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7 CALIFORNIA RIVER WATCH

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 CALIFORNIA RIVER WATCH, a  
11 501(c)(3) nonprofit, public benefit  
Corporation,

12 Plaintiff,

13 v.

14 COUNTY OF SONOMA,

15 Defendant.  
16 \_\_\_\_\_/

CASE NO.

**COMPLAINT FOR DECLARATORY  
RELIEF, INJUNCTIVE RELIEF AND  
REMEDICATION**  
[Endangered Species Act - 16 U.S.C. § 1531  
*et seq.*]

17 NOW COMES Plaintiff CALIFORNIA RIVER WATCH, a 501(c)(3) nonprofit, public  
18 benefit Corporation, (“RIVER WATCH”) by and through its attorneys, and for its Complaint  
19 against Defendant COUNTY OF SONOMA (“the COUNTY”) states as follows:

20 **I. INTRODUCTION**

21 1. This is a civil action brought by RIVER WATCH under the federal Endangered  
22 Species Act (“ESA”) 16 U.S.C. § 1531 *et seq.*, to prevent the COUNTY from ongoing violations  
23 of the ESA and violations of regulations pertaining to the members of the Sonoma Designated  
24 Population Segment of California Tiger Salamander (“Sonoma CTS”) listed as endangered  
25 pursuant to ESA § 4. Said violations are detailed in the October 11, 2013 Notice of Violations  
26 and Intent to File Suit, a true copy of which is attached hereto as EXHIBIT A and fully  
27 incorporated into this Complaint. RIVER WATCH contends the COUNTY is violating ESA §  
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1 9, 16 U.S.C. § 1538, by aiding and facilitating the taking of Sonoma CTS by way of issuing  
2 permits authorizing activities which have caused and accelerated the decline of Sonoma CTS and  
3 likely jeopardize its continued existence.

4 2. The implementation of the regulatory scheme adopted by the COUNTY is  
5 contributing to the continued harm and/or harassment of the species as defined under the ESA  
6 and its implementing regulations, by authorizing habitat modification or degradation of Sonoma  
7 CTS critical habitat where it might kill or injure Sonoma CTS by impairing essential behavioral  
8 patterns, including breeding, feeding or sheltering.

9 3. The implementation of the regulatory scheme adopted by the COUNTY is  
10 contributing to the continued harm and/or harassment of the species, as defined under ESA §  
11 9, 16 U.S.C. § 1538, and its implementing regulations, by authorizing acts or omissions which  
12 create the likelihood of injury to Sonoma CTS by annoying it to such an extent as to disrupt  
13 normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.

14 4. RIVER WATCH alleges the COUNTY is issuing permits which allow the  
15 transformation of portions of designated critical habitat for the endangered Sonoma CTS in the  
16 absence of surveys, consultations, or mitigations.

17 5. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future  
18 violations and any other relief for the COUNTY's violations of the ESA as allowed under law.

## 19 II. JURISDICTIONAL ALLEGATIONS

20 6. Subject matter jurisdiction is conferred upon this Court by ESA § 11(g)(1)(A),  
21 16 U.S.C. § 1540(g)(1)(A), which states in part,

22 “any person may commence a civil suit on his own behalf . . . (A) to enjoin any  
23 person, including the United States and any other governmental instrumentality  
24 or agency (to the extent permitted by the eleventh amendment to the  
Constitution), who is alleged to be in violation of any provision of this Act or  
regulation issued under the authority thereof. . .”

25 The district courts shall have jurisdiction, without regard to the amount in controversy or  
26 the citizenship of the parties, to enforce any such provision or regulation or to order the Secretary  
27 of the U.S. Department of the Interior to perform such act or duty, as the case may be.  
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1 affected by the COUNTY's failure to comply with the ESA as alleged.

2 12. RIVER WATCH is informed and believes and thereupon alleges that Defendant  
3 COUNTY OF SONOMA is a governmental entity located in Northern California, governed by  
4 a Board of Supervisors, with a principal business address of 575 Administration Drive, Santa  
5 Rosa, California 95403.

## 6 V. STATUTORY BACKGROUND

7 13. The ESA is designed to "provide a means whereby the ecosystems upon which  
8 endangered species and threatened species depend may be conserved, [and] to provide a program  
9 for the conservation of such endangered species and threatened species." 16 U.S.C. § 1531(b).  
10 Principal among the ESA's system of species protection is the ESA § 9 prohibition rendering it  
11 illegal for any "person" to "TAKE" any species listed as endangered. 16 U.S.C. § 1538(a)(1)(B).  
12 The term "TAKE" is defined in the broadest possible manner to include every conceivable way  
13 in which a person can 'TAKE' or attempt to 'TAKE' any fish or wildlife. The term "TAKE"  
14 is defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to  
15 attempt to engage in any such conduct."

16 14. Harm includes habitat modification or degradation where such activity kills or  
17 injures members of a listed species by impairing essential behavioral patterns, including  
18 breeding, feeding or sheltering. Harassment includes actions which disrupt normal behavioral  
19 patterns which include, but are not limited to, breeding, feeding, or sheltering. 50 C.F.R. § 17.3.

20 15. Critical habitat consists of a habitat area essential to the survival of a listed species.  
21 This is a specific term and designation within the ESA. To cause or contribute to the destruction  
22 or degradation of critical habitat of the Sonoma CTS by issuing permits for development in  
23 critical habitat without requiring compliance with surveys, consultations, or mitigations  
24 mandated under the ESA is to TAKE Sonoma CTS. As construed by the courts, where adverse  
25 modification of critical habitat does not directly result in death or physical injury to the listed  
26 species, it still constitutes a TAKE under the "harm" element when habitat degradation could  
27 result in extinction of the listed species, contributes to the decline of the listed species, or  
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1 prevents or delays the recovery of the listed species.

2 16. Courts have held that under the ESA, entities are liable for a TAKE when those  
3 entities have authorized the activities of third parties which resulted in a TAKE, and where the  
4 relationship between the authorization issued by the entity and the TAKE of endangered species  
5 is clear and foreseeable.

## 6 VI. STATEMENT OF FACTS

7 17. Sonoma CTS is a population which is discrete from the rest of the population and  
8 is significant to the species. On July 22, 2002, the United States Fish & Wildlife Service  
9 (“FWS”) listed the Sonoma CTS as endangered on an emergency basis. The final rule was issued  
10 on March 19, 2003. The FWS listed the entire California Tiger Salamander species, including  
11 the Sonoma CTS, as threatened throughout its range on August 4, 2004. The Sonoma CTS was  
12 reinstated as a distinct population and re-designated as endangered by the court on August 19,  
13 2005.

14 18. Sonoma CTS inhabit areas with vernal pools, wetlands, and/or burrows which are  
15 essential to their feeding, breeding, and sheltering. The species is highly vulnerable to  
16 agricultural development, road construction and use, and to ongoing agricultural practices which  
17 eliminate the vernal pools, wetlands, and burrows essential to their survival and recovery.  
18 Sonoma CTS numbers have declined to a point where they now face extinction.

19 19. The uninhabited areas of Sonoma County have historically provided essential  
20 breeding, feeding, and sheltering habitat for Sonoma CTS. Adults of the species migrate at night  
21 from upland habitats to aquatic breeding sites during the first major rain events of the autumn  
22 months; walking more than a mile, which can take several days, to the nearest pond or wetland.  
23 Once breeding is complete, they return to the upland habitat. During the spring and summer, the  
24 Sonoma CTS aestivate in burrows.

25 20. Permits issued by the COUNTY for vineyard development, authorize activities  
26 such as grading and deep ripping of land and the use of pesticides including insecticides,  
27 rodenticides and herbicides, which disturb and interfere with the feeding, breeding and sheltering  
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1 of Sonoma CTS and destroy supportive biota.

2 21. Following the designation of critical habitat for Sonoma CTS in the Santa Rosa  
3 Plain Conservation Area, a team of experts and stakeholders, including representatives of the  
4 COUNTY, was convened to develop and ensure effective implementation of a conservation  
5 strategy (“Conservation Strategy”) for the Santa Rosa Plain Conservation Area. The *Santa Rosa*  
6 *Conservation Joint Guidance on Interim Mitigation for the California Tiger Salamander* which  
7 issued pursuant to the Conservation Strategy emphasized that it is crucial for local jurisdictions  
8 to ensure that mitigation, as part of the project review process, is consistent with the long term  
9 conservation goals of the Conservation Strategy. According to FWS, “the Conservation Strategy  
10 will not preserve the species unless implemented by the appropriate agencies.” (See FWS  
11 Programmatic Biological Opinion issued November 2007.) Despite this clear direction, the  
12 COUNTY routinely issues permits for vineyard development which allow the adverse  
13 transformation of portions of designated critical habitat for the endangered Sonoma CTS in the  
14 absence of surveys, consultations, or mitigations mandated pursuant to the ESA.

## 15 VII. GENERAL ALLEGATIONS

16 22. RIVER WATCH alleges the COUNTY’s issuing of permits which authorize  
17 clearing, grading, ripping, land planing of vegetated areas, vineyard development and the use of  
18 pesticides have caused a TAKE of Sonoma CTS as the term “TAKE” is defined in the ESA, and  
19 continues to damage critical habitat to the extent that it interferes with breeding, feeding and  
20 sheltering.

21 23. RIVER WATCH alleges the COUNTY’s actions as alleged herein have caused  
22 and accelerated the decline in Sonoma CTS populations; and if such actions continue, will likely  
23 lead to the extinction of Sonoma CTS. The loss of hundreds of individuals of both the current  
24 and next generation of this rare and endangered species, the increasingly hostile environment  
25 in which the species is expected to survive and its already critically low numbers is a devastating  
26 set back to its recovery which may well lead to extinction of the species if the COUNTY’s  
27 permit approval process is not altered to ensure compliance with the consultations, surveys and  
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1 mitigations required under the ESA.

2 24. RIVER WATCH alleges the COUNTY is currently, and has in the past, been  
3 aware of the threats to the survival of Sonoma CTS posed by the COUNTY's permit approval  
4 process.

5 **VIII. CLAIM FOR RELIEF**

6 **(ESA § 9, 16 U.S.C. § 1538)**

7 RIVER WATCH incorporates the allegations set forth in Paragraphs 1 through 24 above  
8 and **EXHIBIT A** as though fully set forth herein, and alleges as follows:

9 25. By authorizing activities which adversely modify the critical habitat of Sonoma  
10 CTS, such as converting land to vineyard without the required consultations, surveys and  
11 mitigations, which activities harm or harass Sonoma CTS and cause a direct and/or indirect  
12 TAKE of protected species, the COUNTY has violated ESA § 9 and its implementing  
13 regulations (16 U.S.C. § 1538; 50 C.F.R. § 17.31.)

14 26. Due to the continued effects of TAKES of Sonoma CTS authorized by the  
15 COUNTY as well as the COUNTY's continued practices of issuing permits for vineyard  
16 conversions in critical habitat of Sonoma CTS without the required consultations, surveys and  
17 mitigations, RIVER WATCH alleges the COUNTY's violations as set forth in this Complaint  
18 are ongoing and will continue after the filing of this Complaint. RIVER WATCH alleges herein  
19 all violations which may have occurred or will occur prior to trial, but for which data may not  
20 have been available to RIVER WATCH prior to the filing of this Complaint. RIVER WATCH  
21 will amend the pleadings as necessary to address further violations of the ESA by the COUNTY  
22 which may occur after the filing of this Complaint.

23 27. RIVER WATCH is informed and believes, and on such information and belief  
24 alleges, that without the imposition of appropriate equitable relief, the COUNTY will continue  
25 to violate the ESA with respect to Sonoma CTS. RIVER WATCH is further informed and  
26 believes, and on such information and belief alleges, that the relief requested in this Complaint  
27 will redress the injury to RIVER WATCH including Sonoma CTS, prevent future injury and  
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1 protect the interests of RIVER WATCH and its members whose interests are, or may be,  
2 adversely affected by the COUNTY’s violations of the ESA as set forth in this Complaint.

3 **IX. PRAYER FOR RELIEF**

4 WHEREFORE, RIVER WATCH prays this Court grant the following relief:

5 28. Declare the COUNTY to have violated and to be in violation of ESA § 9 by  
6 authorizing activities that constitute a TAKE of Sonoma CTS.

7 29. Issue an order enjoining the COUNTY from issuing permits for development of  
8 land designated as critical habitat for Sonoma CTS unless the permittee is granted an incidental  
9 TAKE permit under ESA § 10 or has satisfied all the requirements for surveys and mitigation  
10 as set forth in the ESA regulations.

11 30. Order the COUNTY to pay RIVER WATCH’s reasonable attorneys’ fees and costs  
12 (including expert witness fees), as provided by 16 U.S.C. § 1540 (g)(3)(A)(4) and applicable  
13 California law; and,

14 31. Grant such other and further relief as may be just and proper.

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DATED: January 14, 2014

By:           /s/ Jerry Bernhaut            
JERRY BERNHAUT  
Attorney for Plaintiff  
CALIFORNIA RIVER WATCH