the entire trapping program.⁵ Based on the Department's documents released over the course of the AB 1213 rulemaking process, a single Department warden, who is fundamental to field surveillance of trap lines and investigations, costs the Department over \$100,000 annually in salary and related expenses.⁶ Given that the 2014-2015 license revenue of approximately \$77,000 fails to cover the cost of a single full-time warden⁷, it is clear that the existing fee structure fails to recoup the costs of California's entire trapping program. Moreover, this amount is for both commercial fur trappers and pest control trappers; licenses fees from purely commercial trappers total less than \$12,000 for the season. Similar low fees and consequently low revenue totals for prior seasons show that the Commission has affirmatively violated FGC § 4006(c) for the past three trapping seasons, including the current one ending on June 30, 2016.

Overall, these figures demonstrate that the Commission has been and remains in gross noncompliance with the unambiguous requirements of the Fish & Game Code. It is critical that the Commission comply with code requirements for the upcoming 2016-2017 trapping season. Further violations of law should not be countenanced.

C. License fees for the upcoming 2016-2017 trapping season must be substantially raised in order to comply with cost recovery provisions of SB 1148 and FGC § 4006(c)

While the exact costs of California's trapping program are not publicly available, the extrapolation of existing data shows that license fees will need to increase substantially in order to meet the cost recovery mandate of FGC § 4006(c) and SB 1148.

⁴ California Department of Fish and Wildlife, "2015-2016 Trapping License Application." Available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=84525&inline>.

⁵ See <https://www.wildlife.ca.gov/Licensing/Statistics>. The majority of these licenses were purchased for pest-control purposes rather than for fur trapping purposes.

⁶ See Memorandum from Charlton Bonham, Director, Cal. Dep't of Fish and Wildlife and Sonke Mastrup, Executive Director, Cal. Fish and Game Comm'n to the Assemblymember Richard Bloom, Member of the Assembly, 50th District, California, "Re: Assembly Bill 2013" (June 13, 2014). Available at: http://www.fgc.ca.gov/meetings/2015/Aug/Exhibits/0805_Item_20_Bobcat.pdf. Given the overlap in the fee recovery provisions of § 4006(c) and AB1213, all fee related documents before the Commission in the bobcat rulemaking should be considered part of the administrative record of the Commission's actions on this petition.

⁷ *Id.*

Total Cost of Trapping Program

During the administrative rulemaking process for AB 1213, the Department stated that existing enforcement, management, and administrative costs of implementing the bobcat trapping program alone amounted to \$161,000.⁸ This total figure included enforcement costs consisting of salaries and vehicle mileage of 12 officers spending approximately 2,000 hours on field patrols over the course of the bobcat trapping season alone. As we demonstrated in the bobcat rulemaking, this cost estimate is unreasonably low. Nevertheless, given bobcats were only one of a dozen species targeted by commercial trappers in California, program costs for the enforcement, management and administration of the overall commercial trapping program likely greatly exceed the figure generated by the Department for just bobcats. A reasonable estimate is likely at least \$200,000, and more likely substantially greater than that. Additionally, enforcement, management, and administrative costs related to pest control trapping likely also exceed the costs attributable to the commercial bobcat trapping program.

Number of Trappers

The critical factor in determining an appropriate license fee is an accurate estimate of the number of trappers who will purchase the license. According to Department license statistics, the total number of trapping licenses issued in the 2014-2015 trapping season was 675, with 506 licenses obtained for pest control only purposes, 99 licenses for commercial fur trapping, and 70 for both purposes.⁹ Given the different purposes as well as logistical, administrative, management and enforcement costs between commercial fur trapping and pest control trapping, Petitioners believe that setting fees separately for these two groups of trappers is appropriate.¹⁰

To accurately estimate the number of commercial fur trappers who will purchase trapping licenses for the 2016-2017 trapping season and beyond, the Commission must reduce the total number of trappers to exclude those trappers primarily trapping bobcats in prior years, as it can be assumed that these individuals will no longer purchase trapping licenses given the implementation of the statewide commercial bobcat trapping ban. Given a maximum of 169 individuals who bought licenses for purposes of fur-trapping in the 2014-2015 season, the number seeking fur trapping licenses for 2016-2017 will likely be fewer than 150, and most likely fewer than 100. Absent a substantial fee increase, the number of pest control trappers would presumably remain roughly the same.

Trapping License Cost

Assuming a total commercial fur trapping program cost of \$200,000 (again, likely an underestimate) and the number of fur trappers to be 100 (again, likely an overestimate), a resident trapping license fee would be approximately \$2,000—seventeen times the license fee for the 2015-2016 trapping season. Even if 150 fur trappers were expected to purchase a license, the fee would need to be set at \$1,333. At the very least, these numbers illustrate that the existing license fee of \$117 for the 2015-2016 season will need to be exponentially increased to meet the cost recovery mandate of the trapping program.

⁸ See “Initial Statement of Reasons for Regulatory Action re: Implementation of the Bobcat Protection Act of 2013” (herein, “AB 1213 ISOR”), at 16. Available at: <http://www.fgc.ca.gov/regulations/2015/478isor.pdf>.

⁹ See <https://www.wildlife.ca.gov/Licensing/Statistics>.

¹⁰ Through this petition, Petitioners at this stage seek that the Commission only address fees for, and/or termination of, the trapping program for commercial (*i.e.* “recreational”) trappers. Setting lawful fees for pest control trappers is likely best done through a separate process.

Given the costs of administering and enforcing the commercial fur trapping program and relatively low number of current fur trappers, we do not see how the program can ever be self-funding. The average income of trappers in the 2014-2015 trapping season was \$1,239, but that figure includes income from bobcat trapping. Absent bobcat trapping, the average income per trapper was well below \$1,000. At a program cost of \$200,000 and 150 trappers paying a \$1,333 trapping fee, the average trapper would still make less from trapping than necessary to pay for the cost of the license. Given this difficulty of breaking even, it is not rational to expect 150 individuals to pay a license fee so as to engage in a commercial enterprise when that enterprise generates on average less money than the cost of the fee. Consequently, the number of trappers supporting the program would be fewer and the fee would need to be raised accordingly. At 50 trappers, the fee would be \$4,000, an amount likely none would be willing to pay.

D. Implementing a statewide ban on all commercial fur trapping is a compelling alternative solution to meeting the cost recovery mandate

This basic economic analysis, based on logical assumptions of cost and viable number of trappers, plainly illustrates that much higher prices of trapping licenses need to be set in order to recover the costs of a commercial fur trapping program in accordance with F&G Code § 4006(c). It is also clear, though, that setting such fees at the required levels would result in a far lower number of trappers (likely approaching zero) willing to pay such fees, leading to a cost-recovery shortfall. Yet setting fees at a level low enough that significant numbers of trappers will pay the fees will simply not recoup program costs. This is also legally impermissible.

In short, given the substantial administrative and enforcement costs associated with fur trapping, and the relatively low numbers of commercial trappers operating in the state, such trapping simply cannot continue in California without a substantial subsidy. Consequently, operating as it must under the cost recovery mandates of F&G Code § 4006(c), we do not see how the Commission can lawfully adopt fees that allows continued commercial fur trapping in California. A statewide ban on commercial and recreational trapping is a compelling alternative and practical solution to meet the statutory cost recovery mandate.

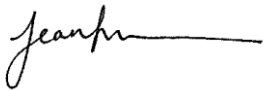
E. The existing trapping fee schedule perpetuates a pattern of fiscal irresponsibility that the Legislature has cautioned against

The reality that the existing trapping program is not self-financing plainly violates SB 1147, as codified in FGC § 4006(c). The legal arguments aside, the practical implications of perpetuating an unsustainable trapping program presents an equally compelling reason to raise fees: insufficient financial resources will inevitably lead to the program's inadequate implementation. As noted by the Legislature in enacting F&G Code §§ 710-711, the Department has failed to adequately meet its regulatory mandates due, in part, to "a failure to maximize user fees and inadequate non-fee related funding", which has "prevented proper planning and manpower allocation" to carry out its "public trust responsibilities" and the "additional responsibilities placed on the Department by the Legislature." F&G Code § 710-710.5. As a result, the Department is burdened with "the inability . . . to effectively provide all of the programs and activities required under this code and to manage the wildlife resources held in trust by the Department for the people of the state." F&G Code § 710.5. As a matter of public policy, the Commission should ensure that fees are raised accordingly for, at the bare minimum, the subsequent trapping season 2016-2017.

V. CONCLUSION

The Commission, presumably by oversight rather than design, is in clear noncompliance with unambiguous requirements of the Fish and Game Code. To rectify these violations, the Department and Commission should perform a cost analysis of the fur trapping program and implement license fees that adequately recoup the cost of that program. However, should the Commission determine that license fees are unlikely to generate sufficient revenue to cover the costs of the program, Petitioners urge the Commission to implement a state-wide ban on all commercial trapping of fur-bearing and nongame mammals.

Respectfully submitted on behalf of Petitioners,



Jean Su
Staff Attorney
Center for Biological Diversity
1212 Broadway Street, Suite 800
Oakland, California 94612
Phone: (510) 844-7139
jsu@biologicaldiversity.org

EXHIBIT B

California Fish and Game Commission – Perpetual Timetable for Anticipated Regulatory Actions

(Dates shown reflect the date intended for the subject regulatory action.)

Updated: 8/18/17

For FGC Staff Use				REGULATORY CHANGE CATEGORY	ACTION DATE, TYPE AND LOCATION	2017						2018												
						AUG 16	SEP 13	OCT 10	OCT 11 12	NOV 9	DEC 6 7	JAN 11	FEB 6	FEB 7 8	MAR 6	MAR 15	APR 12	APR 18 19	MAY 17	JUN 19	JUN 20 21	JUL 17	AUG 22 23	
QUARTERLY EFFECTIVE	DFW RU ANALYST	FGC ANALYST	LEAD			FGC SACRAMENTO	WRC RIVERSIDE	TC ATASCADERO	FGC ATASCADERO	MRC MARINA	FGC SAN DIEGO	WRC SANTA ROSA	TC SACRAMENTO	FGC SACRAMENTO	MRC PETALUMA	FGC TELECONFERENCE	FGC TELECONFERENCE	FGC VENTURA	WRC LOS ALAMITOS	TC SACRAMENTO	FGC SACRAMENTO	MRC SAN CLEMENTE	FGC NORTH COAST	
						File Notice w/OAL by	Notice Published	8/15/17	10/10/17	12/12/17	01/16/18	02/13/18	02/23/18	04/24/18	06/26/18									
				Title 14 Section(s)																				
	KM	JS	FB	Sport Fishing (Annual)	1.05 et al.	N			D		A	V				E 3/1				R			N	
*	SB	ST	HC	Livermore Tarplant	670.2			E 10/1																
*	MR	JS	WLB	Falconry Clean-up	670			E 10/1																
	KM	SF	FB	Klamath River Sport Fishing (Annual)	7.50(b)(91.1)	E 8/?	R				N					D		A		V			E 8/1	
	KM	MMH	FB	Central Valley Salmon Sport Fishing (Annual)	7.50(b)		R				N					D		A		E5/17 V				
	KM	SF	MR	Ocean Salmon Sport Fishing (April 2018) (Annual)	27.80(c)						N					D		A		E 4/1 X				
	KM	SF	MR	Ocean Salmon Sport Fishing (May - November 2018) (Annual)	27.80(d)						N					D		A		E 5/1 X				
	SB	JS	FGC	Use of Dogs for Pursuit/Take of Mammals or for Dog Training	265															E 4/1				
	MR	JS	WLB	Mammal Hunting (Annual)	360 et al.		R				N					D				A	V		E 7/21	
	MR	JS	WLB	Deer Tag Reporting Requirements	708.5			E 10/1																
	MR	JS	WLB	Waterfowl (Annual)	502		R				N					D				A	V		E 7/21	
	MR	JS	WLB	Upland (Resident) Game Bird (Annual)	300		E9/1 V					R				N				D		A		
*	KM	ST	MR	Dungeness Crab and Lobster Recreational Gear Marking and Commercial Lobster Harbor Restricted Fishing Areas	29.80, 122				E 10/1															
	ST	WB	WB	Tricolored Blackbird Emergency - 180 Day	749.9		EE 9/7																	
*	KM	ST	WB	Tricolored Blackbird	749.9				N		D					A		X E 4/1						
	SB	JS	FGC	Use of Dogs for Pursuit/Take of Mammals or for Dog Training	265				D		A									E 4/1				
	KM	SF		Process for Automatic Conformance to Federal Recreational Fishing Regulations	1.95	A				E 11/1														
*	KM	ST	FB	Commercial Take of Rattlesnakes	42, 43, 651, 703				D/A			E 1/1												
*	KM	ST	MR	Nearshore and Deeper Nearshore Fishing Permits	150,150.01,150.02,705	D			A			E 1/1												
*	MR	ST	MR	Commercial Fisheries Electronic Reporting	197				D/A			E 1/1												
*	MR	SF	MR	Commercial Sea Cucumber	128	D			A			E 1/1												
	KM	ST	MR	Abalone Emergency - 180 Day	29.15		EE 9/28																	
	KM	ST	MR	Abalone Emergency - 90 Day	29.15	A					EE 12/27													
	KM	ST	MR	Abalone Certificate of Compliance	29.15	N			D		A									E 4/1				
*	MR	ST	MR	Commercial Sea Urchin (Phase II)	120.7	N			D		A									E 4/1				
RULEMAKING SCHEDULE TO BE DETERMINED																								
*			MR	Kelp and Algae Harvest Management	165, 165.5, 704					V														
*				Possess Game / Process Into Food	TBD																			
*			OGC	AZA / ZAA	671.1																			
				Night Hunting in Gray Wolf Range	474																			
				Shellfish Aquaculture Best Management Practices	TBD					V					R									
			WB	Trapping Fees	TBD																			
			SF	FGC Tribal Take in MPAs	632																			
*			SF	FGC Rockport Rocks Special Closure	632																			

EM = Emergency, EE = Emergency Expires, E = Anticipated Effective Date (RED "X" = expedited OAL review), N = Notice Hearing, D = Discussion Hearing, A = Adoption Hearing, V =Vetting, R = Committee Recommendation, WRC = Wildlife Resources Committee, MRC = Marine Resources Committee, TC = Tribal Committee