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8 OF THE MOKELUMNE RIVER, a California
Unincorporated Nonprofit Association
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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF CALIFORNIA
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13 STEWARDS OF THE MOKELUMNE) Case No.:
14 RIVER, a California Unincorporated)
15 Nonprofit Association,)

16 Plaintiff,)

17 v.)

18 CALIFORNIA DEPARTMENT OF)
19 TRANSPORTATION and TOKS)
20 OMISHAKIN in his official capacity)
21 as Director of the California)
22 Department of Transportation,)

23 Defendants.)
24)
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COMPLAINT FOR:

1. ABATEMENT OF IMMINENT AND SUBSTANTIAL ENDANGERMENT PURSUANT TO RCRA, 42 U.S.C. 6972(a)(1)(B); AND,
2. ABATEMENT OF CONTINUING PUBLIC NUISANCE PURSUANT TO CALIFORNIA CIVIL CODE §3479 AND 3480

1 Plaintiff, STEWARDS OF THE MOKELUMNE RIVER, a California Unincorporated
2 Nonprofit Association (hereafter “Plaintiff”), alleges as its complaint against the CALIFORNIA
3 DEPARTMENT OF TRANSPORTATION and TOKS OMISHAKIN in his official capacity as
4 Director of the California Department of Transportation (hereafter collectively “Caltrans”) as
5 follows:

6 **I. INTRODUCTION**

7 1. Caltrans owns and/or controls significant real property in the area where the
8 Mokelumne River flows beneath State Route 99 near the Turner Road Exit in San Joaquin
9 County, California (“Turner Road Site”). The Turner Road Site abuts the banks of the
10 Mokelumne River, and is immediately adjacent to residences and other privately owned property
11 located along the Mokelumne River. An aerial photograph of the Turner Road Site is attached as
12 Exhibit A to this Complaint.

13 2. Transients have taken up residency at the Turner Road Site due to Caltrans’ failure
14 to adequately secure, patrol, or otherwise reasonably maintain the area. The transient population’s
15 presence at the Turner Road Site has resulted in the discharge of **solid waste** to the Turner Road
16 Site, to the banks of the Mokelumne River, and into the river itself.

17 3. The discharges of **solid waste** at and in the vicinity of the Turner Road Site have
18 resulted in an imminent and substantial endangerment to health and the environment. Section
19 7002(a)(1)(B) of the Resource Conservation and Recovery Act §7002(a)(1)(B), 42 U.S.C.
20 §6972(a)(1)(B) (“RCRA”) provides authority for any person to bring suit in federal court against
21 any person “including...any past or present generator, past or present transporter, or past or present
22 owner or operator of a treatment, storage, or disposal facility, who has contributed or who is
23 contributing to the past or present handling, storage, treatment, transportation, or disposal of any
24 solid or hazardous waste which may present an imminent and substantial endangerment to health
25 or the environment.
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1 utilize the Mokelumne River in the vicinity of the Turner Road Site for recreational purposes
2 such as boating, swimming, and fishing. Plaintiff’s members have been threatened with physical
3 harm and have had their property destroyed by individuals associated with the transient
4 population residing at the Turner Road Site. Accordingly, Plaintiff is prepared to meet and confer
5 with Caltrans regarding specific information about its members and their real property interests in
6 a manner that will not expose the members to retribution by individuals associated with the
7 transient population.

8 10. Defendant CALIFORNIA DEPARTMENT OF TRANSPORTATION is a public
9 and state agency within the State of California.

10 11. Defendant TOKS OMISHAKIN is the Director of the California Department of
11 Transportation. As Director, Mr. Omishakin is responsible for maintenance and operations of
12 roadways comprising the California state highway system. Mr. Omishakin is sued in his official
13 capacity.

14 IV. DEFINITIONS

15 12. The term “**discharge**” as used herein means the accidental or intentional spilling,
16 leaking, pumping, pouring, emitting, emptying, or dumping of **solid waste** into or on any land or
17 water as provided in 40 C.F.R. § 260.10.

18 13. The term “**disposal**” as used herein means the **discharge**, deposit, injection,
19 dumping, spilling, leaking or placing of any **solid waste** into or on any land or water so that such
20 **solid waste** or any constituent thereof may enter the environment or be emitted into the air or
21 **discharged** into any waters, including groundwater, as provided in RCRA § 1004(3), 42 U.S.C. §
22 6903(3).

23 14. The term “**solid waste**” as used herein means any garbage, refuse, sludge from a
24 waste treatment plant, water supply treatment plant, or air pollution control facility and other
25 discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from
26 industrial, commercial, mining, and agricultural operations, and from community activities as
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1 provided in RCRA §1004(27), 42 U.S.C. § 6903(27).

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3 **V. GENERAL ALLEGATIONS**

4 15. The Turner Road Site is located along the banks of the Mokelumne River, and abuts
5 residences and other privately owned real property located adjacent to the Mokelumne River.

6 16. The Mokelumne River in the vicinity of the Turner Road Site is used for recreational
7 purposes such as boating, swimming, and fishing.

8 17. The City of Lodi draws water from the Mokelumne River for municipal drinking
9 water purposes at a location approximately 1-mile downstream from the Turner Road Site.

10 18. The Mokelumne River is a navigable water of the United States, and provides habitat
11 for Pacific salmon and steelhead trout spawning runs.

12 19. Caltrans has failed to adequately secure, monitor, and patrol the Turner Road Site,
13 which has resulted in transients taking up residency there. The transient population's presence at
14 the Turner Road Site has resulted in the **discharge** and **disposal** of **solid waste** to the Turner Road
15 Site, to the banks of the Mokelumne River, and into the river itself.

16 20. The **solid waste discharged** and **disposed** of at and from the Turner Road Site
17 includes human excrement, dog excrement, discarded used feminine hygiene products, discarded
18 used condoms, drug paraphernalia including used hypodermic needles, discarded chemicals from
19 drug-making operations, discarded auto parts, discarded bicycles and bicycle parts, discarded
20 propane cylinders, discarded aerosol cans, discarded gasoline containers, and a whole spectrum of
21 discarded personal and household goods ranging from clothing to tables and chairs. A collection
22 of photographs depicting the conditions at the Turner Road Site is attached hereto as Exhibit B.

23 21. The human excrement, animal excrement, used feminine hygiene products, and
24 used hypodermic needles **discharged** and **disposed** at the Turner Road Site creates conditions that
25 are conducive to the spread of disease, (including typhoid, cholera, and hepatitis), to persons
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1 residing and recreating in the vicinity of the Turner Road Site, and thus represents an imminent
2 and substantial endangerment to health.

3 22. The human excrement, animal excrement, used feminine hygiene products, and
4 used hypodermic needles **discharged** and **disposed** at the Turner Road Site creates conditions that
5 are conducive to the spread of disease, (including typhoid, cholera, and hepatitis), to persons
6 residing and recreating in the vicinity of the Turner Road Site. These conditions represent a
7 substantial and unreasonable interference with the community's free use and enjoyment of the
8 Mokelumne River in the vicinity of the Turner Road Site, which is a public nuisance.

9 23. The chemicals from drug-making operations, auto parts, bicycles and bicycle parts,
10 propane cylinders, aerosol cans, gasoline containers, and other personal and household items
11 **discharged** and **disposed** at the Turner Road Site pose a risk of physical harm to persons residing
12 and recreating in the vicinity of the Turner Road Site, and thus represents an imminent and
13 substantial endangerment to health.

14 24. The chemicals from drug-making operations, auto parts, bicycles and bicycle parts,
15 propane cylinders, aerosol cans, gasoline containers, and other personal and household items
16 **discharged** and **disposed** at the Turner Road Site pose a risk of physical harm to persons residing
17 and recreating in the vicinity of the Turner Road Site. These conditions represent a substantial
18 and unreasonable interference with the community's free use and enjoyment of the Mokelumne
19 River in the vicinity of the Turner Road Site, and thus constitute a public nuisance.

20 25. The human excrement, animal excrement, used feminine hygiene products, used
21 hypodermic needles, chemicals from drug-making operations, auto parts, bicycles and bicycle
22 parts, propane cylinders, aerosol cans, gasoline containers, and other personal and household
23 items **discharged** and **disposed** at the Turner Road Site create conditions that pose a risk of harm
24 to fish and other wildlife dependent on the river as a habitat and food source, and thus represent
25 an imminent and substantial endangerment to the environment.
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1 26. Transients residing at and in the vicinity of the Turner Road Site suffer from
2 mental illness, drug addiction, and other maladies that create a risk of physical harm to members
3 of the community seeking to utilize the Mokelumne River in the vicinity of the Turner Road Site
4 for recreational, aesthetic, and other purposes. These conditions represent a substantial and
5 unreasonable interference with the community's free use and enjoyment of the Mokelumne River
6 in the vicinity of the Turner Road Site, and thus constitute a Public Nuisance.

7 27. The imminent and substantial endangerment to health and the environment and
8 the conditions constituting a Public Nuisance at and emanating from the Turner Road Site could
9 be abated if Caltrans takes all necessary and appropriate measures to prevent unauthorized access
10 to the Turner Road Site, including installing additional fencing and barriers, installing live-feed
11 cameras monitored around-the-clock with the ability to dispatch appropriately qualified personnel
12 in response to unauthorized intruders, and, if necessary, maintaining an around-the-clock presence
13 by properly qualified personnel to prevent unauthorized entry.

14 28. The imminent and substantial endangerment to health and the environment and
15 the conditions constituting a Public Nuisance at and emanating from the Turner Road Site could
16 be abated if Caltrans conducts a thorough investigation of the Turner Road Site under the
17 oversight of appropriately qualified personnel such as industrial hygienists, toxicologists, and
18 water quality experts to identify all **solid waste** at and emanating from the Turner Road Site that
19 may pose an imminent and substantial endangerment to health and the environment.
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21 29. The imminent and substantial endangerment to health and the environment and
22 the conditions constituting a Public Nuisance at and emanating from the Turner Road Site could
23 be abated if Caltrans takes such remedial measures as are necessary to remove and/or detoxify
24 **solid waste** at and emanating from the Turner Road Site so that all conditions that may pose an
25 imminent and substantial endangerment to health and the environment are eliminated.

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FIRST CAUSE OF ACTION

Abatement of Imminent and Substantial Endangerment

(RCRA Section 7002 (a)(1)(B))

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4 30. Plaintiff refers to and realleges paragraphs 1 through 29 of this Complaint and
5 incorporates them herein by this reference.

6 29. Plaintiff has given the requisite Notice of Endangerment pursuant to RCRA § 7002
7 (b)(2)(B) to Caltrans.

8 30. Caltrans, by way of land deeds, easements, and other means, owns, and/or controls
9 the Turner Road Site.

10 31. Plaintiff's members have suffered and continue to suffer an injury in fact to their
11 legally protected interest in the use and enjoyment of the Mokelumne River in the vicinity of the
12 Turner Road Site, and to their interest in protecting and preserving the Mokelumne River in the
13 vicinity of the Turner Road Site.

14 32. Plaintiff is informed and believes and thereon alleges that the injury in fact set
15 forth in paragraph 31 above is likely to be redressed by this Court's granting of the relief
16 requested by herein.

17 33. Caltrans has contributed to and is contributing to the handling, storage, treatment,
18 **discharge and disposal of solid waste** at the Turner Road Site, which has resulted in conditions
19 that may pose an imminent and substantial endangerment to health and the environment until
20 completely abated.

21 34. This Court has authority pursuant to 42 U.S.C. §6972(a) to order both mandatory
22 preliminary and permanent injunctive relief requiring Caltrans to take all action necessary to
23 investigate and abate the imminent and substantial endangerment to health and the environment
24 which exists at the Turner Road Site.

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SECOND CAUSE OF ACTION

Abatement of Continuing Public Nuisance

(California Civil Code §3479)

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4 35. Plaintiff refers to and realleges paragraphs 1 through 29 of this Complaint and
5 incorporates them herein by this reference.

6 36. Plaintiff's members own and/or occupy property at or near the Turner Road Site,
7 and utilize the Mokelumne River near the Turner Road Site for recreational, aesthetic, and other
8 purposes. At all relevant times herein, Plaintiff's members and the public have/had a right to
9 occupy, enjoy, and/or use the Mokelumne River near the Turner Road Site without interference by
10 Caltrans.

11 37. Caltrans owes a duty to the public, including Plaintiff's members herein, to
12 conduct their business, in particular the maintenance and/or operation of the Turner Road Site, in
13 a manner that does not threaten harm or injury to the public welfare.

14 38. Caltrans, by acting and/or failing to act as alleged hereinabove, created a condition
15 which is harmful to the health of the public, including Plaintiff's members, and which interferes
16 with the comfortable occupancy, use, and/or enjoyment of the Mokelumne River near the Turner
17 Road Site.

18 39. Plaintiff's members did not consent, expressly or impliedly, to the wrongful conduct
19 of Caltrans in acting in the manner set forth above.

20 40. The hazardous condition which was created by and/or permitted to exist by
21 Caltrans affects a substantial number of people within the general public, including Plaintiff's
22 members herein, and constitutes a public nuisance under Civil Code §§ 3479 and 3480 which is
23 capable of being abated.

24 41. As a direct and legal result of the conduct of Caltrans, Plaintiff's members suffered
25 harm that is different from the type of harm suffered by the general public because Plaintiff's
26 members own and/or occupy property at or near the Turner Road Site. Specifically, Plaintiff's
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1 members have lost the free use and enjoyment of their own land, which is in addition to the
2 general public's loss of the free use and enjoyment of the Mokelumne River near the Turner Road
3 Site.

4 42. A reasonable, ordinary person would be reasonably annoyed or disturbed by the
5 condition created by Caltrans at and in the vicinity of the Turner Road Site.

6 43. The conduct of Caltrans is unreasonable and the seriousness of the harm to the
7 public, including Plaintiff's members herein, outweighs the social utility of Caltrans' conduct.

8 44. The conduct of Caltrans set forth above constitutes a public nuisance within the
9 meaning of Civil Code §§ 3479 and 3480. Plaintiff's members have standing to maintain an action
10 for public nuisance because the nuisance is especially injurious to them in that the conditions
11 unreasonably interfere with their comfortable enjoyment of their properties, and/or unlawfully
12 obstruct their free use, in the customary manner, of their properties.

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14 45. For these reasons, Plaintiff seeks a permanent injunction ordering that Caltrans abate
15 the existing and continuing nuisance described above.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for judgment as follows:

18 **First Cause of Action:**

- 19 1. For preliminary and permanent injunctive relief enjoining Caltrans to abate the
20 conditions at the Turner Road Site that constitute an imminent and substantial
21 endangerment to health and the environment.

22 **Second Cause of Action:**

- 23 1. For preliminary and permanent injunctive relief enjoining Caltrans to abate the
24 conditions at the Turner Road Site that constitute a public nuisance; and,
25 2. For attorneys fees and costs pursuant to California Code of Civil Procedure §1021.5.

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All Causes of Action:

1. For such other relief that this Court deems just and proper.

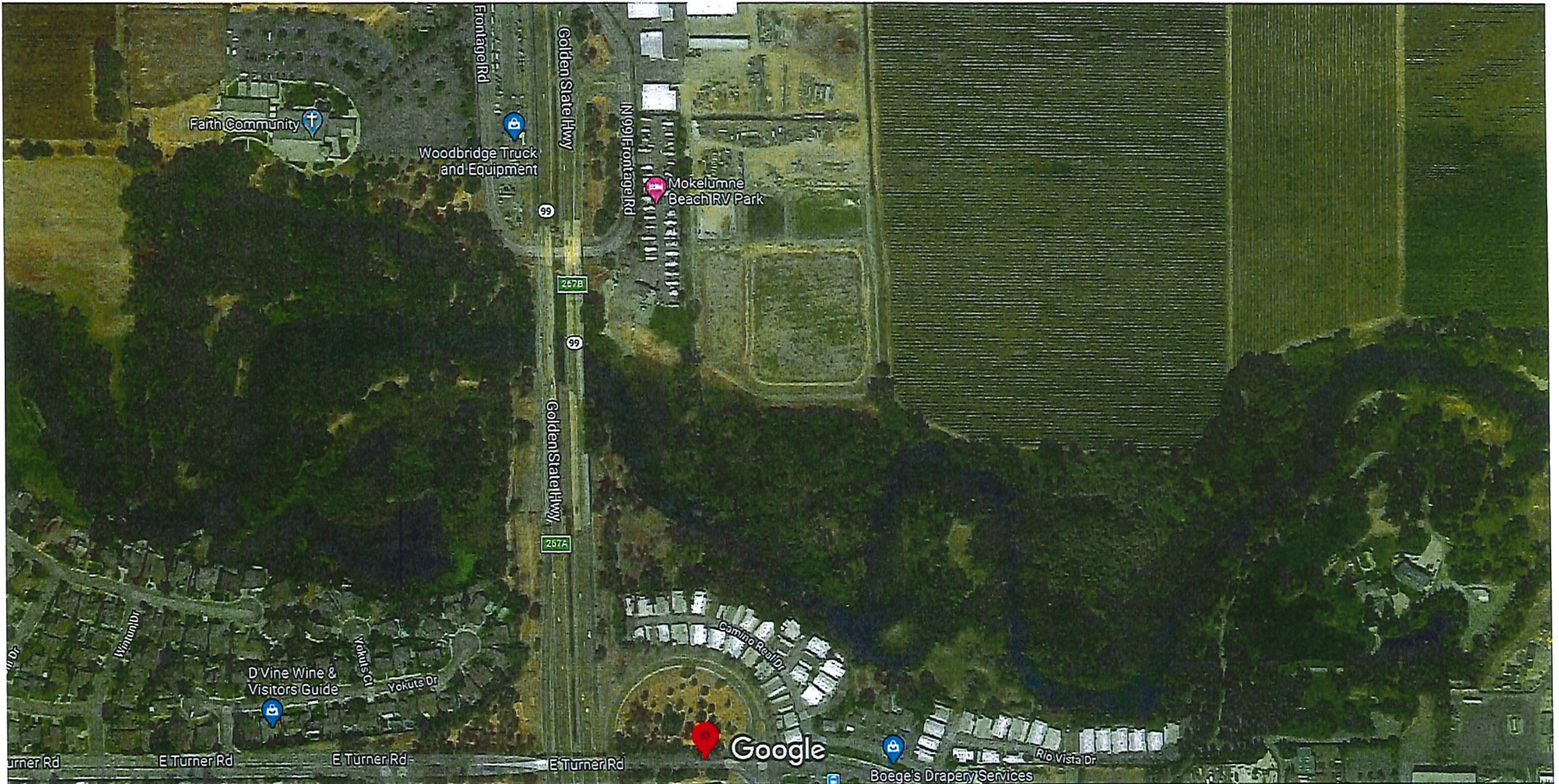
DATED: July 31, 2020

Respectfully submitted,
ISOLA LAW GROUP, LLP

By: /s/ David R. Isola
DAVID R. ISOLA
Attorneys for Plaintiff, STEWARDS OF THE
MOKELUMNE RIVER, a California
Unincorporated Association

EXHIBIT

A



EXHIBIT

B



