

1 DEBORAH A. SIVAS (CA Bar No. 135446)
ALICIA E. THESING (CA Bar No. 211751)
2 MATTHEW J. SANDERS (CA Bar No. 222757)
CHELSEY DAVIDSON (CA Bar Student Cert. No. 463120)
3 JOSEPH INGRAO (CA Bar Student Cert. No. 454648)
ENVIRONMENTAL LAW CLINIC
4 Mills Legal Clinic at Stanford Law School
Crown Quadrangle, 559 Nathan Abbott Way
5 Stanford, California 94305-8610
Telephone: (650) 725.8571
6 Facsimile: (650) 723.4426
dsivas@stanford.edu
7 athesing@stanford.edu
matthewjsanders@stanford.edu
8

9 Attorneys for Intervenors Center for Food Safety,
Defenders of Wildlife, and Xerces Society for
10 Invertebrate Conservation

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SACRAMENTO**
13

14 ALMOND ALLIANCE OF CALIFORNIA;
CALIFORNIA ASSOCIATION OF PEST
15 CONTROL ADVISERS;
CALIFORNIA CITRUS MUTUAL;
16 CALIFORNIA COTTON GINNERS AND
GROWERS ASSOCIATION;
17 CALIFORNIA FARM BUREAU
FEDERATION;
18 WESTERN AGRICULTURAL
PROCESSORS
19 ASSOCIATION; and
WESTERN GROWERS ASSOCIATION,,
20

Petitioners,

21 v.

22 CALIFORNIA FISH AND GAME
COMMISSION, a California Public Agency;
23 CALIFORNIA DEPARTMENT OF FISH
AND
24 WILDLIFE, a California Public Agency,,
25

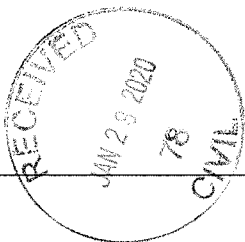
26 Respondents.

Case No. 34-2019-80003216-CU-WM-GDS

ANSWER IN INTERVENTION

Action Filed: September 9, 2019

for FAX



1 By leave of the Court, Respondent-Intervenors The Xerces Society for Invertebrate
2 Conservation, The Center for Food Safety, and Defenders of Wildlife (“Intervenors”) hereby file this
3 answer-in-intervention in this action challenging Respondents’ California Fish and Game
4 Commission and California Department of Fish and Wildlife (“Respondents”) June 12, 2019,
5 decision to list the crotch bumble bee (*Bombus Crotchii*), Franklin’s bumble bee (*Bombus franklini*),
6 suckley cuckoo bumble bee (*Bombus suckleyi*), and western bumble bee (*Bombus occidentalis*)
7 (collectively, “California Native Bees”) as candidate species under the California Endangered
8 Species Act (“CESA”). Intervenors join with Respondents in opposing Petitioners’ claims, and
9 allege as follows:
10

11 1. On October 4, 2019, Petitioners Almond Alliance of California, California Association
12 of Pest Control Advisers, California Citrus Mutual, California Cotton Ginners and Growers
13 Association, California Farm Bureau Federation, Western Agricultural Processors Association, and
14 Western Growers Association (collectively “Petitioners”) filed its First Amended Verified Petition
15 for Writ of Mandate (“First Amended Petition”) seeking that the Court issue:
16

17 (1) A Peremptory Writ of Mandate commanding the [California Fish and Game] Commission
18 to rescind its determination that the listing of the [California Native] Bees is warranted, and
19 vacating the designation of the [California Native] Bees as candidate species.

20 (2) An award of reasonable attorneys’ fees under Code of Civil Procedure section 1021.5
21 and/or Government code section 800.

22 (3) Any other relief deemed appropriate by the Court.

23 **INTERVENORS’ INTERESTS**

24 2. Intervenors, and their staff and members, have direct and immediate interests in the
25 subject matter of this litigation, and these interests will be adversely affected if Petitioners prevail in
26 this action.

27 3. Intervenor THE XERCES SOCIETY FOR INVERTEBRATE CONSERVATION
28 (“Xerces”) is an international scientific nonprofit organization that seeks to prevent the extinction of

1 threatened invertebrates and protect the crucial ecosystem services they provide. Intervenor THE
2 CENTER FOR FOOD SAFETY (“CFS”) is a national nonprofit public interest and environmental
3 advocacy organization that aims to promote sustainable agricultural practices and curb harmful
4 agricultural practices. Intervenor DEFENDERS OF WILDLIFE (“Defenders”) is a national
5 nonprofit organization with over 1.8 million members dedicated to the protection of all native wild
6 animals and plants in their natural communities, including in California.
7

8 4. Protecting pollinators – especially bumble bees such as the California Native Bees –
9 and the connectivity between pollinators, wildlife habitats, ecosystem services, and agricultural
10 vitality, including in California, is a core program and/or purpose of each of the Intervenors.

11 5. Each of the Intervenors has staff, members, and/or supporters who work, reside,
12 and/or recreate in California. These staff and members study pollinators including the California
13 Native Bees, enjoy observing and photographing the California Native Bees, work to protect
14 pollinators including the California Native Bees, and benefit from the ecosystem services that come
15 from ensuring healthy, connected wildlife habitats. The ability of these staff members and supporters
16 to observe, photograph, study, protect and appreciate the California Native Bees, and enjoy the
17 important ecosystem pollination services they provide, has already been compromised because of
18 urban and agricultural development, pesticide use, and diseases spread from cultivated bees. Their
19 interests will be compromised further if the California Native Bees lose their candidacy protections
20 under CESA.
21

22 6. Intervenors Xerces, CFS, and Defenders, including their staff, members, and
23 supporters, jointly prepared the 119-page petition to the California Fish and Game Commission to list
24 the California Native Bees under CESA (“Listing Petition). Xerces and their staff and members
25 gathered and analyzed most of the data underlying the Listing Petition, provided supplemental data
26 and analysis to the Department during its consideration of the Listing Petition, briefed the
27
28

1 Commission on the status of the California Native Bees, and provided oral testimony in support of
2 the Listing Petition at the Commission's June 12, 2019, public hearing on the Listing Petition.

3 Intervenor collectively submitted a memorandum in support of the Commission's legal authority to
4 list invertebrates under CESA on May 30, 2019.

5
6 7. Intervenor furthermore have an interest in affirming the Commission's legal authority
7 to list invertebrates under CESA. Xerces' mission focuses exclusively on the protection of
8 invertebrate species like the California Native Bees because of their importance to healthy
9 ecosystems. All Intervenor's missions are inextricably linked to invertebrate protections. Moreover,
10 all of the Intervenor, like all Californians, consume food that is pollinated by insects, and thereby
11 have an interest in the continued survival of the California Native Bees.

12
13 **ANSWER TO PETITIONERS' CLAIMS**

14 7. Intervenor deny Petitioner's cause of action in their First Amended Petition, to wit:

15 8. Answering paragraphs 1 through 44, Intervenor answer that the legal provisions cited
16 therein speak for themselves and are the best evidence of their contents. To the extent that
17 Paragraphs 1 through 44 call for legal conclusions, no answer is required. To the extent that
18 Paragraphs 1 through 44 contain material allegations, Intervenor deny each and every allegation
19 contained therein.

20 9. In response to paragraph 45 through 47 of the First Amended Petition, Intervenor
21 aver that in approving the Listing Petition of the California Native Bees, Respondents acted within
22 their legal authority and fully complied with all applicable legal requirements.

24 10. In response to paragraphs 48 through 50 of the First Amended Petition, to the extent
25 these paragraphs call for legal conclusions, no answer is required.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Intervenor pray for relief as follows:
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD AFFIRMATIVE DEFENSE

(Reservation of Right to Assert Additional Defenses)

As a separate and distinct affirmative defense to the First Amended Petition and to each cause of action contained therein, Petitioners have failed to particularize its allegations, and/or Intervenors' lack of knowledge of the circumstances surrounding Petitioners' causes of action prevents Intervenors from asserting all applicable defenses at this time. Upon further particularization of the allegations by Petitioners or upon discovery of further information concerning Petitioners' causes of action, Intervenors reserve the right to assert additional defenses.

DATED: January 27, 2020

ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School

By: Joseph A. Ingrao
JOSEPH INGRAO, Certified Law Student
MATTHEW J. SANDERS, Supervising Attorney

Attorneys for Intervenors The Xerces Society for
Invertebrate Conservation, The Center for Food Safety,
and Defenders of Wildlife