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15 SEE SIGNATURE PAGE FOR  
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17  
18 UNITED STATES DISTRICT COURT  
19 EASTERN DISTRICT OF CALIFORNIA

20  
21 DELACROIX CORP., LOUISIANA  
22 LANDOWNERS ASSOCIATION, INC.,  
and LOUISIANA WILDLIFE AND  
23 FISHERIES COMMISSION,

24 Plaintiffs,

25 v.

26 XAVIER BECERRA, in his official capacity  
as Attorney General of California,

27 Defendant.  
28

No.

**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

1 This is an action for declaratory and injunctive relief that California Penal Code Sections 653o  
2 and 653r (the “Challenged Laws”), as applied to American alligators, are preempted by the Endangered  
3 Species Act of 1973 (“ESA”) and violate the Commerce Clause of the United States Constitution. In  
4 the Challenged Laws, California seeks to ban (subject to criminal penalties) the sale, possession with  
5 intent to sell, and importation of any products derived from the body of an alligator or crocodile. This  
6 Court permanently enjoined an earlier version of the Challenged Laws in 1979, finding them to be  
7 expressly preempted by the ESA. That injunction has not been dissolved or modified, and remains in  
8 force. Thus, the question of preemption can be resolved on the straightforward basis that the Attorney  
9 General remains “permanently enjoined from enforcing California Penal Code Sections  
10 653o and 653r as applied to American alligator (*alligator mississippiensis*) hides ...” *Fouke Co. v. Brown*,  
11 463 F. Supp. 1142 (E.D. Cal. 1979).

12 Even if that injunction were no longer in force, however, this Court’s reasoning in *Fouke* was  
13 manifestly correct and there is no basis for a different outcome here. The Challenged Laws are expressly  
14 preempted by the ESA given that they prohibit conduct that is authorized and permitted by federal  
15 law. Those laws are also invalid on grounds of conflict or obstacle preemption. Far from protecting  
16 American alligators, the Challenged Laws—if allowed to go into force—would severely disrupt a well-  
17 functioning conservation and regulatory program that depends on sales of alligator products to support  
18 conservation and management efforts. Indeed, it is the considered judgment of the U.S. Fish & Wildlife  
19 Service that “[f]or crocodylians as a whole ... the best long-run hope for their conservation lies in  
20 development of strong conservation programs,” which “must include vigorous enforcement of  
21 protective laws, strong control of international trade, and *economic ... incentives for the nations*  
22 *and peoples involved to institute such controls.*”

23 The market for alligator products has led to the successful recovery of the American alligator  
24 from the brink of extinction, and the resulting economic incentives benefit alligators themselves as well  
25 as wetland protection programs and a variety of other at-risk, threatened, and endangered species.  
26 California has nevertheless attempted to destroy the market for American alligator products  
27 notwithstanding the fact that no such alligators live in California. The Challenged Laws violate the  
28 Supremacy Clause and Commerce Clause in multiple independent ways and should remain

1 permanently enjoined consistent with this Court's decision in *Fouke*.

2 **JURISDICTION AND VENUE**

3 1. This Court has jurisdiction pursuant to 28 U.S.C. §1331, 28 U.S.C. §2201, 42 U.S.C.  
4 §1983, and the Supremacy and Commerce Clauses of the U.S. Constitution. The Court also has  
5 inherent authority to vindicate its authority and effectuate its decrees.

6 2. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) because the Defendant  
7 is located within this jurisdiction and a substantial part of the events giving rise to Plaintiffs' claims  
8 occurred in this district.

9 **PARTIES**

10 3. Plaintiff Delacroix Corp. ("Delacroix") is a Delaware corporation with its principal  
11 place of business in New Orleans, Louisiana. Delacroix owns approximately 100,000 acres of American  
12 alligator habitat in Louisiana, and the company derives substantial revenue from the sale of American  
13 alligators eggs harvested on its property. Delacroix uses a portion of that revenue to protect its property  
14 from erosion and to maintain the health of its wetlands.

15 4. Plaintiff Louisiana Landowners Association, Inc. ("LLA") is a Louisiana non-profit  
16 corporation with its principal place of business in Baton Rouge, Louisiana. LLA's purpose is to  
17 mobilize the resources of large and small landowners who share an interest in protecting the rights of  
18 individuals to own, manage, develop, use and dispose of land without undue interference from  
19 government, and to enhance the effectiveness of those landowners' voices by channeling resources  
20 and concerns through a single, influential voice. LLA represents about 200 landowners from across  
21 Louisiana. LLA members own approximately two million acres of land, mostly south of Interstate 10.  
22 LLA members derive substantial revenue from the sale of American alligators and alligator eggs  
23 harvested on their property.

24 5. Plaintiff Louisiana Wildlife and Fisheries Commission ("LWFC") is a Louisiana  
25 commission with its principal place of business in Baton Rouge, Louisiana. LWFC equips, maintains  
26 and controls wildlife management areas, which include large areas of alligator habitat in Louisiana.  
27 LWFC controls and supervises wildlife in Louisiana, including American alligators.

28 6. Defendant Xavier Becerra ("Becerra") is the Attorney General of California and

1 successor in office to Evelle J. Younger. Becerra is the chief law enforcement officer of California and  
2 has enforcement authority over the Challenged Laws; has direct supervision over every district attorney  
3 and sheriff; and when in his opinion any law of California is not being adequately enforced, has the  
4 duty “to prosecute any violations of law ... [and] shall have all the powers of a district attorney” in  
5 doing so. Cal. Const., art. V, §13. Becerra resides in this district and is sued in his official capacity.

6 **FACTUAL ALLEGATIONS**

7 THE AMERICAN ALLIGATOR

8 7. A member of the crocodile family and an emblem of the Louisiana bayou, the American  
9 alligator is a living fossil reptile that has survived for millions of years. Its historic range includes parts  
10 of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South  
11 Carolina, and Texas, but no part of California.

12 8. Alligators have been harvested commercially since the 1800s, with the industry strongly  
13 associated with Louisiana’s Cajun population. The harvest was generally unregulated, until the  
14 population declined as a result of excessive exploitation and habitat loss. Concerned with the species’  
15 future, Louisiana sought to protect the American alligator. It banned hunting statewide in 1962, and  
16 implemented a formal long-term research program shortly thereafter.

17 9. The federal government extended protection to the American alligator in 1967, when  
18 the Secretary of the Interior determined that the species was threatened with extinction for purposes  
19 of the Endangered Species Preservation Act. Congress further protected the American alligator in 1969  
20 by amending the Lacey Act (16 U.S.C. §§3371-3378) — which prohibits the taking, possession, or sale  
21 of certain wildlife in violation of state law — to encompass reptiles, any part, egg, or offspring thereof,  
22 or the dead body or parts thereof. And when Congress enacted the Endangered Species Act in 1973,  
23 the listing of the American alligator was carried forward as “endangered” throughout its entire range.

24 10. By 1974, recovery of the American alligator was well underway. The Governor of  
25 Louisiana asked the Secretary of the Interior to remove the population of American alligators in  
26 Cameron, Vermillion, and Calcasieu parishes from the list of threatened and endangered species. The  
27 Secretary of the Interior agreed. The U.S. Fish & Wildlife Service (“USFWS”) accordingly downgraded  
28 alligators in those parishes and captive alligators from “endangered” to “treated as threatened due to

1 similarity of appearance.” At the same time, the federal government adopted strict controls on the  
2 taking, inventory, accountability, and disposition of alligators and products made from their hides.

3 11. In 1977, additional populations of the American alligator were reclassified from  
4 endangered to threatened in all of Florida and in coastal areas of Georgia, Louisiana, South Carolina,  
5 and Texas; the USFWS also clarified that regulated harvesting was permitted in Cameron, Vermillion,  
6 and Calcasieu parishes. The USFWS rejected complaints that additional harvesting would “perpetuate  
7 and legalize the vogue for alligator hide products which conservationists are convinced need to be  
8 eliminated if most species of crocodylian are to survive,” and pointed to “the elaborate system of  
9 tagging and registering all hides, already successfully implemented in Louisiana,” as sufficient to keep  
10 poaching to low levels. The USFWS concluded that “[f]or crocodylians as a whole, the Service feels  
11 that the best long-run hope for their conservation lies in development of strong conservation  
12 programs,” and “[s]uch programs must include vigorous enforcement of protective laws, strong control  
13 of international trade, and *economic ... incentives for the nations and peoples involved to*  
14 *institute such controls.*”

15 12. By 1979, the excessive harvest of the American alligator which occurred in past years  
16 had given way to sound management of the species, such that the USFWS adopted rules permitting  
17 export of American alligator hides. That same year, the United States proposed to transfer the  
18 American alligator from Appendix I to Appendix II under Article 2(a) and Article 2(b) of the CITES  
19 Treaty, which regulates international commerce in endangered plants and animals. That transfer was  
20 agreed to at the Second Meeting of the CITES Conference of the Parties and became effective June  
21 28, 1979. The American alligator is now listed only as “threatened due to similarity of appearance” to  
22 other species throughout its range.

23 13. The harvest of American alligators in Louisiana (and in the other range states) is highly  
24 regulated and closely monitored by both state and federal officials. The Louisiana Department of  
25 Wildlife and Fisheries (“LDWF”) assesses alligator populations annually through aerial nest surveys.  
26 Based on annual population estimates, LDWF determines harvest quotas by region and by habitat type.  
27 Harvest quotas are then regulated through a mandatory permit and tagging system. Prior to shipment,  
28 each alligator hide must be inspected by an LDWF agent who verifies that the hide is tagged. Without

1 the state shipping permit and the appropriate federal CITES tag, alligator hides cannot enter commerce.  
2 If shipped abroad, the tags are again inspected by U.S. Port Inspectors at the port of export and then  
3 by CITES officials at the port of entry in the country that they are shipped to. Export-import licenses  
4 issued by USFWS typically provide that the authorized wildlife products may be imported or exported  
5 through “any designated port per 50 C.F.R. 14.” At least two of the designated ports are located in  
6 California (San Francisco and Los Angeles).

7 14. Every year, Louisiana is required to analyze and certify to the USFWS that its harvest  
8 and export of American alligators are not detrimental to the survival of the species and that all alligators  
9 entering trade have been legally acquired. Louisiana most recently made that certification on November  
10 8, 2019. Moreover, USFWS imposes strict limitations on the harvest of alligators, including a  
11 requirement of serialized tagging for each alligator harvested and strict accountability for each allocated  
12 tag.

13 15. As a result of its sustainable management program, Louisiana is able to generate a  
14 significant, sustainable harvest of American alligators that results in substantial income to Louisiana  
15 and its citizens. The sustainable use management strategy developed by LDWF for the American  
16 alligator has been highly successful, and has served as a model for management of the rest of the  
17 world’s crocodylian populations. Similarly, the alligator tagging system developed in Louisiana has  
18 become mandatory by CITES for trade in any of the world’s crocodylians. Within the CITES  
19 community, the American alligator is considered the model example for sustainable use of a wildlife  
20 species.

21 CALIFORNIA PENAL CODE 653O

22 16. In 1970, California enacted Penal Code Section 653o, effective December 1, 1970:

23 It is unlawful to import into this state for commercial purposes, to  
24 possess with intent to sell, or to sell within the state, the dead body, or  
25 any part or product thereof, of any alligator, crocodile, polar bear,  
26 leopard, ocelot, tiger, cheetah, jaguar, red wolf, timber wolf, vicuna,  
27 sea otter, free roaming feral horse, or Spanish lynx.

28 Cal. Stats. 1970, Ch. 1557, §1.

17. In 1971, California made violation of Section 653o a criminal offense.

1 Notwithstanding the provisions of Section 3 of Chapter 1557 of the  
2 Statutes of 1970, it shall be unlawful to possess with intent to sell, or  
3 to sell, within this state, after June 1, 1972, the dead body, or any part  
4 or product thereof, of any fish, bird, amphibian, reptile, or mammal  
5 specified in Section 653o or 653p.

6 Violation of this section constitutes a misdemeanor.

7 Cal. Stats. 1971, ch. 1283, §§1, 2 (codified at Cal. Penal Code Section 653r). A criminal  
8 penalty was added to Section 653o itself the following year:

9 Any person who violates any provision of this section is guilty of a  
10 misdemeanor and shall be subject to a fine of not less than one  
11 thousand dollars (\$1,000) and not to exceed five thousand dollars  
12 (\$5,000) or imprisonment in the county jail for not to exceed six  
13 months, or both such fine and imprisonment, for each violation.

14 Cal. Stats. 1972, Ch. 119, §2. Violation of Section 653o is also a criminal violation of the Lacey  
15 Act.

16 18. The express purpose of the Challenged Laws is to decrease the number of alligators  
17 being harvested and disrupt the market for alligator products. As the California Court of Appeal held,  
18 Sections 653o and 653r reflect a determination by the California legislature “that elimination of a  
19 market for products derived from [the listed] species will promote their continued existence,” and that  
20 the ban on the sale of products derived from those species “at least decreases the market therefor.”  
21 *People v. K. Sakai Co.*, 56 Cal. App. 3d 531, 537 (1976).

#### 22 THE FOUKE INJUNCTION

23 19. Founded by New Orleans native Phillip Fouke, the Fouke Company (“Fouke”) was a  
24 purchaser of American alligator hides in Louisiana and Florida. In the late-1970s, Fouke desired to sell  
25 processed alligator hides in California, including to Gary’s Leather Creations, Inc. (“Gary’s”). Fouke  
26 and Gary’s therefore filed suit in this Court against then-Governor Edmund G. Brown and then-  
27 Attorney General Evelle J. Younger for declaratory and injunctive relief barring the enforcement of  
28 Sections 653o and 653r with respect to American alligators.

19 20. Governor Brown and Attorney General Younger conceded that Sections 653o and  
20 653r conflicted with the Endangered Species Act and its implementing regulations. The only dispute  
21 was over the scope of the appropriate declaration and injunction. This Court accordingly granted

1 summary judgment in favor of Fouke and Gary’s, adopted the declaratory and injunctive language  
2 proposed by Governor Brown and Attorney General Younger, and held that California Penal Code  
3 Sections 653o and 653r are expressly preempted by the Endangered Species Act of 1973—particularly  
4 Section 6(f), 16 U.S.C. §1535(f). More specifically, this Court ordered and adjudged:

5 1. Pursuant to the Supremacy Clause of the United States Constitution  
6 (Article VI, Clause 2), California Penal Code Section 653o and 653r are  
7 declared unconstitutional and unenforceable as applied to American  
8 alligator (*alligator mississippiensis*) hides unless the same are taken,  
9 bought, tanned, or fabricated in contravention of the U.S. Endangered  
10 Species Act of 1973 (16 U.S.C. §1531-1543) or regulations promulgated  
11 by the Secretary of Interior of the United States implementing said Act,  
12 or in contravention of the terms and conditions of a permit or  
13 exemption issued pursuant to said act or regulations.

14 2. Defendants, their agents, employees, and representatives are hereby  
15 permanently enjoined from enforcing California Penal Code Sections  
16 653o and 653r as applied to American alligator (*alligator mississippiensis*) hides unless the same are taken, bought, tanned, or  
17 fabricated in contravention of the U.S. Endangered Species Act of 1973  
18 (16 U.S.C. §1531-1543) or regulations promulgated by the Secretary of  
19 Interior implementing said Act, or in contravention of the terms and  
20 conditions of a permit or exemption issued pursuant to said act or  
21 regulations.

22 *Fouke Co. v. Brown*, 463 F. Supp. 1142, 1145 (E.D. Cal. 1979) (“*Fouke Injunction*”). The *Fouke Injunction*  
23 was not appealed and has not been modified or vacated.

24 CALIFORNIA DISREGARDS THE FOUKE INJUNCTION

25 21. In 2006, California lawmakers recognized that all states except California that had  
26 previously attempted to prohibit the sale of manufactured alligator products had repealed those  
27 provisions. Although the *Fouke Injunction* declared Section 653o to be “unconstitutional and  
28 unenforceable” with respect to American alligators, the uncorrected statutory code was causing  
confusion and uncertainty among manufacturers. Accordingly, with the encouragement of Louisiana  
Governor Kathleen Blanco, California lawmakers sought to bring the statute into conformity with the  
*Fouke Injunction* by removing the American alligator from the text of Section 653o. The resulting bill  
included a sunset provision, however, such that the importation and sale of American alligators would  
again be banned effective January 1, 2010.



1           22.     In 2009, the sunset provision was extended to January 1, 2015, and renumbered as a  
2 separate provision. The sunset provision was again extended in 2014, this time to January 1, 2020. The  
3 sponsor of the 2014 bill, Luis Alejo, explained that letting the ban kick in would have a “chilling effect”  
4 on the economic activity associated with alligators.

5           23.     In 2019, California lawmakers introduced three bills to again extend the sunset  
6 provision. Blanca Rubio, the sponsor of one of those bills, explained that “[w]ithout the legal,  
7 commercial market for alligator and crocodile products and the revenue it provides for farmers ... the  
8 ‘ecosystem’ created to save alligators will collapse, with the unintended consequence of providing a  
9 market for illegal hunting and poaching.” Animal rights activists nevertheless targeted those bills,  
10 largely based on their general opposition to the use of animal products. None of the extension bills  
11 passed. Thus, notwithstanding the *Fouke* Injunction, effective January 1, 2020, Section 653o will again  
12 ban the importation for commercial purposes, possession with intent to sell, or sale within California  
13 of American alligator products:

14                   Commencing January 1, 2020, it shall be unlawful to import into this  
15 state for commercial purposes, to possess with intent to sell, or to sell  
16 within the state, the dead body, or a part or product thereof, of a  
crocodile or alligator.

17 California Penal Code §653o(b)(1).

18           24.     Activist groups such as PETA have cheered that “California’s long-awaited ban will  
19 [now] go into effect” and manufacturers “can’t hawk their skins in California anymore.” More  
20 ominously, national law firms issued alerts that the sale of alligator products will be “illegal” in  
21 California after January 1st.

22           THE IMPACT OF CALIFORNIA’S IMPENDING BAN ON AMERICAN ALLIGATOR PRODUCTS

23           25.     California’s large economy often results in its product standards becoming de facto  
24 national standards because manufacturers cannot economically produce state-specific products, supply  
25 chains, or retail streams. Examples of this effect include vehicle emissions standards and Proposition  
26 65 product labelling. The same is true vis-à-vis alligator hides: California accounts for a large percentage  
27 of the U.S. market for alligator products, such that many producers of finished alligator products will  
28 forgo using alligator *in toto* rather than try to produce state-specific products or retail streams if the

1 importation for commercial purposes, possession with intent to sell, or sale of alligator products is  
2 banned in California.

3 26. The importation into California for commercial purposes, possession in California with  
4 intent to sell, and sale within California of alligator hides and other products is an integral part of the  
5 alligator industry and supply chain. Yet Section 653o bans those activities effective January 1, 2020, on  
6 pain of criminal penalties.

7 27. The alligator industry has responded as expected given California's large market share  
8 and the serious penalties for violations of Section 653o: anticipating the forthcoming alligator ban,  
9 product manufacturers are curtailing orders for alligator hides and hide prices are falling as a result. By  
10 way of example, one tannery had an order for 600 alligator hides cancelled, with the cancellation directly  
11 attributable to Section 653o and based on the customer having a warehouse in California. And one of  
12 the world's largest purchasers of alligator hides has threatened to cease purchasing those hides entirely:  
13 given the complexity of modern supply chains, it isn't possible for that company to ensure that its  
14 alligator products don't pass through California.

15 28. Because only two crocodilian tanneries are located domestically, the United States  
16 exports a large volume of untanned hides to tanneries in Europe and Asia. Tanned hides and finished  
17 products are then reimported into the United States for further manufacturing and retail sale. Foreign  
18 tanners and manufacturers have stated that if California ports are closed to importation of alligator  
19 products, it will become too confusing to keep their clients informed of which U.S. ports can or cannot  
20 receive alligator products. As a result, they contemplate discontinuing their alligator product trade with  
21 the United States if Section 653o goes into effect.

22 29. Section 653o is already impacting all levels of the alligator supply chain. As  
23 manufacturers cancel or forgo orders from domestic tanneries (and foreign tanneries forgo selling into  
24 the American market), orders from alligator farmers are falling, and the price of hides is decreasing.  
25 Alligator farmers are informing egg collectors to anticipate greatly reduced demand for eggs in the  
26 coming year. Landowners are accordingly expecting greatly reduced egg prices during the upcoming  
27 contracting period in March 2020. In the face of collapsing demand, farmers, egg collectors, and  
28 landowners are halting investments.



WETLANDS AND BIOLOGY

1  
2 33. Approximately 50 percent (greater than 100 million acres) of the wetlands in the  
3 conterminous United States have been lost over the past 200 years. Despite regulatory efforts to  
4 minimize the loss of wetland habitats, losses and alterations continue to occur. Estuarine emergent  
5 wetland losses are mostly attributable to conversion to open water through erosion.

6 34. The economic value of American alligators acts as a powerful incentive for private  
7 landowners to actively manage and protect wetlands. This management and protection of alligator  
8 habitat boosts not only alligators, but a whole myriad of wildlife species. Since the majority of the  
9 coastal habitat in Louisiana is privately owned, the state has no direct control over management.  
10 Louisiana accordingly depends on the economic incentives provided by the alligator industry as a driver  
11 for private land management. Significantly, landowners are incentivized to install water control  
12 structures, burn marsh, establish shoreline protection, and employ numerous other management  
13 techniques to protect marshland. Needless to say, once wetlands are lost to erosion or saltwater  
14 intrusion, the loss is permanent. If the alligator ban in Section 653o goes into effect, Delacroix, LLA  
15 members, and other landowners will be forced to greatly reduce or cease their erosion control efforts  
16 because they will be unable to economically sustain those efforts, resulting in irreparable harm to their  
17 property as well as harm to Louisiana's sovereign environmental interests in wetland preservation.

18 35. The harm from wetlands erosion is not limited to the specific landowners whose land  
19 is lost to erosion. Coastal communities are intermingled with privately owned alligator habitat. Those  
20 private marshes serve an important role in protecting the intermingled communities, as well as the city  
21 of New Orleans, from storm surges and rising sea levels. Absent private erosion control efforts funded  
22 by revenue from the harvest of American alligator eggs and hides, New Orleans and the surrounding  
23 communities will be at increased risk from storm surges and rising sea levels.

24 36. The harm from a reduced or destroyed alligator industry is not limited to wetlands  
25 themselves. Alligator habitat is shared with the eastern black rail, which the USFWS has proposed to  
26 list as endangered or threatened under the Endangered Species Act of 1973 based on, *inter alia*, (i)  
27 habitat fragmentation and conversion, resulting in loss of its wetland habitat, and (ii) incompatible land  
28 management practices. Other at-risk species that share alligator habitat include the alligator snapping

1 turtle, Calcasieu painted crawfish, Pascagoula map turtle, frecklebelly madtom, and western chicken  
2 turtle. American alligator habitat is shared with a number of species listed as threatened or endangered  
3 under the ESA, including the whooping crane, ringed map turtle, West Indian manatee, and numerous  
4 birds. The management and protection of private wetlands that is incentivized and funded by the sale  
5 of American alligator eggs and hides benefits these species as well. If Section 653o goes into effect,  
6 Delacroix, LLA members, and other landowners will be forced to greatly reduce or cease their habitat  
7 management activities because they will be unable to economically sustain those activities, resulting in  
8 irreparable harm to at-risk, threatened, and endangered species that benefit from those activities.

9         37. In their habitat, American alligators act as a keystone species, *i.e.*, a species with a  
10 disproportionately large effect on its natural environment that enables other species to survive. For  
11 example, during the dry periods, American alligators use their powerful tail, jaws and feet to push away  
12 dirt and vegetation to keep a pool of water open, forming an “alligator hole.” Alligator holes become  
13 one of the few remaining wet habitats during dry periods. As a result, a variety of species concentrate  
14 around and visit alligator holes: they provide foraging sites for wading birds, turtles, and snakes; they  
15 provide refuge sites for fish during dry seasons; and predators eat the other animals that gather there.  
16 Alligator nests provide elevated areas for nests of other reptiles and germination of plants less tolerant  
17 of flooding. And as apex predators, American alligators help control introduced nuisance exotic species  
18 such as feral pigs and nutria. Alligators also keep populations of marsh herbivores such as muskrat and  
19 nutria in check. If populations of these rodents are allowed to explode, broad-scale marsh denudement  
20 known as “marsh eat outs” occur. A healthy alligator population is thus important to wetlands species  
21 as a group. In short, a healthy alligator population is a necessary part of a healthy wetland ecosystem.  
22 Absent the economic incentives provided by the American alligator industry and the related sustainable  
23 management program, alligator populations would enter a boom-bust cycle to the detriment of the  
24 wetland ecosystem as a whole.

25         38. The harm to the wetland ecosystem on Plaintiffs’ properties is not compensable by any  
26 amount of money. Even if it were compensable through monetary damages, Plaintiffs could not obtain  
27 money damages from the State of California.  
28

**CLAIMS FOR RELIEF**

**COUNT I**

**Supremacy Clause – Express Preemption**

39. The foregoing allegations are incorporated as though fully set forth herein.

40. Under the Supremacy Clause, state laws that contravene validly enacted federal laws are preempted and have no force or effect. The Challenged Laws contravene binding federal law and are therefore expressly preempted.

41. Section 6(f) of the Endangered Species Act provides that “[a]ny State law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively ... prohibit what is authorized pursuant to an exemption or permit provided for in this chapter or in any regulation which implements this chapter.” 16 U.S.C. §1535(f).

42. This Court has already held that Section 6(f) preempts California’s attempts to ban commerce in American alligator products. *See Fouke*, 463 F. Supp. At 1145. The resulting injunction remains in force and continues to bind the California Attorney General.

43. Even apart from the ongoing injunction, however, the decision in *Fouke* is manifestly correct. The Challenged Laws would prohibit commerce in alligator products that is expressly authorized and permitted by federal law, including the Endangered Species Act and the CITES Treaty.

44. The Ninth Circuit has held multiple times that Section 653o is expressly preempted insofar as it seeks to ban commerce in products derived from endangered or threatened species where such commerce is authorized by federal law. *See, e.g., Man Hing Ivory & Imports Inc. v. Deukmejian*, 702 F.2d 760 (9th Cir. 1983) (California prohibition on trade in African elephant products preempted as applied to trader who has secured all necessary federal permits pursuant to the ESA); *H.J. Justin & Sons v. Deukmejian*, 702 F.2d 758 (9th Cir. 1983) (same).

45. Delacroix, LLA members, and LWFC, directly or through assignment of their permits and tags to others, engage in harvesting of American alligators pursuant to the ESA and the CITES Treaty, under which alligator hides may not enter commerce unless they have the appropriate federal CITES tags. California has thus sought to ban commerce in American alligator products that is

1 expressly authorized and permitted under the ESA and the CITES Treaty.

2 46. The Challenged Laws are thus expressly preempted by federal law, and must be  
3 declared unconstitutional and enjoined as unenforceable under the Supremacy Clause.

4 **COUNT II**

5 **Supremacy Clause – Conflict/Obstacle Preemption**

6 47. The foregoing allegations are incorporated as though fully set forth herein.

7 48. State laws are preempted to the extent they conflict with federal law or impose an  
8 obstacle to the accomplishment of the purposes or objectives of federal law.

9 49. The Challenged Laws conflict with, and would severely undermine, the purposes and  
10 objectives of federal law, including the ESA and the CITES Treaty.

11 50. The American alligator is a tremendous success story for the ESA and CITES Treaty.  
12 Those alligators were threatened with extinction in the 1960s, but the population has recovered  
13 substantially due to a close cooperative relationship between the federal government, state  
14 governments, and private parties such as landowners, farmers, and tanneries.

15 51. As explained above, revenue from the sale of alligator hides and products is  
16 indispensable to this sustainable management program, as it supports conservation efforts and gives  
17 participants in the supply chain a powerful economic incentive to properly manage their wetlands and  
18 ensure a robust and healthy population of alligators.

19 52. The USFWS has expressly emphasized that “the best long-run hope” for the  
20 conservation of crocodylians—including American alligators—entails a comprehensive management  
21 program, including “economic incentives for the nations and peoples involved” to carefully control  
22 and manage the supply of such products.

23 53. The Challenged Laws will significantly disrupt revenue streams derived from American  
24 alligator products, thereby upending a well-functioning market and significantly decreasing the funds  
25 available for conservation and restoration efforts. Those laws conflict with federal policy regarding  
26 sustainable management and harvesting of American alligators, and stand as a direct obstacle to the  
27 achievement of the purposes and objects of the ESA and CITES Treaty.

28 54. Moreover, federal law has struck a careful balance with respect to threatened species

1 such as the American alligator, by carefully restricting the trade in such species without banning it  
2 altogether. Yet the Challenged Laws would upset that delicate balance and override federal policy  
3 regarding permissible uses for products derived from threatened species. *See Geier v. Am. Honda Motor*  
4 *Co.*, 529 U.S. 861 (2000).

5 55. The Challenged Laws are thus preempted by federal law and must be declared  
6 unconstitutional and enjoined as unenforceable under the Supremacy Clause.

7 **COUNT III**

8 **Commerce Clause – Obstruction of Channels of Commerce**

9 56. The foregoing allegations are incorporated as though fully set forth herein.

10 57. The Challenged Laws have the effect of closing California’s channels of commerce—  
11 *i.e.*, its ports, highways, warehouses, and airports—to lawful interstate and foreign commerce in  
12 products derived from American alligators.

13 58. For example, the Challenged Laws would forbid transporting an American alligator  
14 hide from Louisiana to Japan via the Port of Los Angeles or San Francisco International Airport, even  
15 if the product is not sold in California. Similarly, the Challenged Laws would prohibit shipping finished  
16 products from foreign countries to other U.S. markets via California’s ports, airports, warehouses, or  
17 roads.

18 59. The Challenged Laws accordingly violate the Commerce Clause by obstructing and  
19 burdening Plaintiffs’ access to the channels of interstate and foreign commerce.

20 60. California’s enforcement of the challenged statutes will deprive Plaintiffs of their rights  
21 under the Constitution and laws of the United States, in violation of 42 U.S.C. §1983.

22 **COUNT IV**

23 **Commerce Clause – Extraterritorial Regulation**

24 61. The foregoing allegations are incorporated as though fully set forth herein.

25 62. A state statute violates the Commerce Clause if the practical effect of the law is to  
26 control conduct beyond the boundaries of the state.

27 63. The purpose and effect of the Challenged Laws is to disrupt commerce in lawful  
28 products that occurs wholly outside California.





- 1           5.       award Plaintiffs their costs and attorneys fees to the extent provided by law; and  
2           6.       grant such other relief as is just and proper.

3 Dated: December 12, 2019

Respectfully submitted,

4  
5 /s/ Bryan K. Weir

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*Counsel for Louisiana Landowners Ass'n, Inc.*

*\*Application for admission*

*pro hac vice forthcoming*

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VERIFICATION

I, Robert Michael Bengé, as President of Delacroix Corporation, have reviewed this Verified Compliant, and I verify that the facts contained within it are true and accurate, to the best of my personal knowledge and belief.

The sources of my knowledge and belief are my personal knowledge, my ten years of service on the Louisiana Alligator Advisory Counsel, my extensive experience in land management, and my extensive experience in the alligator industry.

**I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA, THE STATE OF LOUISIANA, AND THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.**

Executed in New Orleans, Louisiana this 11th day of December, 2019.

  
Robert Michael Bengé

**VERIFICATION**

I, Rudy C. Sparks, as a director of Louisiana Landowners Association, Inc., have reviewed this Verified Compliant, and I verify that the facts contained within it are true and accurate, to the best of my personal knowledge and belief.

The sources of my knowledge and belief are my personal knowledge, my approximately 35 years of experience managing approximately 125,000 acres swampland and marshland in south Louisiana, and my approximately 30 years of experience in the alligator industry.

**I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA, THE STATE OF LOUISIANA, AND THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.**

Executed in Patterson, Louisiana this 12<sup>th</sup> day of December, 2019.

  
Rudy C. Sparks

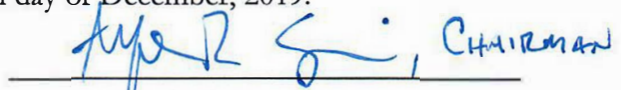
**VERIFICATION**

I, Alfred R. Sunseri, as chairman of the Louisiana Wildlife and Fisheries Commission, have reviewed this Verified Compliant, and I verify that the facts contained within it are true and accurate, to the best of my personal knowledge and belief.

The sources of my knowledge and belief are my personal knowledge and information provided to me in my capacity as chairman of the Louisiana Wildlife and Fisheries Commission.

**I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA, THE STATE OF LOUISIANA, AND THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.**

Executed in New Orleans, Louisiana this 12th day of December, 2019.



Alfred R. Sunseri

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