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August 3, 2009

Secretary Ken Salazar
United States Department of the Interior
Attorney General Eric Holder
United States Department of Justice
Ms. Loretta King
Assistant Attorney General for Civil Rights
Ms. Lisa P. Jackson
Administrator, United States Environmental Protection Agency (US EPA)
Ms. Laura Yoshii
Regional Administrator, US EPA Region 9

Complaint re: Keep California State Parks Open for All

Dear Secretary Salazar, Attorney General Holder, Assistant Attorney General King, Administrator Jackson and Regional Administrator Yoshii:

The undersigned members of a diverse and growing alliance submit this complaint to prevent proposed budget cuts and repeated threats to close up to 100 or more California state parks. This complaint is submitted against California Governor Arnold Schwarzenegger; the State of California; the California State legislature; the California Resources Agency; the California Department of Parks and Recreation (The Department), and their agents, officers, and representatives.

The State of California proposes to cut from \$8 million to \$14.2 million and up to \$70 million this year from the Department's budget, which represents up to 87% of its budget this year. The State has also threatened to cut another \$73 million from the Department's budget next year. Closing units of the park system would cost far more than any proposed savings and would be arbitrary, capricious, discriminatory, and illegal under the following laws, among others, as discussed below:

- the Federal Land and Water Conservation Fund, and the Federal Lands to Parks Program;
- laws requiring that beaches remain public for all, including the public trust doctrine, the California Constitution, the California Coastal Act, and other California statutory law;
- federal and state civil rights laws prohibiting intentional discrimination and unjustified discriminatory impacts based on race, color or nation origin by recipients of federal and/or state funds, including Title VI of the Civil Rights Act of 1964 and its regulations, and California Government Code 11135 and its regulations;
- Federal and state laws protecting the interests of Native Americans in Sacred Sites on State Park grounds, and requiring respectful government to government consultations with Native Americans, which have not in fact occurred;

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- Federal and state environmental laws requiring full environmental review before any discretionary acts to close State Parks;
- California Code of Civil Procedure 526a, prohibiting any illegal expenditure of, waste of, or injury to public property.

“If there is a place on earth for us to find peace and tranquility, it is the open space available at State Parks and Native Sacred Sites like Panhe. It is a travesty for the majority of hard working people to lose these precious places in the face of great economic pressure on family needs, but every soul needs a quiet place away from our troubled world,” according to Robert Bracamontes.

Visitors to California’s state parks spend an average of \$4.32 billion per year in park-related expenditures, based on attendance estimates by the Department of about 74.9 million visitors a year, according to a recent study by the California State University at Sacramento.

The Governor originally proposed cutting \$70 million and closing 1,287,645 acres of state parks, which would more than cancel the federal government’s efforts to green California. Congress has authorized the acquisition of over 700,000 acres of green space in California. Up to 87% of State Park employees would have lost their jobs under the Governor’s proposal, undermining federal economic stimulus. On or about July 24, 2009, the California legislature voted to cut \$8 million dollars from the budget. On or about July 28, 2009, the Governor increased the budget cut to \$14.2 million, which would result in the closure of up to 100 state parks or more out of 279 state parks.

Assembly Speaker Karen Bass has requested an opinion by the Legislative Counsel as to whether the Governor’s line-item vetoes are illegal. A legal opinion circulated by Assemblyman John A. Pérez dated July 29, 2009, indicates that the Governor’s line-item vetoes exceeded his authority under Article IV, Section 10 of the California Constitution.

The National Trust for Historic Preservation has named California’s state parks as one of the nation’s eleven most endangered historic treasures. The National Park Service has fee free National Parks this summer, in recognition of the values parks provide, particularly during the worst economic crisis since the Depression.

State parks provide economic benefits which would help pull the United States out of the worst economic crisis since the Great Depression, including but not limited to:

- places for physical activity to reduce obesity, improve health, and cut medical costs;
- local green jobs for youth and small and disadvantaged business enterprises;
- Conservation Corps type programs to diversify job and career opportunities and to permanently improve the park system;
- tourism dollars; and
- transit to trails.

Parks offer multiple benefits beyond dollars and cents, including but not limited to:

- the simple joys of playing in the park;

- social cohesion, or bringing people together;
- improved physical, psychic, and social health;
- improved youth development and academic performance;
- educational programs on stewardship;
- positive alternatives to gangs, crime, drugs, and violence;
- conservation values of clean air, water, land, and habitat protection, and climate justice;
- art, culture and historic preservation;
- preservation of Native American Sacred Sites;
- spiritual values in protecting the earth and its people; and
- sustainable regional planning.

Fundamental principles of equal justice and democracy underlie each of these other values. *See generally Exhibit 1*, Robert García et al., *Economic Stimulus, Green Space and Equal Justice* (Policy Report The City Project 2009), which is fully incorporated by reference here. The Policy Report is available at tinyurl.com/m5xpyd.

LWCF and FLP. Closing State Park facilities that have received assistance from the Federal Land and Water Conservation Fund (LWCF) State Grant Program could jeopardize future reimbursements and funding under this program. Similarly, closures affecting properties conveyed to the State under the Federal Lands to Parks Program (FLP) could result in reversion of the property to federal ownership for re-disposal. *See Exhibit 2*, Letter to Governor Schwarzenegger from Jonathan B. Jarvis, Regional Director, Pacific West Region, National Park Service (June 8, 2009). Measures exist short of park closures that will allow the State to remain in compliance with LWCF and FLP. 67 of the State Parks on the proposed closure list are affected by LWCF. California has received \$286 million from LWCF. This figure dwarfs any proposed savings from closing State Parks. *See generally* P.L. 88-578, 16 U.S.C. 4601-8, section 6(f)(3); 36 CFR section 59. Six of the State Parks on the proposed closure list are affected by FLP. *See generally* Federal Property and Administrative Services Act of 1949, 63 Stat. 377, 40 U.S.C. section 550. For the complete list *see Exhibit 3*, National Park Service, *Federal Protection Status of State Park System Units to Be Placed in Caretaker Status* (June 1, 2009).

Public Beaches. Thirty percent of the California coast could be closed to the public. It was a condition of California joining the union that the beach remain public. Units of the State Park system on the coast, such as the 22 miles of the Sinkyone State Wilderness Park along the Lost Coast, must remain open for all under the public trust doctrine, the California Constitution, the California Coastal Act, and state and federal civil rights laws. *See Exhibit 4*, Robert García and Erica Flores Baltodano, *Free the Beach! Equal Justice, Public Access, and the California Coast*, 2 Stanford Journal of Civil Rights and Civil Liberties 143, 178-85, 185-93 (2005), which is fully incorporated by reference here.

Urban Parks. Closing urban State Parks, such as Río de Los Angeles State Parks and Los Angeles State Historic Park, would constitute intentional discrimination and unjustified discriminatory impacts, in violation of state and federal civil rights laws. These laws include but are not limited to Title VI of the Civil Rights Act of 1964 and its regulations, and California Government Code 11135 and its regulations; section 1983; and the Equal Protection Clause of

the United States Constitution and California Constitution. There is a strong basis in evidence of impermissible discrimination here. Andrew Cuomo, then Secretary of the United States Department of Housing and Urban Development, recognized that equal justice principles and laws must be implemented in the development of urban parks such as the Los Angeles State Historic Park, which has been on the list of parks that would be closed. Secretary Cuomo withheld federal funding for the best use of a site, including the park alternative, unless the government agency conducted a “full blown” assessment to identify the full range of options, including the environmental justice and environmental quality impacts on communities of color and low income communities. *See Exhibit 15*, letter from Nancy Lesser, Senior Counsel to Secretary Cuomo, to Deputy Mayor Rocky Delgadillo, Sept. 25, 2000. *See generally Exhibit 5*, Robert García et al., *Dreams of Fields: Soccer, Community and Equal Justice* (Policy Report The City Project 2002), which is fully incorporated by reference here, and Exhibits 8 and 9 below. *See generally Exhibit 12*, Peter R. Orszag, Director, Office of Management and Budget, *Memo re: Updated Implementing Guidance for American Recovery and Reinvestment Act of 2009*, April 3, 2009, www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-15.pdf.

Native American sites. Native Americans would lose access to their Sacred Sites in State Parks. No one else would. Federal and state laws require respectful government to government consultations, which have not occurred, before closing off access. *See Exhibit 6*, Public Comments by The City Project and United Coalition to Protect Panhe, submitted to Carlos Gutierrez, United States Secretary of Commerce and Thomas Street, NOAA Office of General Counsel for Ocean Services re: *Save Panhe and Save San Onofre State Beach – Stop the Proposed Toll Road: Reject Override Request – Consistency Certification for the Foothill-South Toll Road [FR Doc. E8-5247]* (October 2, 2008). *See generally* www.savepanhe.org and www.savesanonofre.org.

Taxpayers’ Suits. Under these circumstances, Code of Civil Procedure section 526a permits a taxpayer action to prevent any illegal expenditure of, waste of, or injury to public property. Citizen suits promote the policy of guaranteeing citizens the opportunity to ensure that governmental bodies do not impair or defeat public rights. *See, e.g., Connerly v. State Personnel Bd.*, 92 Cal.App.4th 16, 29 (2001).

There are positive alternatives to closing state parks. The New Deal offers invaluable lessons both for the State of California and for President Barack Obama and his administration to avoid closing state parks. The Civilian Conservation Corps (CCC) employed 3 million young men, planted 2 billion trees – more than half of all the trees planted in the United States up until that time – slowed soil erosion on 40 million acres of farmland, and developed 800 new state parks. Visits to National Parks increased 600 percent from less than 3.5 million people in 1933, to 21 million by 1941. The rise in visitors was due to the increased facilities for recreation afforded by the completion of trails, campgrounds, roads and other projects by the CCC. The work of the CCC appealed to people across the political spectrum and across class lines. The work projects appealed to foresters in the West, to farmers in the Dust Bowl and in the soil-eroded South, and to easterners who could recreate in new state and national parks. Unemployed urban youths enrolled in the program got paid, and their minds and bodies grew stronger as they learned the benefits of hard work, conservation and recreation. Working-class families received CCC paychecks every month. Business owners sold goods and services to CCC camps and rural families benefited economically from the nearby camps. President Franklin Delano Roosevelt

relied on the CCC to raise support among the American people, on the local and national levels, and on the political Left and Right, to knit together an ideologically diverse political constituency to support the New Deal. *See generally Exhibit 14*, Neil Maher, *Nature's New Deal* at pages 43-76, 110, and 11-12 (2008), excerpts available on the web at www.cityprojectca.org/blog/archives/1633.

The proposed budget cuts would devastate the state park system and the benefits of state parks for the people of California and the nation. According to the executive director of the California State Parks Foundation – a private non-profit organization that cannot be muzzled by the Governor:

This is a dark day in the history of California's state park system. At a time when Californians are most in need of their low cost, accessible state parks, the gates are being slammed in their faces. At a time when local businesses, particularly in rural communities, most rely on tourism and park visitation for their own economic stimulus, the doors are being shut to them. In the context of an \$85 billion General Fund budget, the \$14.2 million in "savings" that would come from closing more than 100 state parks is truly a drop in the bucket. But it's a small drop that will have a ripple effect, then a tsunami, for park visitors and local economies.

Closing more than one-third of the state park system cannot be done without real consequences to Californians. Although CSPF and other park partners are already trying to identify ways to keep some parks open, it will simply not be possible for the state to walk away from 100 parks and expect others to fully substitute for its public responsibility. California's state parks have been teetering on the brink of a funding cliff for several decades, this action now pushes them over the edge. California cannot afford for its state parks to be a political football every year. Our state parks desperately need a dedicated funding source to protect them from these now- annual budget actions.

Everyone would suffer from the closure of parks, but people of color and low income communities would suffer first and worst. The proposal to close state parks is part of a pattern and practice of the California state legislature depriving people of color and low income communities of the social net of state services. Indeed, California State Senator Gil Cedillo publicly criticized the budget the legislature approved on July 24, 2009, as follows:

This is the darkest day for Californians as we vote in favor of drastic cuts. The compromise has been made – on the shoulders of college students, poverty-stricken children, the unemployed, disabled, elderly, the sick and the poor. On our worst economic day in California we are still the eighth largest economy in the world and we have decided to abandon the most vulnerable in our society. I cannot in good conscience support this budget. We should have the responsibility of careful analysis on the human and economic costs of cutting \$30 billion from education, higher education access, and healthcare for vulnerable populations. We are creating a two-tier system in our society. We should have the responsibility of truly asking ALL of California to share the burden – and this

would include closing egregious corporate tax loopholes and asking oil companies to pay their fair share. We should have responsibility to local government in preserving funding allocations.

State park closures would impact the communities with the greatest needs. *See generally Exhibit 8, Keep State Parks Open For All! Green Access, Child Obesity, Youth, Poverty, and People of Color by County* (Policy Brief The City Project); *Exhibit 9, Keep State Parks Open For All! Park Poverty and Income Poverty* (Policy Brief The City Project).

People of color and low income people have helped ensure the passage of state park bonds over the past several years, and they deserve their fair share of the benefits. In 2002, diverse California voters passed Proposition 40, at that time the largest resource bond in United States history, which provided \$2.6 billion for parks, clean water and clean air. Prop 40 passed with the support of 77% of Black voters, 74% of Latino voters, 60% of Asian voters, and 56% of non-Hispanic White voters. 75% of voters with an annual family income below \$20,000, and 61% with a high school diploma or less, supported Prop 40 – the highest among any income or education levels. California voters in November 2006 approved \$40.2 billion in park and clean water, flood control, housing, education, and transportation infrastructure bonds, including \$400 million in park funds under Proposition 84. People of color were crucial to the passage of Prop 84, a \$5.4 billion park and water bond. Only 45% of non-Hispanic whites favored Prop 84. Latinos supported Prop 84 by 84%. Latinos gave Prop 84 an 800,000 vote margin, accounting for Prop 84's margin of victory. *See Exhibit 1, page 8.*

A diverse and growing alliance supports healthy livable communities by keeping state parks open for all. *See Exhibit 10, letter from diverse allies to President Barack Obama re Support National Park Service Saving State Parks for All*, <http://tinyurl.com/lxmtfb> (June 11, 2009); *Exhibit 13, California Green Stimulus Coalition, Green Access and Justice Recommendations Report*, <http://californiagreengstimulus.org>; *Exhibit 7, letter from diverse allies to Governor Schwarzenegger re: Legal Requirements to Keep State Parks Open for All* (updated July 22, 2009); *Exhibit 11, letter from diverse allies to Governor Schwarznegger re Keep State Parks Open for All* (updated June 11, 2009), tinyurl.com/ntdhwq.

Privatization of State Parks is no solution. Parks are a public good in economic terms, one whose benefits are indivisibly spread among the entire community. Efficient provision of public goods requires government action. The market will not provide enough of a public good. Public goods like parks reflect a private market failure.

We demand that the State of California and its agents, representatives, and officers keep the California State Parks and Recreation system open for all, and cease and desist the threats to cut the budget of the Department and to close units of the State Park system. The alternative is for the State to face the loss of federal funds and litigation to achieve access to justice through the courts.

The demands of the undersigned include but are not limited to the following:

1. No State Parks may be closed that received, are affected by, or benefited from LWCF funds.

2. No State Parks may be closed that received, are affected by, or benefitted from FLP funds or land.
3. Public beaches must remain open for all.
4. The State must proactively comply with federal and state civil rights laws that prohibit intentional discrimination and unjustified discriminatory impacts based on race, color, or national origin, and may not close any State Parks that would result in intentional discrimination or unjustified discriminatory impacts.
5. No Sacred Sites at State Parks may be closed to Native Americans. The State must engage in respectful government to government consultations with Native Americans before restricting their access to Sacred Sites or to the California Indian Heritage Center, before cutting the budget of any State Park with a Sacred Site; and before cutting the budget of the California Indian Heritage Center.
6. No State Park may be closed without a full, fair, and prior environmental impact report and environmental impact statement analyzing the impacts on each unit of the State Park system proposed to be closed, on all the units of the State Park system proposed to be closed, and on the entire State Park system.
7. No State Park may be closed without a full, fair, and prior health impact analyzing the impacts on each unit of the State Park system proposed to be closed, on all the units of the State Park system proposed to be closed, and on the entire State Park system.
8. Federal economic stimulus and other funds must be made available to keep State Parks open for all, to save State Parks jobs, to create local green jobs, and to provide economic stimulus for the communities surrounding State Parks and the people of California and the United States. The federal government has bailed out the auto industry, insurance industry, and the banking industry, and is paying far more for clunkers than is necessary to save the California State Park system for all the people of California and the nation.
9. Such other relief as may be just and proper.

We look forward to meeting with each of you to resolve these concerns, enforce the laws, and keep California State Parks open for all.

Very truly yours,

Robert Bracamontes, Acjachemen Nation, Juaneño Tribe
Harold Goldstein, California Center for Public Health Advocacy
Fran Gibson, Coastwalk California
Martin Martinez, California Pan Ethnic Health Network
Robert García, The City Project
Mark Williams, Concerned Citizens of South Central Los Angeles

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cc:

Governor Arnold Schwarzenegger
Senate President Pro Tem Darrell Steinberg
Senate Minority Leader Dennis Hollingsworth
Assembly Speaker Karen Bass
Assembly Minority Leader Sam Blakeslee
Inspector General Laura Chick



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Complaint re: Keep California State Parks Open for All

Dear Secretary Salazar, Attorney General Holder, Assistant Attorney General King,
Administrator Jackson and Regional Administrator Yoshii:

Please take notice that Raul Macias and Anahuak Youth Sports Association join this
Administrative Complaint.

Very truly yours,

Raul Macias, Anahuak Youth Sports Association
Robert Bracamontes, Acjachemen Nation, Juaneño Tribe
Harold Goldstein, California Center for Public Health Advocacy
Fran Gibson, Coastwalk California
Martin Martinez, California Pan Ethnic Health Network
Robert García, The City Project
Mark Williams, Concerned Citizens of South Central Los Angeles

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