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9 Attorneys for Plaintiff Center for Biological Diversity

10 *Seeking admission *pro hac vice*

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 **CENTER FOR BIOLOGICAL**
16 **DIVERSITY**, a non-profit organization;

17 Plaintiff,

18 v.

19 **U.S. DEPARTMENT OF THE INTERIOR;**
SALLY JEWELL, Secretary of the Interior;
20 **U.S. FISH AND WILDLIFE SERVICE;**
DAN ASHE, Director, U.S. Fish and Wildlife
21 Service;

22 Defendants.

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**
ADMINISTRATIVE PROCEDURE ACT
CASE

23 **INTRODUCTION**

24 1. Plaintiff Center for Biological Diversity (“the Center”) challenges the failure of
25 Defendants U.S. Department of the Interior; Sally Jewell, Secretary of the Interior; U.S. Fish and
26 Wildlife Service; and Dan Ashe, Director of the U.S. Fish and Wildlife Service (collectively,
27 “FWS”) to comply with section 7 of the Endangered Species Act (“ESA”) and its implementing
28 regulations, as well as section 706 of the Administrative Procedure Act (“APA”). Specifically,

1 FWS has failed to complete interagency consultation regarding the effects of three pesticides on
2 two endangered species in the California Bay Delta within the timelines required under the ESA
3 and its implementing regulations.

4 2. Interagency consultation is a central feature of the ESA’s framework for
5 protecting endangered and threatened species. Through the consultation process, federal
6 agencies work with expert federal wildlife agencies, including FWS, to ensure that their actions
7 do not jeopardize the survival of threatened or endangered species.

8 3. As a result of previous litigation and a court-approved settlement, the
9 Environmental Protection Agency (“EPA”) determined that dozens of registered pesticides are
10 likely to adversely affect listed species in the California Bay Delta and requested consultation
11 with FWS on the impacts of these pesticides. Three of these pesticides – atrazine, alachlor and
12 2,4-D – and two listed species – the Delta smelt and Alameda whipsnake – are at issue in this
13 Complaint.

14 4. Almost six years have passed since EPA attempted to initiate the first of these
15 consultations, and FWS has not completed a single consultation to ensure that pesticides will not
16 cause jeopardy to listed species in the California Bay Delta or adversely modify their habitats.
17 Through this ongoing delay, FWS has failed to comply with the ESA’s strict time limits for
18 completion of the section 7(a)(2) consultation process. The agency’s delay in completing the
19 required consultations allows toxic pesticides to continue to harm the species and contaminate
20 their habitats.

21 5. Through this Complaint, the Center seeks injunctive and declaratory relief,
22 including an order compelling FWS to complete the consultations and placing restrictions on
23 pesticide use to prevent jeopardy to the listed species until consultation is completed.

24 **JURISDICTION**

25 6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question
26 jurisdiction), 16 U.S.C. § 1540(g)(1)(A) (ESA citizen suit provision) and 5 U.S.C. § 702 (APA).

1 7. The Center provided FWS with at least 60 days notice of the ESA violations
2 alleged herein as required by 16 U.S.C. § 1540(g)(2)(A). FWS has not remedied the violations
3 set out in that 60-day written notice.

4 8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) and 16 U.S.C. §
5 1540(g)(3)(A) because a substantial part of the agency’s violations of law occurred and continue
6 to occur in this district and injury to the Center and its members occurred and continues to occur
7 in this district.

8 **INTRADISTRICT ASSIGNMENT**

9 9. Pursuant to Civil Local Rules 3-2 and 3-5, the appropriate intradistrict assignment
10 of this case is to either the San Francisco Division or the Oakland Division because a substantial
11 part of the agency’s violations of law occurred and continue to occur in the counties of Alameda,
12 Contra Costa, Marin, San Francisco, Santa Clara, Santa Cruz, and Sonoma, which are within the
13 range of the Delta smelt or the Alameda whipsnake.

14 **PARTIES**

15 10. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)
16 organization with over 50,000 active members, with offices in San Francisco, California and
17 elsewhere across the country. The Center and its members are concerned with the conservation
18 of imperiled species, including the Alameda whipsnake and Delta smelt, and the effective
19 implementation of the ESA. Recognizing that pesticides are one of the foremost threats to the
20 earth’s environment, biodiversity, and public health, the Center works to prevent and reduce the
21 use of harmful pesticides and to promote sound conservation strategies.

22 11. The Center’s members include those who have visited areas where the Alameda
23 whipsnake and Delta smelt are known to occur. They use these areas for observation of these
24 listed species and other wildlife; research; nature photography; aesthetic enjoyment; and
25 recreational, educational, and other activities. The Center’s members derive professional,
26 aesthetic, spiritual, recreational, economic, and educational benefits from these listed species and
27 their habitats. Those members have concrete plans to continue to travel to and recreate in areas
28

1 where they can observe the Alameda whipsnake and Delta smelt and will continue to maintain an
2 interest in these species and their habitats in the future.

3 12. The above-described interests of the Center and its members have been and are
4 being adversely affected by FWS's failure to complete consultation on the impacts of pesticides
5 on the Alameda whipsnake and Delta smelt. Once in the environment, pesticides impact listed
6 species through acute and chronic effects and contamination of habitats. If FWS completed
7 consultation as required, FWS would detail how the pesticides are affecting the Alameda
8 whipsnake and Delta smelt and their habitats and, if necessary, would suggest reasonable and
9 prudent alternatives to protect the species. 16 U.S.C. § 1536(a)(3).

10 13. Unless the requested relief is granted, the Center's interests will continue to be
11 adversely affected and injured by the agency's failure to complete the consultations, as well as
12 by the ongoing harm to the Alameda whipsnake and Delta smelt and their habitats as a result of
13 ongoing pesticide use. The injuries described above are actual, concrete injuries that are
14 presently suffered by the Center and its members and will continue to occur unless relief is
15 granted by this Court. These injuries are directly caused by the agency's failure to complete
16 consultations to ensure that EPA's pesticide registrations do not affect listed species. The relief
17 sought herein – an order compelling completion of consultation and placing restrictions on
18 pesticide use in habitats of the Alameda whipsnake and Delta smelt until the agency brings itself
19 into compliance with law – would redress the Center's injuries. The Center has no other
20 adequate remedy at law.

21 14. Defendant U.S. DEPARTMENT OF THE INTERIOR is a federal agency charged
22 with ESA consultation obligations.

23 15. Defendant SALLY JEWELL is the Secretary of the Interior. She is sued in her
24 official capacity. The Secretary is the federal official charged with ESA consultation. The
25 Secretary has delegated her duty to the U.S. Fish and Wildlife Service.

26 16. Defendant FWS is a federal agency within the Department of the Interior. Under
27 the ESA, FWS is responsible for consulting with federal agencies to ensure that agency actions
28

1 do not jeopardize the survival and recovery of the Alameda whipsnake and Delta smelt or
2 adversely affect their critical habitats. 16 U.S.C. § 1536(a)(2).

3 17. Defendant DAN ASHE is the Director of FWS. He is sued in his official capacity
4 as FWS Director.

5 LEGAL BACKGROUND

6 18. The ESA declares that endangered and threatened species are of “esthetic,
7 ecological, educational, historical, recreational and scientific value to the Nation and its people.”
8 16 U.S.C. § 1531(a)(3). Accordingly, the ESA establishes the “means whereby the ecosystems
9 upon which endangered species and threatened species depend may be conserved” and “a
10 program for the conservation of such endangered species and threatened species” *Id.* §
11 1531(b); *see id.* §§ 1531-1544.

12 19. The Secretaries of Commerce and Interior are charged with administering and
13 enforcing the ESA, but they have delegated this responsibility to the National Marine Fisheries
14 Service (“NMFS”) and FWS, respectively. 50 C.F.R. § 402.01(b).

15 20. Section 2(c) of the ESA provides that it is “the policy of Congress that all Federal
16 departments and agencies shall seek to conserve endangered species and threatened species and
17 shall utilize their authorities in furtherance of the purposes of this [Act].” 16 U.S.C. § 1531(c)(1).
18 The ESA defines “conservation” to mean “the use of all methods and procedures which are
19 necessary to bring any endangered species or threatened species to the point at which the
20 measures provided pursuant to this [Act] are no longer necessary.” *Id.* § 1532(3).

21 21. To fulfill the substantive purposes of the ESA, federal agencies are required under
22 section 7(a)(2) to engage in consultation with FWS (and/or NMFS) before authorizing, funding,
23 or engaging in any “action” that could “jeopardize the continued existence” of any listed species
24 or “result in the destruction or adverse modification of habitat of such species ... determined ...
25 to be critical.” *Id.* § 1536(a)(2). Under the regulations jointly adopted by FWS and NMFS to
26 govern Section 7 consultations, EPA’s ongoing oversight of pesticides under the Federal
27 Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) constitutes agency “action” subject to
28

1 ESA section 7(a)(2). 50 C.F.R. §§ 402.02, 402.03; *see also Wash. Toxics Coal. v. Env'tl. Prot.*
2 *Agency*, 413 F.3d 1024, 1033 (9th Cir. 2005).

3 22. A federal agency is relieved of the obligation to consult only if its action will have
4 “no effect” on any listed species or designated critical habitat. 50 C.F.R. § 402.14(a)-(b). If an
5 agency determines that its action “may affect” but is “not likely to adversely affect” a listed
6 species or its critical habitat, the regulations permit “informal consultation,” during which FWS
7 must concur in writing with the agency’s determination. *Id.* § 402.13(a). If the agency
8 determines that its action is “likely to adversely affect” a listed species or critical habitat, or if
9 FWS does not concur with the agency’s “not likely to adversely affect” determination, the
10 agency must engage in “formal consultation,” as outlined in 50 C.F.R. § 402.14 (“Formal
11 Consultation”). *Id.* § 402.14; *see also id.* § 402.02. Through consultation, FWS details how the
12 agency action affects the listed species and their habitats and, if necessary, suggests reasonable
13 and prudent alternatives to protect the species. 16 U.S.C. § 1536(b)(3).

14 23. The ESA requires that consultation occur at the earliest possible time and be
15 conducted according to a strict timeline in order to ensure that the agency action is not causing
16 jeopardy to listed species and their critical habitat, or otherwise harming the species. *See* 16
17 U.S.C. § 1536(b)(1)(A); 50 C.F.R. §§ 402.14(e), 402.46(c)(1). To that end, FWS and EPA are
18 required to conclude consultations within 90 days. 16 U.S.C. § 1536(b)(1)(A); 50 C.F.R. §§
19 402.14(e), 402.46(c)(1).

FACTUAL BACKGROUND

I. Pesticides Impact the Delta Smelt and Alameda Whipsnake

Delta Smelt

23 24. The Delta smelt (*Hypomesus transpacificus*) is a tiny fish found only in
24 California. It feeds on small, planktonic crustaceans, insect larvae, and copepods.

25 25. This once-abundant species’ population has crashed due to unsustainable water
26 diversions and water transfers in the Bay Delta; ever increasing amounts of pesticides and other
27 toxic pollutants; and the spread of nonnative species that thrive in the degraded Delta habitat.

1 Scientists have warned that the Delta smelt could go extinct within 20 years, and in 2013, the
2 FWS recommended uplisting the Delta smelt from “threatened” to an “endangered” status.

3 26. The San Francisco Bay Delta has become polluted with often-lethal
4 concentrations of herbicides and pesticides discharged and transported from California’s Central
5 Valley into the fish’s estuary home. Toxic pulses of pesticides have been documented in the
6 Delta during critical stages in fish development, and pesticides have been implicated in the
7 recent collapse of the Delta smelt population. High levels of pesticides and other pollutants harm
8 the Delta smelt both directly and indirectly by harming its invertebrate prey.

9 Alameda Whipsnake

10 27. The Alameda whipsnake (*Masticophis lateralis euryxanthus*) is a slender, semi-
11 arboreal, diurnal snake with a broad head, large eyes, and slender neck. The whipsnake feeds
12 primarily on lizards, and also on frogs, snakes, small birds, small mammals, and insects. It is
13 found in the eastern San Francisco Bay area in areas of chaparral or coastal scrub vegetation that
14 is interspersed with other native habitat types including annual grasslands, mixed evergreen
15 forests, oak savannahs, oak woodlands, and riparian areas.

16 28. Rodenticides, herbicides, and other pesticides are used in and around designated
17 critical habitat for the whipsnake and threaten the species both directly and indirectly — through
18 prey reduction and habitat alteration. The 1994 proposed listing of the Alameda whipsnake
19 identified pesticide exposure as a threat to the species, stating that pesticides have the potential to
20 harm this species because “species in the food chain of the snake would be impacted.” 59 Fed.
21 Reg. 5377, 5380 (Feb. 4, 1994). The draft recovery plan for the Alameda whipsnake includes
22 reducing pesticide exposure through outreach and education to the public and pesticide
23 applicators in particular as necessary recovery actions for the Alameda whipsnake.

24 **II. Atrazine, Alachlor, and 2,4-D Impact Endangered Wildlife**

25 Atrazine

26 29. Each year, approximately 60-80 million pounds of atrazine are used across the
27 United States. As a result, atrazine is one of the most commonly detected pesticides in drinking
28 water, surface waters, and ground water across the nation. Approximately 75 percent of stream

1 water and about 40 percent of all groundwater samples from agricultural areas tested in an
2 extensive U.S. Geological Survey study contained atrazine and its primary degradate,
3 deethylatrazine.

4 30. Such widespread environmental contamination is particularly alarming because
5 exposure to atrazine at levels as low as 0.1 parts per billion (ppb) have been shown to negatively
6 impact the development of sexual organs in amphibians. Research demonstrated that exposure to
7 21 ppb of atrazine during metamorphosis for as little as two days can impair development of the
8 reproductive organs in male and female frogs. Atrazine has also been shown to negatively
9 impact fish, reptiles, mammals, and birds.

10 **Alachlor**

11 31. Alachlor is a less-commonly used herbicide than atrazine, but even so,
12 approximately 4 million pounds were applied across the United States in 2011. The use of
13 alachlor has declined significantly since the early 1990s, when approximately 20-25 percent of
14 corn cropland was sprayed with this pesticide. Alachlor and its degradates are leachable from
15 agricultural soils and have been detected in watersheds of agricultural land, including ground and
16 surface waters.

17 32. EPA restricted the use of alachlor in 1998 due to significant environmental and
18 human health concerns. EPA currently classifies alachlor as a “likely” human carcinogen at high
19 doses and a “not likely” carcinogen at low doses. Alachlor is highly toxic to freshwater fish and
20 slightly toxic to birds and some invertebrates.

21 **2,4-D**

22 33. In 2014, approximately 45 million pounds of 2,4-D were applied, making 2,4-D
23 one of the most commonly used herbicides in the United States after glyphosate and atrazine.

24 34. The 2005 reregistration eligibility decision for 2,4-D acknowledges the significant
25 harms that 2,4-D can have on endangered species like the Delta smelt, concluding that the use of
26 2,4-D “exceed the acute risk level of concern (LOC) for freshwater fish and invertebrates and
27 chronic risk LOC for freshwater and estuarine fish and freshwater invertebrates.” In addition,
28 NMFS concluded that the use of 2,4-D jeopardized the continued existence of 28 Evolutionarily

1 Significant Units of endangered salmon and steelhead in the northwest United States and
2 adversely modified the critical habitat of six of those species. EPA's risk assessment is deficient
3 in that it does not mention reptiles like the Alameda whipsnake.

4 **III. FWS Fails to Complete Required Section 7 Consultation**

5 35. In 2007, the Center sued EPA for failing to consult with FWS regarding the
6 pesticide impacts on 11 San Francisco Bay Area species with respect to 77 pesticide active
7 ingredients. In 2010, the Center and EPA reached a settlement and the Federal Court entered a
8 Stipulated Injunction requiring the EPA complete effects determinations for these 11 species and
9 imposing spray-limitation buffers around defined habitats. In compliance with these settlements,
10 EPA began to analyze the impacts of different pesticides on the listed species.

11 36. In February 2009, EPA requested formal consultation from FWS for atrazine,
12 alachlor, and 2,4-D after determining that these pesticide were likely to adversely affect the Delta
13 smelt and the Alameda whipsnake (as well the California red-legged frog, which is not covered
14 by this Complaint). But FWS refused to complete formal consultation.

15 37. Nearly six years have passed since EPA requested the first of its consultations. In
16 that time, FWS has not completed any consultation or recommended any measures necessary to
17 ensure that atrazine, alachlor, and 2,4-D will not harm the Delta smelt or the Alameda
18 whipsnake, or adversely modify their critical habitat. The process has been stalled for years
19 despite the mandatory deadlines in the ESA and its applicable regulations. The agency's delay in
20 completing the consultations and prescribing mitigation allows toxic pesticides to continue to
21 harm wildlife species, in violation of law.

22 **FIRST CAUSE OF ACTION**

23 **FWS Has Failed to Complete Consultation within the ESA's Mandatory Timelines**

24 38. All allegations set forth above in this Complaint are incorporated herein by
25 reference.

26 39. Under section 7(a)(2) of the ESA, EPA has a duty to ensure through consultation
27 with FWS that its actions are not likely to "jeopardize the continued existence of any endangered
28 species or threatened species or result in the destruction or adverse modification of [critical]

1 habitat” 16 U.S.C. § 1536(a)(2). Formal consultation is required for any pesticide that EPA
2 determines “may affect” a listed species or critical habitat. *See* 50 C.F.R. § 402.14(a).

3 40. In 2009, EPA requested formal consultation from FWS for atrazine, alachlor, and
4 2,4-D after determining that these pesticides were likely to adversely affect the Alameda
5 whipsnake and Delta smelt.

6 41. FWS did not consult with EPA and has not issued biological opinions to protect
7 the Alameda whipsnake or Delta smelt from atrazine, alachlor, or 2,4-D.

8 42. Under the ESA and its implementing regulations, FWS must complete the
9 consultation process within 90 days after consultation has been initiated by the action agency. 16
10 U.S.C. § 1536(b)(1); 50 C.F.R. §§ 402.14(e), 402.46(c)(1).

11 43. By failing to complete consultations within the ESA’s deadlines, FWS is in
12 violation of the ESA. 16 U.S.C. § 1536; 50 C.F.R. §§ 402.14(e), 402.46(c)(1).

13 **SECOND CAUSE OF ACTION**

14 **By Unreasonably Delaying Completion of Formal Consultation, FWS is Violating Section**
15 **706(1) of the APA**

16 44. All allegations set forth above in this Complaint are incorporated herein by
17 reference.

18 45. The APA dictates that agencies must conclude a matter presented to it “within a
19 reasonable time.” 5 U.S.C. § 555(b). Accordingly, APA section 706(1) authorizes reviewing
20 courts to “compel agency action unlawfully withheld or unreasonably delayed.” *Id.* § 706(1).

21 46. In February of 2009, EPA requested consultations with FWS for atrazine,
22 alachlor, and 2,4-D after determining that these pesticides were likely to adversely affect the
23 Alameda whipsnake and Delta smelt. Despite the passage of approximately six years since EPA
24 requested these consultations, FWS has not completed consultation for any of these pesticides.
25 FWS’s delay in completing the consultations constitutes unlawful and unreasonable delay under
26 APA section 706(1).

27 **PRAYER FOR RELIEF**

28 WHEREFORE, the Center prays that the Court:

1 (1) Declare that FWS is in violation of section 7 of the ESA, 16 U.S.C. § 1536, and
2 its implementing regulations, 50 C.F.R. §§ 402.14(e), 402.46(c)(1), by failing to timely complete
3 the consultations for atrazine, alachlor, and 2,4-D, which EPA determined were likely to
4 adversely affect the Alameda whipsnake and Delta smelt;

5 (2) Declare that FWS is in violation of Section 706(1) of the APA by failing to
6 complete the consultations within a reasonable time;

7 (3) Order FWS to complete the required consultations;

8 (4) Order restrictions on, or prohibit the use of, atrazine, alachlor, and 2,4-D where
9 they may affect the Alameda whipsnake and Delta smelt or their habitats until the consultation
10 processes have been completed;

11 (5) Award Plaintiff its attorneys' fees and costs in this action pursuant to 16 U.S.C. §
12 1540(g)(4) and 28 U.S.C. § 2412; and

13 (6) Grant such other and further relief as the Court deems just and proper.
14
15
16

/s/ Justin Augustine

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
CENTER FOR BIOLOGICAL DIVERSITY

(b) County of Residence of First Listed Plaintiff San Francisco
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Justin Augustine (CA Bar No. 235561); Center for Biological Diversity;
 351 California Street, Suite 600; San Francisco, CA 94104;
 (415) 436-9682;

DEFENDANTS
U.S. DEPARTMENT OF THE INTERIOR; SALLY JEWELL,
 Secretary of the Interior; **U.S. FISH AND WILDLIFE SERVICE; DAN**
ASHE, Director, U.S. Fish and Wildlife Service

County of Residence of First Listed Defendant _____
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) _____

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
16 U.S.C. 1536; 5 U.S.C. 706

Brief description of cause:
Failure to complete ESA consultation

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)
 (Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

DATE: February 12, 2015 SIGNATURE OF ATTORNEY OF RECORD: /s/ Justin Augustine

Case3:15-cv-00658-JCS Document1-1 Filed02/12/15 Page2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.