

1 LISA T. BELENKY (SBN 203225)
JUSTIN AUGUSTINE (SBN 235561)
2 CENTER FOR BIOLOGICAL DIVERSITY
1095 Market St., Suite 511
3 San Francisco, California 94103
Telephone: 415-436-9682
4 Facsimile: 415-436-9683
Email: lbelenky@biologicaldiversity.org

5 Attorneys for Petitioners
6 CENTER FOR BIOLOGICAL DIVERSITY and
DESERT PROTECTIVE COUNCIL
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

11 CENTER FOR BIOLOGICAL DIVERSITY, a non-)
profit corporation; and DESERT PROTECTIVE)
12 COUNCIL, an non-profit corporation;)

13 Petitioner/Plaintiff,)

14 v.)

15)
16 CALIFORNIA DEPARTMENT OF PARKS AND)
RECREATION; CALIFORNIA DEPARTMENT OF)
GENERAL SERVICES; and DOES 1 - 20, inclusive;)

17 Respondents/Defendants.)
18 _____)

19 CALIFORNIA OFF ROAD VEHICLE ASSOCIATION;)
and DOES 21 through 40,)

20 Real Parties in Interest.)
21 _____)

CASE NO.

Filed under the California Environmental
Quality Act ("CEQA").

PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR DECLARATORY
JUDGMENT

22 **I. INTRODUCTION**

23 _____ 1. Petitioners Center for Biological Diversity and Desert Protective Council challenge
24 Respondent California Department of Parks and Recreation's ("State Parks'") failure to comply with CEQA
25 in its acquisition and management of approximately 4,000 acres of undeveloped desert habitat in Imperial
26 County ostensibly acquired as an addition to the Anza-Borrego Desert State Park (the "Project") because
27 Respondent State Parks has and is continuing to allow indiscriminate and destructive off-road vehicle use

28 Petition for Writ of Mandate

Center for Biological Diversity, et al. v. California Department of Parks and Recreation, et al.

1 of the Project area without having conducted environmental review as required by law.

2 Respondent State Parks issued a Notice of Exemption for the proposed project that stated that the
3 lands would be acquired as “an addition to the Anza-Borrego Desert State Park.” Notice of Exemption,
4 Department of Parks and Recreation, “Desert Cahuilla Acquisition Project-Phase 1(04/05-CD-09),” State
5 Clearinghouse Number 2004118395 (November 29, 2004). However, since the Project was approved and
6 the land transferred to State Parks in September, 2006, State Parks has changed its position and stated that
7 the lands are being jointly managed by Anza-Borrego Desert State Park and the Ocotillo Wells State
8 Recreational Vehicle Area. As part of this joint management but without any plan in place, from September
9 2006 to the present, State Parks has allowed extensive off-road vehicle use of project area that not only may
10 but most certainly is causing significant impacts to the environment. Adding insult to injury, literally, State
11 Parks is currently reviewing a special event permit for a large off-road vehicle event on the Project site – the
12 so called “Truckhaven Challenge”– to take place on January 20-21, 2007, without undertaking any CEQA
13 review for the special event permit.

14 The Project area includes critical habitat for the endangered Peninsular Bighorn Sheep, rare
15 geological formations (including the lakebed of ancient Lake Cahuilla), rare and threatened plants including
16 Orcutt’s Aster and California Fam Palm oases, and many paleontological and archeological sites. Therefore,
17 Petitioners seek from this Court injunctive relief halting State Parks’ current management practices that
18 allow for off-road vehicle use until proper environmental review is conducted pursuant to CEQA, and
19 declaratory relief ordering that the Notice of Exemption does not apply to this Project.

20 In essence, State Parks has engaged in a classic “bait and switch” tactic by providing a Notice of
21 Exemption based on one project description and then approving a different project. Therefore, the Notice
22 of Exemption does not apply to this Project. Because State Parks failed to accurately describe the project
23 in its Notice of Exemption and the actual Project as it is being carried out by State Parks can not be
24 exempted from CEQA review under any categorical exemption or otherwise, State Parks failed to comply
25 with CEQA and the CEQA Guidelines in approving the Project and violated CEQA and the CEQA
26 Guidelines.

27 2. Petitioners petition this Court for a Writ of Mandate under Code of Civil Procedure § 1094.5

1 directing Respondents to vacate and set aside their approvals of the Project, and submit the Project to full
2 environmental review pursuant to CEQA. Petitioners may petition this Court for an Alternative Writ and
3 Stay requiring immediate steps be taken by Respondent State Parks to protect the environmental resources
4 of the project area and to prevent State Parks from issuing any special event permits for large off-road
5 vehicle events on the Project site until adequate CEQA review is completed. Petitioners also seek
6 declaratory and injunctive relief against State Parks for violations of the Public Resources Code statutory
7 directives regarding protection of biological resources, wildlife, and cultural and archeological resources
8 within the Project area, These claims are based on the following allegations:

9 II. PARTIES

10 3. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (“the Center”) is a non-profit, public
11 interest corporation, with over 32,000 members and offices in San Francisco, Los Angeles, and San Diego,
12 California; Tucson and Phoenix, Arizona; Pinos Altos, New Mexico; and Portland, Oregon. The Center and
13 its members are dedicated to protecting the diverse native species and habitats of western North America
14 through science, policy, education, and environmental law. The Center and its members have long had an
15 active role in protecting the many sensitive species, their habitat, and their surrounding environment
16 throughout California and in Imperial County. Many members and staff of the Center reside and own
17 property in California, and visit Anza-Borrego Desert State Park and adjacent lands for professional,
18 scientific, recreational, and spiritual purposes, the interests of members and staff is being directly affected
19 by the project as described herein. The Center publically advocated the protection of the Peninsular Bighorn
20 Sheep and its habitat, a species that is listed as endangered under the Federal Endangered Species Act and
21 is a Fully Protected Species under California Law, through litigation, education, and media. The Peninsular
22 Bighorn Sheep has designated critical habitat within the project area that is being directly affected by the
23 project and its components, as described herein.

24 4. The Desert Protective Council (“DPC”) was incorporated in California in 1955 as a non-profit
25 membership 501(c) 4 membership organization. In 2002, the Desert Protective Council merged with the
26 Desert Protective Council Foundation to become a 501(c) 3 membership organization. The mission of the
27 Desert Protective Council, Inc is to safeguard for sustainable use by this and succeeding generations those

1 desert areas of Southern California that are of unique or significant scenic, scientific, historical, spiritual,
2 and recreational value, and to educate both children and adults to a better understanding of the desert, in
3 order that the objectives of the corporation may be obtained. The Desert Protective Council has a long
4 history of involvement in the desert areas in and around Anza-Borrego Desert State Park and Ocotillo Wells
5 State Vehicular Recreation Area (OWSVRA). DPC participated in the various public general plan processes
6 for Anza-Borrego State Park, has been a consistent voice for the protection of the Coyote Canyon riparian
7 area from off road vehicular through-traffic and has a desert garden within Coyote Canyon dedicated by the
8 DPC. In the late 1960s, the Desert Protective Council was vocal in its support of the establishment of the
9 Ocotillo Wells State Vehicular Area as a dedicated off road vehicle play area. The Desert Protective Council
10 was involved in early negotiations regarding the acquisition of the 4,000 acres of private land in the area
11 west of highway 86 and north of highway S22, called the Desert Cahuilla Prehistoric Area or Freeman
12 Properties. DPC's goal was to ensure that the land be acquired as an addition to Anza-Borrego State Park
13 for protection of the unique cultural, palaeontological, and biological resources of the area. The Desert
14 Protective Council by this suit is seeking to ensure appropriate protection of the unique resources of this area
15 by State Parks.

16 5. Respondent California Department of Parks and Recreation (“State Parks”) is an agency of
17 the State of California within the Resources Agency and is the CEQA “lead agency” for purposes of Public
18 Resources Code § 21067, with principal responsibility for the actions described herein.

19 6. Respondent Department of General Services (“DGS”) is an agency of the Sate of California
20 and issued a second Notice of Exemption for the Project approximately eight-months after the first Notice
21 of Exemption was issued by State Parks. The DGS Notice of Exemption similarly stated that the project
22 was an “acquisition . . . to be added to the Anza Borrego Desert State Park.” Notice of Exemption,
23 Department of General Services, “Acquisition of Freeman Properties, Desert Cahuilla Prehistoric Area,
24 Anza Borrego State Park,” State Clearinghouse Number 2006078023 (July 5, 2006).¹

25 _____
26 ¹The California Public Works Board also approved the project authorizing the acquisition based on
27 a different project description on August 18, 2006. The Project description as stated in the minutes of the
28 August 18, 2006 meeting was the “acquisition of approximately 4,000 acres as an addition to the existing
600,000-acre Anza Borrego Desert State Park and the 75,000- acre Ocotillo Wells State Vehicular
Recreation Area.” State Public Works Board August 18, 2006 Meeting Minutes at 115, Action Item, Staff
Analysis Item - 42. The Public Works Board provided no CEQA compliance for the newly described
Petition for Writ of Mandate

1 primary purpose was clearly stated by the Legislature in Public Resources Code section 5019.53 as follows:

2 The purpose of state parks shall be to preserve outstanding natural, scenic, and cultural
3 values, indigenous aquatic and terrestrial fauna and flora, and the most significant examples
4 of ecological regions of California, such as the Sierra Nevada, northeast volcanic, great
5 valley, coastal strip, Klamath-Siskiyou Mountains, southwest mountains and valleys,
6 redwoods, foothills and low coastal mountains, and desert and desert mountains.

7 Each state park shall be managed as a composite whole in order to restore, protect, and
8 maintain its native environmental complexes to the extent compatible with the primary
9 purpose for which the park was established.

10 Improvements undertaken within state parks shall be for the purpose of making the areas
11 available for public enjoyment and education in a manner consistent with the preservation
12 of natural, scenic, cultural, and ecological values for present and future generations.
13 Improvements may be undertaken to provide for recreational activities including, but not
14 limited to, camping, picnicking, sightseeing, nature study, hiking, and horseback riding, so
15 long as those improvements involve no major modification of lands, forests, or waters.
16 Improvements that do not directly enhance the public's enjoyment of the natural, scenic,
17 cultural, or ecological values of the resource, which are attractions in themselves, or which
18 are otherwise available to the public within a reasonable distance outside the park, shall not
19 be undertaken within state parks.

20 Pub. Res. Code § 5019.53 (emphasis added).

21 15. In 2004, in anticipation of the acquisition of land adjacent to the east side of Anza-Borrego
22 Desert State Park (north of S22 and west of Highway 86) owned by a private party and referred to as the
23 Freeman Properties, State Parks issued a Notice of Exemption stating that the lands were to be acquired as
24 “an addition to the Anza-Borrego Desert State Park.” Notice of Exemption, California Department of Parks
25 and Recreation, “Desert Cahuilla Acquisition Project-Phase 1(04/05-CD-09),” State Clearinghouse Number
26 2004118395 (November 29, 2004).² The Project area is composed of six sections of land that are checker-
27 boarded with other private lands and with six sections of land that are owned by the California State Lands
28 Commission as trustee for the State Teachers Retirement System (“School Lands”). See Exhibit 1 to the
Declaration of Lisa T. Belenky (“Exhibit 1”) (Letter from State Lands Commission to CORVA and Map).

16. As described in the January 2006 report prepared by State Parks staff in anticipation of the
inclusion of the acquisition lands into Anza-Borrego Desert State Park, the Project area provides a
significant example of the ancient western shoreline of Lake Cahuilla and an outstanding example of the

²The same rationale was provided in the Notice of Exemption issued by the Department of General
Services. Notice of Exemption, Department of General Services, “Acquisition of Freeman Properties,
Desert Cahuilla Prehistoric Area, Anza Borrego State Park,” State Clearinghouse Number 2006078023 (July
5, 2006) (“acquisition . . . to be added to the Anza Borrego Desert State Park”).

1 desert ecosystem that has been established in this unique environment (including rare California Fan Palm
2 oases and rare plants such as Pierson's pincushion and Orcutt's woody-aster). See Exhibit 2 at 2, 6-9,
3 (California State Parks, Colorado Desert District, "Natural & Cultural Resources Overview, Desert Cahuilla
4 Acquisition Project, Imperial County, California," January 2006 at 2, 6-9); Id. at Appendix II ("Botanical
5 Resources Technical Report, Desert Cahuilla Acquisition Project, Imperial County, California," September
6 2005 and Appendices thereto at Appendix 4-1 "Fan Palm Census" and photos). The acquisition was intended
7 to protect the unique resources of the Project area. As State Parks noted, past off-road vehicle use "in the
8 south-central and southeastern portions of the project area has resulted in disturbance to soils and vegetation
9 including destruction of the palm grove at Four Palms." Id. at 3. In addition, "the soils in the project area
10 are alluvial in origin, and therefore highly erodable." Id. at 2.

11 17. A majority of the Desert Cahuilla Acquisition lands are within the designated critical habitat
12 for the Peninsular Bighorn Sheep. The endangered Peninsular Bighorn Sheep is a State and Federally listed
13 species that is also a "fully protected species" under California law. Fish & Game Code § 4700(b)(2).
14 Therefore, pursuant to State law, State Parks is obligated to manage those portions of the property that are
15 habitat for the Peninsular Bighorn Sheep for the preservation of the endangered Peninsular Bighorn Sheep,
16 and to provide the same degree of protection that is provided to other similar areas of designated critical
17 habitat for this species within Anza-Borrego Desert State Park.

18 18. The use of off-road vehicles has the potential to disrupt normal Peninsular Bighorn Sheep
19 behavior and may alter their use of essential resources. See Final Determination of Critical Habitat for
20 Peninsular Bighorn Sheep: Final Rule, 66 Fed. Reg. 8650, 8651 (February 1, 2001); Declaration of Esther
21 Rubin filed concurrently. Therefore, by allowing off-road vehicle use in critical habitat State Parks may be
22 violating the "take" prohibitions of both the California and Federal Endangered Species Acts.

23 19. The archeological and cultural resources of the Project site are also extraordinary and in need
24 of protection. These resources include "sleeping circles" and fish traps used by native Americans in the area
25 for hundreds or thousands of years. Similar archeological resources in the area currently managed as part
26 of the Occotillo Wells State Vehicle Recreation Area has been significantly impacted by off-road vehicle
27 use there.

1 “[A]rcheologists have noted the potential threats from off-highway vehicles, particularly
2 quads and motorcycles on the remaining archeological resources at the site. Schneider
3 (2005) commented on the obliteration of all cultural resources from the same ancient lake
4 shoreline just south of County Road S-22, in the recently expanded OWSVRA, and
5 recommended, in particular, protection of the desert pavement covered terraces in the
6 western portion of the acquisition project and for the Four Palms spring area.”

7 Exhibit 2 at 11 (California State Parks, Colorado Desert District, “Natural & Cultural Resources Overview,
8 Desert Cahuilla Acquisition Project, Imperial County, California,” January 2006); Declaration of David
9 Bloom; Declaration of Carol Ziegler.

10 20. Pursuant to statute, off-road vehicles can only be permitted where the “terrain [is] capable
11 of withstanding extensive human impact.” Public Resources Code § 5019.56(a); see also Pub. Res. Code
12 § 5090.02(a) (“the indiscriminate and uncontrolled use of those vehicles may have a deleterious impact on
13 the environment, wildlife habitats, native wildlife, and native flora”). Nothing in the Public Resources Code
14 or elsewhere would allow State Parks to permit the use of off-road vehicles in ecologically sensitive areas
15 such as the Desert Cahuilla Acquisition. As discussed above, State Parks’ own report admits that past off-
16 road vehicle use has shown that the terrain and the significant ecological, geological, and cultural resources
17 cannot withstand such extensive human impact.

18 21. Since the Project was approved and the land transferred to State Parks in September, 2006,
19 State Parks has changed its position and stated that the lands are being jointly managed by Anza-Borrego
20 Desert State Park and the Ocotillo Wells State Recreational Vehicle Area. As part of this joint management,
21 but without any plan in place, from September 2006 to the present, State Parks has allowed extensive off-
22 road vehicle use of project area that not only may but most certainly is causing significant impacts to the
23 environment. See Declaration of Terry Weiner, Declaration of Larry Hogue (and accompanying photos).
24 State Parks is now reviewing a special event permit for a large off-road vehicle event on the Project site –
25 the so called “Truckhaven Challenge” which will include over 400 off-road vehicles – to take place on
26 January 20-21, 2007, without undertaking any CEQA review for the special event permit.

27 22. Respondents have abused their discretion and failed to act as required by law in the following
28 ways:

1 **V. CAUSE OF ACTION UNDER CEQA**

2 (Violation of California Environmental Quality Act, Pub. Resources Code §§ 21000, *et seq.*)

3 **Failure to Conduct Environmental Review**

4 23. Petitioners hereby incorporate by reference the allegations contained in paragraphs 1 through
5 23, inclusive.

6 24. In carrying out their review and approval activities with respect to the Project, Respondent
7 State Parks was, and is, at all times mentioned herein under a mandatory duty to comply with the provisions
8 of CEQA and the CEQA Guidelines, 14 Cal. Code Reg. § 15000 *et seq.*

9 25. In carrying out their review and approval activities with respect to the Project, Respondent
10 Department of General Services was, and is, at all times mentioned herein under a mandatory duty to comply
11 with the provisions of CEQA and the CEQA Guidelines, 14 Cal. Code Reg. § 15000 *et seq.*

12 26. CEQA and the CEQA Guidelines apply to discretionary agency projects or actions which
13 have the potential for resulting in a physical change in the environment.

14 27. CEQA and the CEQA Guidelines require that the public agency approving the project
15 determine whether the project may have a significant effect on the environment. CEQA requires that an
16 environmental impact report (“EIR”) be prepared for projects which may have a significant effect on the
17 environment. If the project will not have a significant effect on the environment, then a negative declaration
18 (“Neg Dec”) must be prepared.

19 28. CEQA provides that certain types of activities that would otherwise require preparation of
20 an EIR or a Neg Dec may be exempt from the requirements of CEQA and the CEQA Guidelines.
21 Specifically, the CEQA Guidelines provide for certain categorical exemptions so long as “the application
22 of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2.”
23 Guidelines, § 15061(b)(2). The exceptions include where cumulative impacts are significant or where there
24 is a reasonable possibility that the project will have significant effects on the environment due to unusual
25 circumstances. Guidelines, § 15300.2.

26 29. State Parks issued a Notice of Exemption for the Project, the acquisition of the property,
27 based on its finding that the acquisition, defined as follows, was exempt from CEQA:
28

1 the acquisition by the Department of Parks and Recreation of approximately 5,000 acres of
2 natural lands as an addition to the Anza Borrego Desert State Park. The property is located
3 along the current eastern park boundary, immediately north of the County highway S22....
The primary purpose of the acquisition is for the conservation of natural habitat, sensitive
species, and archeological resources.

4 State Parks, Notice of Exemption, November 29, 2004. State Parks claimed that the acquisition was exempt
5 from CEQA review pursuant to the CEQA Guidelines section 15316, Categorical Exemption 16a, 14 CCR
6 § 15316(16)(a), and stated as follows:

7 No potential for significant impacts to the environment is anticipated. Acquisition of land
8 in order to establish a park where the land is in a natural condition or contains historic sites
or archeological sites, where the management plan for the park has not been prepared.

9 State Parks, Notice of Exemption, November 29, 2004. CEQA Guidelines section 15316 is entitled
10 “Transfer of Ownership of Land in Order to Create Parks” and states in its entirety:

11 Class 16 consists of the acquisition, sale, or other transfer of land in order to establish a park
12 where the land is in a natural condition or contains historical or archaeological resources and
either:

13 (a) The management plan for the park has not been prepared, or

14 (b) The management plan proposes to keep the area in a natural condition or preserve the
15 historic or archaeological resources. CEQA will apply when a management plan is proposed
that will change the area from its natural condition or cause substantial adverse change in the
significance of the historic or archaeological resource.

16 14 CCR § 15316. After the Notice was issued, and before the land was acquired, a management plan for
17 Anza-Borrego Desert State Park was adopted – the 2005 Anza-Borrego Desert State Park General Plan.
18 Therefore, subsection (a) was no longer applicable to this property at the time it was acquired. Once the
19 General Plan was prepared, the Project could only fit within this categorical exemption if the “management
20 plan proposes to keep the area in a natural condition or preserve the historic or archeological resources.” 14
21 CCR 15316(b).³

22 30. Since the ownership of the Project site was transferred to State Parks in September, 2006,
23 State Parks has failed to provide any interim management plan or to adequately protect the environmental
24 resources of the site. Rather, State Parks has allowed off-road vehicles to use the Project site indiscriminately
25 and to damage and destroy many of the resources of this area. See Declaration of Terry Wiener; Declaration
26 of Lawrence Hogue. Petitioners are informed that State Parks is now considering an application for a special

27 ³Because State Parks is allowing ongoing use of the Project area by off-road vehicles and such use
28 will not “keep the area in a natural condition or preserve historic and archeological resources,” it is not
complying with the terms of this categorical exemption. CEQA Guidelines, § 15316(b).

1 event permit sought by Real Party in Interest CORVA for an event called “the Truckhaven Challenge,”
2 consisting of two major events. On Saturday, January 20th, 2007, participants will drive a 20 mile course
3 and will also have the opportunity to leave the main course and pursue "more difficult" alternate routes. See
4 Exhibit 3 (website pages). On Sunday, January 21st, 2007, as stated in the event poster, participants will,
5 as part of the "Satellite Safari," be encouraged to “pick their own route,” and will essentially be on their own
6 as to where they drive their off road vehicle on the Project site. See Exhibit 3. In other words, the
7 “Truckhaven Challenge”, as described by the sponsor, CORVA, will allow extensive use of the Project site.
8 State Parks has not undertaken any CEQA review for the proposed special event permit and there will be
9 little or no supervision or control as to where participants drive their vehicles on the Project site.

10 31. The Project does not qualify for any categorical exemption pursuant to the CEQA Guidelines,
11 § 15061(b)(2), and neither does the proposed special use permit. Rather than provide management for the
12 Project area to protect the environmental, cultural, and archeological resources as appropriate for an addition
13 to Anza-Borrego Desert State Park, soon after the land was transferred to State Parks it announced that it
14 would be “jointly managed” by Anza-Borrego Desert State Park and Ocotillo Wells State Vehicle Recreation
15 Area. Exhibit 4 (News Release, California Department of Parks and Recreation, “State Parks Takes
16 Ownership of Freeman Property,” October 13, 2006; “While long term stewardship strategies are being
17 developed, it will be managed jointly by the State Parks’ management teams from both Anza-Borrego Desert
18 State Park and Ocotillo Wells State Vehicle Recreation Area.”) Furthermore, the news release obscures
19 more than it reveals. For example, it states that the property “has a 50-year history of diverse recreational
20 use by motorized and non-motorized recreational vehicles,” id., but fails to disclose to the public that the
21 prior use of this property by off-road vehicles was not authorized and that this trespass by off-road vehicles
22 damaged and degraded many fragile resources of this property and neighboring properties including rare
23 California Fan Palm (*Washingtonia filifera*) oases and cultural resources in the southern and eastern portions
24 of the property.
25
26
27
28

1 32. Thus, after filing the Notice of Exemption stating that the Project would enhance
2 conservation (the acquisition of lands for one of the premier State Parks in the system that is known for its
3 efforts to preserve some of the most spectacular wild lands in California as well as outstanding archeological
4 and cultural resources), State Parks initiated a different project that is not only likely to, but is certain to,
5 destroy many of the environmental values of the acquired property. Because State Parks is now attempting
6 to legitimize previously unauthorized off-road vehicle use and expand recreational off-road vehicle use to
7 the detriment of wildlife, rare plants, unique geological features, and cultural and archeological values
8 without any environmental review, State Parks has violated CEQA.

9
10 33. In essence, State Parks has engaged in a classic “bait and switch” tactic by providing a Notice
11 of Exemption to acquire the land for one purpose but then later changing the purpose of the project. Because
12 the Project as it is actually being carried out by State Parks could not have been exempted from CEQA
13 review under any categorical exemption or otherwise, State Parks failed to comply with CEQA and the
14 CEQA Guidelines in approving the Project and violated CEQA and the CEQA Guidelines. State Parks’
15 approval of the Project without compliance with the requirements of CEQA and the CEQA Guidelines is
16 arbitrary and capricious, an abuse of discretion, and not in accordance with law. State Parks should be
17 ordered to rescind and annul their approval of the Project and to provide adequate interim protections for
18 the resources on these newly acquired State owned lands while the Agency fully complies with the law.

19
20
21 **Improper Claim of Exemption by Department of General Service**

22 34. Petitioners hereby incorporate by reference the allegations contained in paragraphs 1 through
23 33, inclusive.

24 35. As a responsible agency in the decision-making process for this approval Respondent
25 Department of General Services was, and is, at all times mentioned herein under a mandatory duty to comply
26 with the provisions of CEQA and the CEQA Guidelines, 14 Cal. Code Reg. § 15000 *et seq.*

1 36. The Notice of Exemption filed by the Respondent California Department of General Services
2 on July 5, 2005, stated that “The proposed project consists of an acquisition of approximately 4,000 acres
3 of undeveloped land to be added to the Anza Borrego Desert State Park. The project will transfer the
4 ownership of land to the California Department of Parks and Recreation to ensure the preservation of open
5 space and the natural environment.” Notice of Exemption, Department of General Services, “Acquisition
6 of Freeman Properties, Desert Cahuilla Prehistoric Area, Anza Borrego State Park,” State Clearinghouse
7 Number 2006078023 (July 5, 2006). Respondent DGS relied on a different categorical exemption, Class
8 25, Guidelines section 15325 entitled “Transfers of Ownership of Interest in Land to Preserve Existing
9 Natural Conditions and Historical Resources, and which states as relevant here:
10

11 Class 25 consists of the transfers of ownership of interests in land to preserve open space,
12 habitat, or historical resources. Examples include, but are not limited to:

13 (a) Acquisition, sale, or other transfer of areas to preserve the existing natural conditions,
14 including plant or animal habitat;

15 ...

16 (c) Acquisition, sale, or other transfer to allow restoration of natural conditions,
17 including plant or animal habitats.

18 ...

19 (f) Acquisition, sale, or other transfer to preserve open space or lands for park purposes.

20 14 CCR 15325. The reason given by DGS for the use of the exemption was:

21 The project involves the acquisition of land and transfer of ownership for the purposes of
22 preserving open space and wildlife habitat as part of the Anza Borrego Desert State Park.

23 Notice of Exemption, Department of General Services, “Acquisition of Freeman Properties, Desert Cahuilla
24 Prehistoric Area, Anza Borrego State Park,” State Clearinghouse Number 2006078023 (July 5, 2006)
25 (emphasis added).

26 37. The Project does not qualify for any categorical exemption pursuant to the CEQA Guidelines,
27 § 15061(b)(2), because the Project description in the Notice of Exemption was inaccurate. State Parks has
28 made it clear that it will not manage the land to preserve open space and wildlife habitat as part of Anza
 Borrego Desert State Park but will instead allow the use of off-road vehicles in the Project area that have
 destroyed environmental resources of the property in the past and continue to do so in the present. While

1 it is unclear at this time whether or not DSG knew that State Parks would abandon the original stated
2 purpose of the project, that question is immaterial. Pursuant to CEQA, the Notice of Exemption is invalid
3 because the project described in the Notice of Exemption issued by DGS is not an accurate description of
4 the Project that is being carried out. The Project being carried out (which allows off-road vehicle use in an
5 area with significant wildlife habitat, rare plants, cultural, geological, and archeological resources) could not
6 be properly exempted from CEQA review under the Class 25 categorical exemption, any other categorical
7 exemption, or otherwise. Therefore DGS has failed to comply with CEQA and the CEQA Guidelines in
8 approving the Project and violated CEQA and the CEQA Guidelines. DGS' approval of the Project without
9 compliance with the requirements of CEQA and the CEQA Guidelines is arbitrary and capricious, an abuse
10 of discretion, and not in accordance with law. Respondent DGS should be ordered to rescind and annul its
11 approval of the Project and to ensure that adequate interim protections for the resources on these State
12 owned lands are put in place while each of the responsible State agencies fully comply with the law.

15 **Inadequate Environmental Review by all Respondents**

16 38. Petitioners hereby incorporate by reference the allegations contained in paragraphs 1 through
17 37, inclusive.

18 39. The proposed Project is a discretionary agency action which has the potential for resulting
19 in physical changes to the environment. Absent the claimed exemption by State Parks and DGS, the Project
20 would be subject to the requirements of CEQA and the CEQA Guidelines.

22 40. All Respondents failed to accurately determine whether the proposed project may have a
23 significant effect on the environment.

24 41. All Respondents failed to prepare an initial study, or issue a Neg Dec, or require the
25 preparation of an EIR.

26 42. All Respondents failed to analyze feasible mitigation measures and alternatives to the
27 proposed Project.
28

1 use has shown that the terrain and the significant ecological, geological, and cultural resources cannot
2 withstand such extensive human impact.

3 48. For all these reasons, Petitioners seek a declaration from this Court that State Parks has
4 violated the Public Resources Code and its mandatory duties thereunder, to protect outstanding natural,
5 scenic, and cultural values, indigenous aquatic and terrestrial fauna and flora on the Project site. Pub. Res.
6 Code § 5019.53.

7 **VII. PRAYER FOR RELIEF**

8 WHEREFORE, Petitioner prays for judgment as follows:

- 9
- 10 1. For peremptory writs of mandate and alternative writs, commanding Respondent State
11 Parks:
- 12 (A) to set aside findings that the project is exempt from the provisions of CEQA;
13 (B) to vacate and set aside the approval of the Project;
14 (C) to conduct full CEQA review of the Project;
15 (D) to suspend any and all activity pursuant to Respondent's approval of the Project,
16 that will prejudice the consideration or implementation of particular mitigation
17 measures or alternatives, until Respondent has complied with all requirements of
18 the California Environmental Quality Act and all other applicable state and local
19 laws, policies, ordinances, and regulations as are directed by this Court pursuant
20 to Public Resources Code section 21168.9; and
- 21
- 22 2. For a declaration that State Parks has violated its mandatory duties to protect the
23 outstanding natural, scenic, and cultural values, indigenous aquatic and terrestrial fauna
24 and flora and other environmental resources on the Project site;
- 25
- 26 3. For peremptory writs of mandate and alternative writs, commanding Respondent
27 Department of General Services:
28

- 1 (A) to set aside findings that the project is exempt from the provisions of CEQA;
2 (B) to vacate and set aside the approval of the Project;
3 (C) to conduct full CEQA review of the Project;
4 (D) to suspend any and all activity pursuant to Respondent's approval of the Project,
5 that will prejudice the consideration or implementation of particular mitigation
6 measures or alternatives, until Respondent has complied with all requirements of
7 the California Environmental Quality Act and all other applicable state and local
8 laws, policies, ordinances, and regulations as are directed by this Court pursuant
9 to Public Resources Code section 21168.9;
10

- 11 4. For a temporary stay, temporary restraining order, and preliminary injunction restraining
12 State Parks and Real Party from taking any actions in reliance on any special event permit
13 issued by State Parks for the Project site, pending full compliance with the requirements
14 of CEQA;
15
16 5. For costs of the suit;
17
18 6. For attorneys' fees as authorized by Code of Civil Procedure § 1021.5 and other
19 provisions of the law;
20
21 7. For such other and future relief as the Court deems just and proper.

21 Respectfully submitted,

22 DATED: January 18, 2007

LISA T. BELENKY
JUSTIN AUGUSTINE
Center for Biological Diversity

Attorneys for Petitioners
CENTER FOR BIOLOGICAL DIVERSITY and
DESERT PROTECTIVE COUNCIL