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7 Attorneys for Petitioners

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SONOMA

10 ENVIRONMENTAL INFORMATION PROTECTION )  
11 CENTER, a non-profit corporation; and HUMBOLDT )  
12 WATERSHED COUNCIL, a non-profit corporation, )

13 Petitioners,

14 v.

15 CALIFORNIA REGIONAL WATER QUALITY )  
16 CONTROL BOARD – )  
17 NORTH COAST REGION, a state agency, )

18 Respondent. )  
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Case No.:

VERIFIED PETITION FOR WRIT OF  
MANDATE (California Environmental  
Quality Act, Pub. Res. Code § 21000 *et seq.*;  
Code Civ. Pro. § 1094.5)

29 Petitioners Environmental Information Protection Center and Humboldt Watershed Council respectfully  
30 allege:

31 1. Petitioners seek the issuance of a writ of mandate ordering respondent California  
32 Regional Water Quality Control Board, North Coast Region (“Regional Board”) to vacate and  
33 set aside Resolution No. R1-2002-0109 because, in issuing the resolution, the Regional Board  
34 failed to comply with its duties under the California Environmental Quality Act, Public  
35 Resources Code, § 21000 *et seq.* By Resolution No. R1-2002-0109, the Regional Board adopted  
36 an “Interim Categorical Waiver for Discharges Related to Timber Operations in the North Coast  
37 Region.” The waiver exempts an undisclosed number of logging operations and their  
38 accompanying discharges of pollutants including sediment and herbicides throughout the entire

1 North Coast region that will be initiated over the next year from having to comply with the  
2 reporting and permitting requirements that otherwise would apply to those operations' discharges  
3 of pollutants to waters of the North Coast. Resolution No. R1-2002-0109 also approved an  
4 initial study and negative declaration, resolving that the waiver will not have a significant effect  
5 on the environment. Substantial evidence supports a fair argument that the waiver for logging  
6 discharges may continue or exacerbate degraded conditions in almost all of the North Coast's  
7 waterways. The waiver further threatens the continued existence and/or health of a number of  
8 fish species listed as threatened or endangered, including for example the coho salmon, which  
9 depend for their survival on unpolluted rivers and streams throughout the North Coast region.  
10 Because the administrative record contains substantial evidence of a fair argument that the  
11 adopted waiver may have a significant effect on the environment, a writ of mandate should issue  
12 ordering the Regional Board to vacate and set aside Resolution No. R1-2002-0109.

13 2. Petitioner Environmental Information Protection Center ("EPIC") is a non-profit public  
14 benefit corporation organized under the laws of the State of California with its main office in  
15 Garberville, California. EPIC has approximately 3,000 members, many of whom reside in the  
16 North Coast region of California. EPIC's purpose is to protect and restore biological diversity  
17 and ecosystem health in northwestern California's forests. EPIC works to preserve northwest  
18 California's forests and watersheds in part by monitoring state and federal environmental  
19 management activities in those lands in order to ensure compliance with current law. EPIC also  
20 serves as a community resource center for members of the public working to protect forest and  
21 stream ecosystems.

22 3. Petitioner Humboldt Watershed Council ("HWC") is a confederation of residents of the  
23 Freshwater Creek drainage and other interested residents of the area who are committed to the  
24 restoration and protection of Humboldt County watersheds, protection of private property rights  
25 from upstream nuisance, and the sustainability of Humboldt County's economy. HWC has been  
26 a petitioner before the Regional Board, requesting it to take action, including the issuance of  
27 water quality permits, against harmful logging practices by logging companies in Humboldt  
28 County.

1 4. Members of petitioners reside near the myriad rivers, streams and waterways located in  
2 the North Coast region of California, including, for example, Freshwater Creek, Jacoby Creek,  
3 Mattole River, Noyo River, Eel River, Klamath River, Van Duzen River, Trinity River, and  
4 Redwood Creek, and use and enjoy those waters for recreation and other activities. Members of  
5 petitioners use and enjoy the waters into which occur pollution discharges resulting from logging  
6 operations currently excluded from the reporting and permitting requirements of the Porter-  
7 Cologne Act. Members of petitioners use those areas to drink, fish, sail, boat, kayak, bird watch,  
8 view wildlife and engage in scientific study including monitoring activities. Numerous members  
9 of petitioners have swum or drunk from, or would like to swim and drink from northern  
10 California rivers, but are seriously concerned and fearful about the health effects of consuming  
11 or coming into contact with pollutants.

12 5. The discharge of sediments and other pollutants from logging operations throughout the  
13 North Coast region into the region's rivers and streams has impaired and continues to impair  
14 each of those uses. Discharges of sediments and other pollutants from logging operations  
15 significantly contribute to the unacceptably high levels of sediments, turbidity and temperature in  
16 the Albion River, Big River, Freshwater Creek, Gualala River, Jacoby Creek, Mad River,  
17 Mattole River, Noyo River, Russian River, Scott River, Eel River, Van Duzen River, Garcia  
18 River, Trinity River, Redwood Creek, Navarro River, Ten Mile River, their tributaries, and other  
19 waters of northern California.

20 6. Discharges of sediments and other pollutants from logging operations throughout the  
21 North Coast region into the region's rivers and streams have adversely affected the health of fish  
22 species endangered or threatened with extinction. Future pollution discharges pursuant to the  
23 waiver for logging operations will adversely affect coho salmon and other endangered or  
24 threatened species in the future.

25 7. On behalf of themselves and their members, petitioners actively gather and distribute  
26 information in order to educate their members, the general public and state and federal agencies  
27 regarding the environmental health of California's waters, including waters in northern  
28 California. Petitioners publish regular newsletters, maintain websites, prepare comments on

1 proposed regulatory actions and monitor agency actions regarding water quality of rivers and  
2 streams along the North Coast of California. In order to carry out their educational and advocacy  
3 missions, petitioners depend upon the agencies' full compliance with environmental assessment  
4 statutes such as the California Environmental Quality Act ("CEQA").

5 8. The health, environmental, recreational, scientific and informational interests of  
6 petitioners and their members have been, are being, and will continue to be directly and  
7 adversely affected by the Regional Water Quality Control Board, North Coast Region's  
8 ("Regional Board") failure to comply with CEQA in issuing and/or maintaining Resolution No.  
9 R1-2002-0109.

10 9. Respondent California Regional Water Quality Control Board, North Coast Region is the  
11 entity authorized pursuant to Water Code §§ 13263 and 13269 to issue water pollution control  
12 permits and to waive certain reporting and permitting requirements when it is not against the  
13 public interest.

14 10. The project is the issuance of an "Interim Categorical Waiver for Discharges Related to  
15 Timber Operations in the North Coast Region," Resolution No. R1-2002-0109 (hereinafter  
16 "Waiver"). The Waiver governs discharges of an array of pollutants, including but not limited to  
17 sediment, turbidity, temperature and pesticides from several million acres of forested lands  
18 throughout the North Coast Region to the waters of the State of California. Those waters include  
19 but or not limited to the Albion River, Big River, Freshwater Creek, Gualala River, Jacoby  
20 Creek, Mad River, Mattole River, Noyo River, Russian River, Scott River, Eel River, Klamath  
21 River, Van Duzen River, Garcia River, Trinity River, Redwood Creek, Navarro River, Ten Mile  
22 River, all of which have been identified as impaired by logging-induced pollutant discharges.  
23 Respondent Regional Board is the lead agency responsible under CEQA for evaluating the  
24 environmental impacts of the project.

25 11. Respondent Regional Board caused a draft initial study and negative declaration for the  
26 project to be prepared and circulated for comment from November 6, 2002 to December 6, 2002.  
27 On December 10, 2002, Respondent Regional Board held a public hearing on the draft negative  
28 declaration.

1 12. By Resolution No. R1-2002-0109, dated December 10, 2002, respondent Regional Board  
2 resolved to adopt the negative declaration and issue the Waiver. By that same resolution,  
3 respondent adopted the Waiver. The Regional Board's Waiver became final and effective on  
4 December 10, 2002. On December 30, 2002, respondent filed a notice of determination to carry  
5 out the project.

6 13. Petitioners, other agencies, interested groups, and individuals made oral and written  
7 comments on the initial study and the negative declaration and raised each of the legal  
8 deficiencies asserted in this petition. The State Water Resources Control Board may only  
9 consider petitions for review of regional board decisions that are specified in Water Code section  
10 13320. Water Code section 13320 does not identify any provisions of CEQA or the Public  
11 Resources Code as reviewable by the State Water Resources Control Board. Hence, no further  
12 administrative remedies are available to petitioners for the claims in this petition.

13 14. Petitioners have no plain, speedy, or adequate remedy in the ordinary course of law in  
14 that, unless the Court grants the requested writ of mandate to require the Regional Board to  
15 comply with their legal duties, respondents will continue to proceed in violation of the law to the  
16 detriment of petitioners.

17 15. Petitioners performed all conditions precedent to filing this action by complying with the  
18 requirements of Public Resources Code section 21167.5 in filing notice of this action on January  
19 15, 2003. A true and correct copy of petitioners' notice of intent to file a CEQA petition is  
20 attached hereto as Exhibit A.

21 16. On January 15, 2003, petitioners, through petitioners' counsel, informed respondent that  
22 petitioners intended to prepare and copy the administrative record and requesting that  
23 respondents accommodate that effort without delay. On January 16, 2003, petitioners requested  
24 that respondent prepare a true and correct copy of the administrative record. A copy of that  
25 request is attached as Exhibit B.

26 17. Respondent's action in adopting the initial study and the negative declaration constitutes  
27 a prejudicial abuse of discretion in that respondent failed to proceed in the manner required by  
28 law and its decision is not supported by substantial evidence as follows:

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- (a) The initial study’s and negative declaration’s finding that the project could not have a significant effect on the environment is not supported by substantial evidence. For example, the Regional Board has no evidence in the record to show that the proposed waiver will likely reduce discharges of logging-related pollutants, including for example, sediment to the state’s waters. Whether the project will result in increases or decreases in pollutant loadings from logging discharges is based on conjecture and conclusory assertions by respondent. Respondent’s administrative record does not contain factual information regarding the number of future timber harvest plans and federal timber sales, the location of logging-related discharges, their volume and constituents, what if any management practices are being applied, whether those practices actually control any pollutants sufficiently to achieve water quality objectives and Basin Plan requirements, and the availability of other management practices.
- (b) The initial study is not substantial evidence that the project could not have a significant effect on the environment because it does not disclose the evidence relied on by the study and asserts conclusory statements unsupported by any evidence or factual information.
- (c) The initial study’s and negative declaration’s finding that the project could not have a significant effect on the environment is not supported by the substantial evidence of a fair argument that the project may have a significant environmental effect provided by the uncontradicted opinions of qualified experts that the project may lead to increased loadings of pollutants.
- (d) The initial study’s and negative declaration’s finding that the project could not have a significant effect on the environment is not supported by the substantial evidence of a fair argument that the project may have a significant environmental effect provided by other responsible and trustee agencies.
- (e) The initial study’s and negative declaration’s finding that the project could not have a significant effect on the environment erroneously assumes that the project’s vague conditions will prove effective. There is no factual information in the record from which respondent could evaluate the effectiveness of any future mitigations for any future

1 logging operations. Nor is there any factual information in the record regarding the  
2 effectiveness of existing or future management practices throughout the project area.

3 (f) The initial study's and negative declaration's finding that the project would not degrade  
4 the quality of the environment is not supported by substantial evidence in the record of a  
5 fair argument that the project may degrade the quality of the environment. For example,  
6 substantial evidence in the record shows that about 85% of the North Coast's rivers and  
7 creeks are identified as impaired by discharges of sediment and high temperature  
8 associated with logging operations. The Waiver authorizes additional discharges of  
9 sediment and other pollutants to those degraded waters from future logging operations.  
10 Pollution discharges authorized by the waiver will further degrade those impaired rivers  
11 and creeks and/or retard the recovery of those waterways.

12 (g) The initial study's and negative declaration's finding that the project would not  
13 substantially reduce the habitat of a fish or wildlife population to drop below self-  
14 sustaining levels, threaten to eliminate a plant or animal community, or reduce the  
15 number or restrict the range of a rare or endangered plant or animal is not supported by  
16 substantial evidence of a fair argument that the project may result in such impacts.

17 (h) The initial study's and negative declaration's finding that the project does not have the  
18 potential to achieve short-term environmental goals to the disadvantage of long-term  
19 environmental goals is not supported by substantial evidence in the record of a fair  
20 argument that the project may cause long-term environmental impacts, including, for  
21 example, increased risk of landslides in logged areas and increased risk of road and  
22 stream crossing failures.

23 (i) The initial study's and negative declaration's finding that the project would not have  
24 impacts that are individually limited, but cumulatively considerable is not supported by  
25 substantial evidence in the record of a fair argument that the project may result in such  
26 cumulative impacts.

27 (j) The initial study's and negative declaration's finding that the project would not have  
28 environmental effects which will cause substantial adverse effects on human beings,

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either directly or indirectly is not supported by substantial evidence in the record of a fair argument that the project may result in adverse effects on human beings, including, for example, increased risk of flooding and impairment of drinking water quality.

(k) The initial study's and negative declaration's finding that the project would have a less than significant effect on hydrology and water quality is not supported by substantial evidence in the record of a fair argument that the project may result in water quality impacts. Evidence in the record and statements of the Regional Board confirm that individual discharges governed by the project may not comply with water quality standards and that cumulatively discharges governed by the project will violate applicable water quality standards.

(l) The initial study's and negative declaration's finding that the project would have a less than significant impact on biological resources is not supported by substantial evidence in the record of a fair argument that the project may result in impacts to biological resources, including species listed as endangered or threatened.

(m) The initial study's and negative declaration's finding that the project would have a less than significant impact on geology and soils is not supported by substantial evidence in the record of a fair argument that the project may result in impacts related to geology and soils, including erosion and landsliding known to the respondent to degrade water quality.

(n) The initial study's and negative declaration's finding that the project would have a less than significant impact on air quality is not supported by substantial evidence in the record of a fair argument that the project may result in air quality impacts.

(o) The initial study's and negative declaration's finding that the project would have a less than significant impact on aesthetics is not supported by substantial evidence in the record of a fair argument that the project may result in aesthetic impacts.

(p) The initial study's and negative declaration's finding that the project could not have a significant effect on cultural or historic resources is not supported by substantial evidence in the record of a fair argument that the project may result in impacts to cultural and historic resources.

- 1 (q) The initial study's and negative declaration's finding that the project would have a less  
2 than significant impact on noise levels is not supported by substantial evidence in the  
3 record of a fair argument that the project may result in noise impacts.
- 4 (r) The initial study's and negative declaration's finding that the project would have a less  
5 than significant impact on recreation is not supported by substantial evidence in the  
6 record of a fair argument that the project may result in impacts to recreational activities,  
7 including but not limited to fishing, swimming, birdwatching, hiking, and kayaking.
- 8 (s) The initial study and negative declaration fail to identify and consider the indirect social  
9 and economic changes that increased loadings of pollutants associated with logging  
10 operations may have on downstream residents, including for example armoring channel  
11 banks, raising homes, installing super-filters on pumps, discontinuing agricultural and/or  
12 agronomy operations due to sedimentation of pastures or clogging of water pumps.
- 13 (t) The initial study and negative declaration fail to set forth an adequate description of the  
14 project, including but not limited to the specific locations of discharges that would be  
15 governed by the waiver; the number of discharges at issue; the volume of such  
16 discharges; the pollutants found in such discharges; the nature of any pollution control  
17 measures that may already be in place; other pollution control measures that would be  
18 applied, and; the effectiveness of any existing or future pollution control measures.
- 19 (u) The initial study and negative declaration fail to adequately describe the environmental  
20 setting of the project, including but not limited to the condition of surface waters into  
21 which discharges governed by the project occur and proximity to downstream residential  
22 areas.

23 Respondent thereby violated its duties by adopting an initial study and negative declaration that fail to  
24 conform with the requirements of CEQA and the CEQA Guidelines and by failing to prepare a full environmental  
25 impact report for the project. Accordingly, Resolution No. R1-2002-0109 must be set aside.

26 16. Petitioners have incurred substantial costs and attorneys fees that will continue to accrue in an  
27 amount not yet determined. Petitioners are entitled to an award of attorneys' fees if they prevail in this action as  
28 provided in California Code of Civil Procedure § 1021.5 because this action seeks to enforce important rights

1 affecting the public interest which, if enforced, will confer significant benefits on the general public. Petitioners will  
2 seek an award of fees and costs.

3 WHEREFORE, petitioners demand entry of judgment as follows:

- 4 1. For a peremptory writ of mandate directing:
  - 5 (a) Respondent to vacate and set aside its decision adopting the initial study, the negative  
6 declaration and Resolution No. R1-2002-0109.
  - 7 (b) Respondent to prepare, circulate, and consider a legally adequate EIR and otherwise to  
8 comply with CEQA in any subsequent action to approve the project.
- 9 2. For their costs of suit.
- 10 3. For an award of attorneys' fees.
- 11 4. For other equitable or legal relief that the Court considers just and proper.

12 Dated: January 16, 2003

13 Respectfully Submitted,

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15 EARTHJUSTICE LEGAL DEFENSE FUND

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18 By: \_\_\_\_\_  
19 Michael R. Lozeau  
20 Attorney for Petitioners  
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**VERIFICATION**

I, the undersigned, say:

I am the Program Director for the Environmental Protection Information Center. I have read the foregoing petition and complaint and am familiar with its contents. The facts alleged in the above petition and complaint are true of my personal knowledge. I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration is executed on January 14, 2003, at Garberville, California.

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Cynthia Elkins