

ORIGINAL



1 BILL LOCKYER, Attorney General
of the State of California
2 MARY HACKENBRACHT
Senior Assistant Attorney General
3 MARK W. POOLE, State Bar No. 194520
Deputy Attorney General
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
5 Telephone: (415) 703-5605
Fax: (415) 703-5480

FILED
ALAMEDA COUNTY

JUL 22 2005

CLERK OF THE SUPERIOR COURT
By *Sara Dellese* Deputy

6 Attorneys for Defendants
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA

11 KARUK TRIBE OF CALIFORNIA;
AND LEAF HILLMAN,

Case No.: RG 05211597

12 Plaintiffs,

ANSWER OF DEFENDANTS

13 v.
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15 CALIFORNIA DEPARTMENT OF
FISH AND GAME; AND RYAN
16 BRODDRICK, DIRECTOR,
CALIFORNIA DEPARTMENT OF
17 FISH AND GAME,

18 Defendants.
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21 Defendants California Department of Fish and Game and Ryan Broddrick, Director,
22 California Department of Fish and Game ("Defendants") answer the verified complaint for
23 declaratory and injunctive relief ("complaint") as follows:
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25 INTRODUCTION

26 1. The allegations contained in the first sentence of Paragraph 1 of the complaint are
27 the Plaintiffs' characterizations and contentions regarding the claims set forth in the complaint.
28 The Defendants allege that the complaint speaks for itself. To the extent that a response is

1.

1 required, the Defendants deny these allegations on the grounds that the complaint is the best
2 evidence of its contents. Additionally, the Defendants allege that the 1994 Environmental Impact
3 Report ("1994 EIR") referenced in Paragraph 1 speaks for itself. To the extent that a response is
4 required, the Defendants deny these allegations on the grounds that the 1994 EIR is the best
5 evidence of its contents. The allegations contained in the third sentence of paragraph 1 are
6 conclusions of law to which no response is required. To the extent that a response is required,
7 the Defendants deny the allegations.

8 2. The allegations contained in paragraph 2 are characterizations and contentions
9 regarding the claims set forth in the complaint. The Defendants allege that the complaint speaks
10 for itself. To the extent that a response is required, the Defendants deny the allegations on the
11 grounds that the complaint is the best evidence of its contents.

12 PARTIES

13 3. In response to paragraph 3, the Defendants lack sufficient information or belief to
14 form an opinion as to the truth of the allegations and, on that basis, deny the allegations.

15 4. In response to paragraph 4, the Defendants lack sufficient information or belief to
16 form an opinion as to the truth of the allegations and, on that basis, deny the allegations.
17 Alternatively, the allegations in paragraph 4 contain conclusions of law to which no response is
18 required. To the extent that a response is required, the Defendants deny the allegations.

19 5. In response to paragraphs 5 and 6, the Defendants lack sufficient information or
20 belief to form an opinion as to the truth of the allegations and, on that basis, deny the allegations.

21 6. In response to the allegations contained in the first sentence of paragraph 7, the
22 Defendants lack sufficient information or belief to form an opinion as to the truth of the
23 allegations and, on that basis, deny the allegations. The allegations contained in the second
24 sentence of paragraph 7 are conclusions of law to which no response is required. To the extent
25 that a response is required, the Defendants deny the allegations.

26 7. The allegations contained in paragraph 8 are conclusions of law to which no
27 response is required. To the extent that a response is required, the Defendants deny the
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1 allegations. The Defendants affirmatively allege that the California Department of Fish and
2 Game is an agency of the State of California.

3 8. The allegations in paragraph 9 contain conclusions of law to which no response is
4 required. The Defendants affirmatively allege that Ryan Broddrick is the Director of the
5 California Department of Fish and Game.

6 9. The allegations contained in paragraphs 10 and 11 are conclusions of law to which
7 no response is required. To the extent that a response is required, the Defendants deny the
8 allegations.

9 JURISDICTION AND VENUE

10 10. The allegations contained in paragraph 12 are conclusions of law to which no
11 response is required. To the extent that a response is required, the Defendants deny the
12 allegations.

13 11. The allegations in paragraph 13 contain conclusions of law to which no response
14 is required. To the extent that a response is required, the Defendants deny the allegations.

15 12. The allegations contained in paragraph 14 are conclusions of law to which no
16 response is required. To the extent that a response is required, the Defendants deny the
17 allegations.

18 FACTUAL AND LEGAL SETTING

19 13. In response to the allegations contained in paragraph 15 through 17, the
20 Defendants lack sufficient information or belief to form an opinion as to the truth of the
21 allegations and, on that basis, deny the allegations.

22 14. The allegations contained in paragraph 18 are the Plaintiffs' characterizations and
23 contentions regarding the 1994 EIR. The Defendants allege that the 1994 EIR speaks for itself.
24 To the extent that a response is required, the Defendants deny these allegations on the grounds
25 that the 1994 EIR is the best evidence of its contents. The Defendants affirmatively allege that
26 the EIR was issued in April 1994.

27 15. The allegations contained in paragraph 19 are the Plaintiffs' characterizations and
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1 contentions regarding the 1994 EIR and the Biological Opinion. The Defendants allege that the
2 1994 EIR and Biological Opinion speak for themselves. To the extent that a response is
3 required, the Defendants deny these allegations on the grounds that the 1994 EIR and Biological
4 Opinion are the best evidence of their contents.

5 16. The allegations contained in paragraphs 20 and 21 are the Plaintiffs'
6 characterizations and contentions regarding the 1994 EIR and 14 Cal. Code Regs § 228 *et seq.*
7 The Defendants allege that these documents speak for themselves. To the extent that a response
8 is required, the Defendants deny these allegations on the grounds that the 1994 EIR and the
9 regulations are the best evidence of their own contents.

10 17. In response to the allegations in the first sentence of paragraph 22, the Defendants
11 lack sufficient information or belief to form an opinion as to the truth of the allegations and, on
12 that basis, deny the allegations. As to the remainder of the allegations in paragraph 22, the
13 allegations contain legal conclusions to which no response is required. Alternatively, the
14 allegations are the Plaintiffs' characterizations and contentions regarding the listing decisions
15 referenced therein. The Defendants allege that these documents speak for themselves. To the
16 extent that a response is required, the Defendants deny these allegations on the grounds that the
17 documents are the best evidence of their own contents. The Defendants affirmatively allege that
18 the Coho salmon was listed as a threatened species under the California Endangered Species Act
19 on March 30, 2005.

20 18. The allegations contained in paragraph 23 are the Plaintiffs' characterizations and
21 contentions regarding the Recovery Strategy referenced therein. The Defendants allege that the
22 Recovery Strategy speaks for itself. To the extent that a response is required, the Defendants
23 deny these allegations on the grounds that the Recovery Strategy is the best evidence of its own
24 content.

25 19. In response to the first sentence of paragraph 24, the Defendants lack sufficient
26 information or belief to form an opinion as to the truth of the allegations and, on that basis, deny
27 the allegations. The allegations in paragraph 24 also contain legal conclusions to which no
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1 response is required. Alternatively, the allegations in the second sentence of paragraph 24 are the
2 Plaintiffs' characterizations and contentions regarding the listing decisions referenced therein.
3 The Defendants allege that these documents speak for themselves. To the extent that a response
4 is required, the Defendants deny these allegations on the grounds that the documents are the best
5 evidence of their own contents.

6 20. The allegations contained in paragraphs 25 and 26 are conclusions of law to which
7 no response is required. To the extent that a response is required, the Defendants deny the
8 allegations. Alternatively, to the extent the allegations contain characterizations and contentions
9 of the 1994 EIR, the Defendants allege that the 1994 EIR speaks for itself. To the extent that a
10 response is required, the Defendants deny these allegations on the grounds that the 1994 EIR is
11 the best evidence of its own content.

12 21. The allegations contained in the first sentence of paragraph 27 are the Plaintiffs'
13 characterizations and contentions regarding the Public Records Act request referenced therein.
14 The Defendants allege that the Public Records Act request speaks for itself. To the extent that a
15 response is required, the Defendants deny these allegations on the grounds that Public Records
16 Act request is the best evidence of its own content. The allegations contained in the second
17 sentence of paragraph 27 are the Plaintiffs' characterizations and contentions regarding the
18 August 24, 2004 letter referenced therein. The Defendants allege that the August 24, 2004 letter
19 speaks for itself. To the extent that a response is required, the Defendants deny these allegations
20 on the grounds that August 24, 2004 letter is the best evidence of its own content. Defendants
21 affirmatively allege that in a letter dated August 24, 2004 Defendant California Department of
22 Fish and Game informed Plaintiffs' attorney, the Environmental Law Foundation, that the
23 Department did not locate any documents responsive to the Public Records Act request
24 referenced in paragraph 27. The allegations contained in the third sentence of paragraph 27
25 contain conclusions of law to which no response is required. To the extent a response is required
26 the Defendants deny the allegations.

27 22. The allegations in the first four sentences of paragraph 28 are the Plaintiffs'
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1 characterizations and contentions regarding the letter referenced therein. The Defendants allege
2 that the letter speaks for itself. To the extent that a response is required, the Defendants deny
3 these allegations on the grounds that the letter is the best evidence of its own content.
4 Defendants admit that Defendant Broddrick has not responded to the letter referenced in
5 paragraph 28.

6 FIRST CAUSE OF ACTION

7 23. Responding to the allegations set forth in paragraph 29, the Defendants
8 incorporate their responses to paragraphs 1 through 28 of the complaint, inclusive, as set forth
9 above.

10 24. The allegations contained in paragraph 30 are conclusions of law to which no
11 response is required. To the extent that a response is required, the Defendants deny the
12 allegations.

13 25. The allegations contained in paragraph 31 are conclusions of law to which no
14 response is required. To the extent that a response is required, the Defendants deny the
15 allegations. Alternatively, the allegations contained in paragraph 31 are the characterizations and
16 contentions of the Plaintiffs regarding the 1994 EIR. The Defendants allege that the 1994 EIR
17 speaks for itself. To the extent that a response is required, the Defendants deny the allegations on
18 the ground that the 1994 EIR is the best evidence of its contents.

19 26. The allegations contained in paragraph 32 are conclusions of law to which no
20 response is required. To the extent that a response is required, the Defendants deny the
21 allegations. Alternatively, the allegations contained in the third and fourth sentences of
22 paragraph 32 are the characterizations and contentions of the Plaintiffs regarding the 1994 EIR.
23 The Defendants allege that the 1994 EIR speaks for itself. To the extent that a response is
24 required, the Defendants deny the allegations on the ground that the 1994 EIR is the best
25 evidence of its contents.

26 27. The allegations contained in paragraphs 33 through 37 are conclusions of law to
27 which no response is required. To the extent that a response is required, the Defendants deny the
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1 allegations.

2 SECOND CAUSE OF ACTION

3 28. Responding to the allegations set forth in Paragraph 38, the Defendants
4 incorporate their responses to paragraphs 1 through 37 of the complaint, inclusive, as set forth
5 above.

6 29. The allegations contained in paragraph 39 are the characterizations and
7 contentions of the Plaintiffs regarding California Fish and Game Code § 5653(b). The
8 Defendants allege that § 5653(b) speaks for itself. To the extent that a response is required, the
9 Defendants deny the allegations on the ground that § 5653(b) is the best evidence of its contents.
10 Alternatively, the allegations contained in paragraph 39 are conclusions of law to which no
11 response is required. To the extent that a response is required, the Defendants deny the
12 allegations.

13 30. The allegations contained in the first and second sentences of paragraph 40 are the
14 characterizations and contentions of the Plaintiffs regarding the 1994 EIR. The Defendants
15 allege that the 1994 EIR speaks for itself. To the extent that a response is required, the
16 Defendants deny the allegations on the ground that 1994 EIR is the best evidence of its contents.
17 The allegations contained in the third sentence of paragraph 40 are conclusions of law to which
18 no response is required. To the extent that a response is required, the Defendants deny the
19 allegations.

20 31. The allegations contained in paragraph 41 are conclusions of law to which no
21 response is required. To the extent that a response is required, the Defendants deny the
22 allegations.

23 32. The allegations contained in paragraphs 42 and 43 are conclusions of law to which
24 no response is required. To the extent that a response is required, the Defendants deny the
25 allegations.

26 THIRD CAUSE OF ACTION

27 33. Responding to the allegations set forth in Paragraph 44, the Defendants

1 incorporate their responses to paragraphs 1 through 43 of the complaint, inclusive, as set forth
2 above.

3 34. The allegations contained in paragraph 45 are conclusions of law to which no
4 response is required. To the extent that a response is required, the Defendants deny the
5 allegations.

6 35. The remaining allegations in the complaint are the Plaintiffs' prayers for relief to
7 which no response is required.

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9 AFFIRMATIVE DEFENSES

10 1. The Plaintiffs' claims should be dismissed due to the Plaintiffs' lack of
11 standing to raise their claims as against Defendants.

12 2. The Plaintiffs' claims should be dismissed due to the Plaintiffs' failure to
13 exhaust all available administrative remedies prior to filing suit.

14 3. The Plaintiffs' claims should be dismissed due to the Plaintiffs' failure to state
15 sufficient facts to state a claim against the Defendants.

16 4. The Plaintiffs' claims should be dismissed due to the Plaintiffs' unclean hands
17 in bringing this complaint.

18 5. The Plaintiffs' claims should be dismissed for failure to state a sufficient
19 beneficial interest giving rise to standing to claim the relief sought.

20 6. The Plaintiffs' claims should be dismissed due to the Plaintiffs' failure to
21 adequately preserve issues at the administrative level which are raised in the complaint.

22 7. The Plaintiffs' claims should be dismissed pursuant to the doctrine of laches.

23 8. The Plaintiffs' claims should be dismissed due to the Plaintiffs' failure to
24 comply with all applicable statutes of limitations.

25 9. The Plaintiffs' claims should be dismissed for lack of actual controversy relating
26 to the legal rights and duties of the respective parties.


1 REQUEST FOR RELIEF

2 WHEREFORE, the Defendants pray that:

- 3 1. The complaint be dismissed;
- 4 2. The Plaintiffs take nothing by their action;
- 5 3. Judgment be awarded against the Plaintiffs and in favor of the Defendants; and
- 6 4. Allowable fees and costs, including those recoverable pursuant to Government
- 7 Code, section 6103.5, be awarded to the Defendants; and
- 8 5. Any other relief deemed appropriate by this Court.

9 Dated: July 21, 2005

BILL LOCKYER
Attorney General

10
11 By: 
12 MARK W. POOLE,
13 Deputy Attorney General

14 Attorneys for Defendant California
15 Department of Fish and Game
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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Karuk Tribe v. California Dept. of Fish and Game**
Alameda County Superior Court Case No. RG05211597

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 455 Golden Gate Avenue, Suite 11000, San Francisco, California 94102-7004.

On July 21, 2005, I served the attached

ANSWER OF DEFENDANTS

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at San Francisco, California, addressed as follows:

Joshua J. Borger
1736 Franklin St., 9th Floor
Oakland, CA 94612

Roger Beers
2930 Lakeshore Ave., Suite 408
Oakland, CA 94610

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 21, 2005 at San Francisco, California.

Kathleen Deocampo

Declarant

KDeocampo

Signature