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11 RIDGE TOP RANCH, LLC

12
13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**
15

16 RIDGE TOP RANCH, LLC,

17 Plaintiff,

18 v.

19 UNITED STATES FISH & WILDLIFE
20 SERVICE; DANIEL M. ASHE, DIRECTOR,
21 UNITED STATES FISH AND WILDLIFE
SERVICE,

22 Defendants.

CASE NO. *Pending*

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

1 Plaintiff Ridge Top Ranch, LLC (“Ridge Top”) sues Defendants United States Fish and Wildlife
2 Service (“Fish & Wildlife”) and its Director Daniel M. Ashe (“Ashe” or “Director”), and states as
3 follows on personal knowledge as to its own actions and on information and belief as to all other matters:

4 **NATURE OF THIS ACTION AND SUMMARY OF CLAIMS**

5 1. This is an action under the Administrative Procedure Act (“APA”) and the Endangered
6 Species Act to hold unlawful and set aside a) a determination by Fish & Wildlife that is contrary to law,
7 and otherwise arbitrary, capricious and an abuse of discretion, and b) a revision to a designation of
8 critical habitat under the Endangered Species Act purportedly made by Fish & Wildlife which violates
9 mandatory statutory obligations.

10 2. Ridge Top owns and operates property that will be utilized as a wildlife conservation bank
11 (the “Conservation Bank”) located about 25 miles northeast of San Francisco in Solano County,
12 California. Under the Endangered Species Act, federal agencies (or their designated non-federal entities)
13 are required to ensure that any projects they authorize are not likely to jeopardize the continued existence
14 of a “listed” (endangered or threatened) species or adversely affect “critical habitat” (certain designated
15 areas occupied by listed species). The Act also makes it illegal to “take” (harass, harm, pursue, etc.) a
16 listed species. Project proponents may address these responsibilities by consulting with Fish & Wildlife
17 before undertaking the project and by adopting measures identified during consultation to mitigate any
18 potential adverse impacts.

19 3. Mitigation can include a variety of measures, and sometimes includes the purchase of
20 mitigation “credits,” the revenue from which is used for the permanent preservation and management of
21 habitat at an off-site bank. Ridge Top’s Conservation Bank is designed to provide mitigation “credits” in
22 such circumstances for two endangered species, the California red-legged frog and the Callippe silverspot
23 butterfly

24 4. As further described below, in connection with a highway construction project headed by
25 the California Department of Transportation (“Caltrans”), on May 20, 2013 the Solano Transportation
26 Authority issued a request for proposals (“the Solano RFP”) seeking, among other things habitat
27 mitigation to offset the highway project’s impacts on the California red-legged frog and the Callippe
28 silverspot butterfly. Regarding those species, the basic requirement of the Solano RFP was that the

1 mitigation provided must satisfy the habitat mitigation requirements duly set forth in a regulatory
2 document known as a “Biological Opinion” that was issued by Fish & Wildlife, under the Endangered
3 Species Act, after extensive consultation with Caltrans.

4 5. Ridge Top’s Conservation Bank ultimately won the Solano RFP and was designated the
5 probable awardee, because Ridge Top’s proposal was the low price bid and the Solano Transportation
6 Authority and Caltrans recognized that the Ridge Top’s proposal meets all requirements of the Solano
7 RFP -- including the mitigation requirements of the Biological Opinion for the California red-legged
8 frog and the Callippe silverspot butterfly. Subsequently, however, Fish & Wildlife determined that the
9 Conservation Bank does not provide acceptable mitigation for the California red-legged frog, stating as
10 reasons additional and differing mitigation requirements for that species than those duly set forth in the
11 Biological Opinion. Fish & Wildlife’s determination that the Conservation Bank does not provide
12 acceptable mitigation also rested on a purported revision by Fish & Wildlife to the designation of critical
13 habitat for the California red-legged frog, contrary to Endangered Species Act requirements governing
14 such revisions.

15 6. Fish & Wildlife’s determination that Ridge Top’s Conservation Bank does not provide
16 acceptable mitigation with respect to the California red-legged frog is contrary to law, as well as
17 arbitrary, capricious and an abuse of discretion. Accordingly, that determination should be invalidated so
18 that Ridge Top can proceed to provide the habitat mitigation sought by the Solano Transportation
19 Authority in the Solano RFP that Ridge Top won as the low responsive bidder. Based on the same
20 violations of law, and to ensure effective relief, Fish & Wildlife also should be enjoined from taking any
21 further action to prevent Ridge Top from providing all the habitat mitigation sought in the Solano RFP,
22 including such mitigation regarding the California red-legged frog, and from taking any action to approve
23 or otherwise allow any other party to provide such mitigation for the highway project to Caltrans or the
24 Solano Transportation Authority.

25 **JURISDICTION AND VENUE**

26 7. This Court has jurisdiction of this action under 28 U.S.C. §§1331 & 1337, because Ridge
27 Top’s claims arise under the Administrative Procedure Act, 5 U.S.C. §701 et seq. (“APA”) and the
28 Endangered Species Act, 16 U.S.C. § 1531 et seq.

1 8. Venue is proper in the Eastern District of California under 28 U.S. C. § 1391(e) because a
2 substantial part of the events or omissions giving rise to the claims asserted in this action occurred in that
3 district.

4 **PARTIES**

5 9. Plaintiff Ridge Top Ranch, LLC (“Ridge Top”) is a limited liability company organized
6 and existing under the laws of the State of Delaware, with its principal place of business at 4171 Essen
7 Lane, Baton Rouge, Louisiana 70809. Ridge Top owns and will operate a wildlife conservation bank
8 (the “Conservation Bank”) in Solano County, California known as “Ridge Top Ranch Wildlife
9 Conservation Bank.”

10 10. Defendant United States Fish and Wildlife Service (“Fish & Wildlife”) is an agency of the
11 federal government within the Department of the Interior, with responsibility for implementing various
12 aspects of the Endangered Species Act.

13 11. Defendant Daniel M. Ashe (“Ashe” or “Director”) is the Director of Fish & Wildlife, with
14 ultimate overall responsibility for its actions. Mr. Ashe is sued here in his official capacity as Director of
15 Fish & Wildlife.

16 **FACTS**

17 **“Consultation” Leading to the Biological Opinion**

18 12. For many years, Caltrans, in cooperation with the Federal Highway Administration and
19 the Solano Transportation Authority, has been planning to construct improvements to the Interstate
20 80/Interstate 680/State Route 12 Interchange (the “I-80/I-680/SR 12 Interchange”) in Solano County,
21 California. Due to federal involvement and funding, the I-80/I-680/SR 12 Interchange project is subject
22 to the requirements of the Endangered Species Act.

23 13. Early planning documents indicated a potential that the I-80/I-680/SR 12 Interchange
24 project would adversely impact certain listed species and related habitat. Caltrans therefore requested to
25 engage in “consultation” with the Fish & Wildlife Service, pursuant to Section 7 of the Endangered
26 Species Act, 16 U.S.C. § 1536, to determine how the project would affect those listed species and habitat,
27 and what if any protective or mitigation measures were appropriate.

28 14. The Endangered Species Act provides that upon the conclusion of such consultation, the

1 Secretary shall provide a written statement detailing how the particular project (here, the I-80/I-680/SR
2 12 Interchange project) affects each listed species and habitat addressed in the consultation process. See
3 16 U.S.C. § 1536 (b). These written statements are commonly called “Biological Opinions.”

4 15. Fish & Wildlife and its Director have responsibility for implementing the consultation
5 process under the Endangered Species Act, including responsibility for issuing and ensuring compliance
6 with Biological Opinions and for carrying out other related responsibilities that the Endangered Species
7 Act confers upon the Secretary of Interior.

8 16. The Endangered Species Act further provides that if consultation indicates that a project
9 will result only in an “incidental taking” of an endangered species, the Secretary of Interior shall provide
10 a written statement that, among other things, i) “specifies the impact of such incidental taking on the
11 species,” ii) “specifies those reasonable and prudent measures that the Secretary considers necessary or
12 appropriate to minimize such impact,” and iii) “sets forth the terms and conditions (including, but not
13 limited to, reporting requirements) that must be complied with . . . to implement the [reasonable and
14 prudent] measures specified” in the statement. See 16 U.S.C. § 1536(b)(4). These written statements are
15 commonly called “Incidental Take Statements,” and included as a separate section in Biological Opinions
16 issued by Fish & Wildlife.

17 17. Fish & Wildlife’s regulations implementing the Endangered Species Act reiterate, and
18 provide further detail, concerning the required contents of Biological Opinions and Incidental Take
19 Statements.

20 18. Thus, 40 CFR 402.14 (h), entitled “Biological Opinions,” states what “[t]he biological
21 opinion shall include.”

22 19. 40 CFR 402.14 (i), entitled “Incidental take,” states that where only incidental takings of
23 endangered species are involved, “the Service will provide with the biological opinion a statement
24 concerning incidental take.” This regulation then specifies the required content of such an Incidental
25 Take Statement, in terms comparable to those set forth in the Endangered Species Act itself as noted in
26 paragraph 16 above.

27 20. With respect to the I-80/I-680/SR 12 Interchange project, Fish & Wildlife engaged in
28 formal consultation with Caltrans from approximately April 2011 until April 16, 2012, when Fish &

1 Wildlife issued a Biological Opinion pertaining to that project (the “4/16/12 Biological Opinion”).

2 21. Fish & Wildlife’s regulations implementing the Endangered Species Act provide that
3 “[f]ormal consultation is terminated with the issuance of the biological opinion.” See 40 CF 402.14
4 (l)(1).

5 22. The 4/16/12 Biological Opinion addressed the impact of the I-80/I-680/SR 12 Interchange
6 project on numerous endangered species, including the California red-legged frog and the Callippe
7 silverspot butterfly.

8 23. The 4/16/12 Biological Opinion found that the I-80/I-680/SR 12 Interchange project
9 would only result in an incidental taking of the California red-legged frog and the Callippe silverspot
10 butterfly (as well as certain other species) . Therefore, in accordance with the statutory and regulatory
11 provisions mentioned above, the 4/16/12 Biological Opinion contains an Incidental Take Statement, so-
12 designated as a separate section, which specifies the matters set forth in those statutory and regulatory
13 provisions. As relevant here, that Incidental Take Statement specifies the habitat mitigation requirements
14 that Fish & Wildlife determined during consultation were necessary or appropriate to minimize the
15 impact of the incidental taking of the California red-legged frog that would be caused by the I-80/I-
16 680/SR 12 Interchange project. Specifically, the Incidental Take Statement specifies that the required
17 mitigation measures for the California red-legged frog are those measures set forth in the Biological
18 Opinion under the heading “Description of the Proposed Action,” in a section titled “Proposed
19 Conservation Measures.”

20 24. The remainder of this Complaint focuses on the habitat mitigation requirements for the
21 California red-legged frog that are specified in the Incidental Take Statement included in the 4/16/12
22 Biological Opinion, as set forth in the section of the Biological Opinion entitled “Proposed Conservation
23 Measures.”

24 **Ridge Top Wins The Solano RFP**

25 25. Shortly after the 4/16/12 Biological Opinion issued, on May 30, 2013, the Solano
26 Transportation Authority, acting for Caltrans and others involved in the I-80/I-680/SR 12 Interchange
27 project, issued a request for proposals (“the Solano RFP”) to provide required habitat mitigation in
28 connection with the project. Regarding the California red-legged frog, the basic requirement of the

1 Solano RFP was that proposals for habitat mitigation satisfy the mitigation requirements duly set forth in
2 the 4/16/12 Biological Opinion.

3 26. Evaluation criteria stated in the Solano RFP included compliance with the habitat
4 mitigation requirements duly set forth in the 4/16/12 Biological Opinion, as well as the cost of applicable
5 mitigation measures. The RFP stated that award would be made to the mitigation provider offering the
6 lowest cost proposal that meets the minimum requirements.

7 27. Ridge Top, through its environmental consultant WRA, Inc., timely submitted a proposal
8 dated June 7, 2013 in response to the Solano RFP which proposed to provide the required habitat
9 mitigation for the California red-legged frog at Ridge Top's Conservation Bank (as well as other
10 mitigation included in the Solano RFP but not relevant here).

11 28. Upon review of Ridge Top's proposal and other proposals submitted in response to the
12 Solano RFP, the Solano Transportation Authority ultimately determined (and Caltrans agreed) that Ridge
13 Top's proposal meets all requirements of the Solano RFP, including the basic requirement that the
14 proposal satisfy the mitigation requirements duly set forth in the 4/16/12 Biological Opinion. Ridge
15 Top's proposal also was the lowest cost bid. Accordingly, the Solano Transportation Authority wrote to
16 WRA on July 9, 2013, stating that Ridge Top was the "Apparent Successful Proposer" to provide
17 mitigation for the California red-legged frog (and the other mitigation included in the Solano RPF and
18 proposed by Ridge Top, which is not relevant here).

19 29. On that same date, July 9, 2013, Caltrans submitted the Ridge Top proposal to Fish &
20 Wildlife for review and comment. This was understood by Caltrans, the Solano Transportation Authority
21 and Ridge Top as a pro forma exercise to confirm the conclusion of Caltrans and the Solano
22 Transportation Authority that the Ridge Top proposal met the requirements duly set forth in the
23 Biological Opinion. It was not an occasion for Fish & Wildlife to revisit those requirements or substitute
24 its judgment for that of Caltrans and the Solano Transportation Authority as to which of the potential
25 mitigation providers should be selected. There was – and remains today -- no question that Ridge Top's
26 proposal of habitat mitigation for the California red-legged frog at Ridge Top's Conservation Bank (and
27 other mitigation proposed by Ridge Top) satisfies the mitigation requirements specified in the Proposed
28 Conservation Measures and in the Incidental Take Statement included in the 4/16/12 Biological Opinion.

Fish & Wildlife's Unlawful Determination

1
2 30. Notwithstanding the fact that Ridge Top's proposal of habitat mitigation at the
3 Conservation Bank satisfies all the mitigation requirements specified in the Proposed Conservation
4 Measures and in the Incidental Take Statement included in the 4/16/12 Biological Opinion and also was
5 the low bid responsive to the Solano RFP, Fish & Wildlife subsequently determined that Ridge Top's
6 proposal of the Conservation Bank would not provide acceptable mitigation for the adverse effects of the
7 I-80/I-680/SR 12 Interchange project on the California red-legged frog.

8 31. That determination by Fish & Wildlife was set forth in two separate letters addressed to
9 both Caltrans and the Solano Transportation Authority, one dated August 6, 2013 and the other dated
10 September 3, 2013 (together, the "Unlawful Fish & Wildlife Determination.").

11 32. Both of those letters state as reasons for the Unlawful Fish & Wildlife Determination
12 requirements for habitat mitigation for the California red-legged frog that are additional to, and in several
13 respects inconsistent with, the mitigation requirements specified in the Proposed Conservation Measures
14 and in the Incidental Take Statement included in the 4/16/12 Biological Opinion. As such, the Unlawful
15 Fish & Wildlife Determination is contrary to the Endangered Species Act and its implementing
16 regulations, pursuant to which Fish & Wildlife may only impose and enforce those habitat mitigation
17 requirements that are specified in the Incidental Take Statement included in the 4/16/12 Biological
18 Opinion.

19 33. Fish & Wildlife knows what those habitat mitigation requirements are. They are explicitly
20 and clearly "specified," as required by the Endangered Species Act and its implementing regulations, in
21 the Incidental Take Statement included the 4/16/12 Biological Opinion. Ridge Top's proposal submitted
22 in response to the Solano RFP satisfies those requirements, and Fish & Wildlife knows that Ridge Top's
23 proposal satisfies those requirements.

24 34. Nonetheless, Fish & Wildlife's August 6, 2013 letter goes on to determine that Ridge
25 Top's proposal to provide habitat mitigation for the California red-legged frog at Ridge Top's
26 Conservation Bank is not acceptable, stating as reasons for that determination matters not specified in the
27 Incidental Take Statement included in the 4/16/12 Biological Opinion. That determination is contrary to
28 the requirements imposed by law, specifically the Endangered Species Act and its implementing

1 regulations, and also is arbitrary and capricious and an abuse of Fish & Wildlife's discretion.

2 35. In response to the August 6 letter, by letter dated August 16, 2013, Ridge Top's
3 environmental consultant WRA wrote to Fish & Wildlife, explaining that Ridge Top's Conservation
4 Bank "meets the three (3) specific measurable criteria" for California red-legged frog habitat mitigation
5 specified in the Incidental Take Statement included in the 4/16/12 Biological Opinion, and "that the other
6 reasons identified in the [August 6] Letter to support the conclusion that the Bank is not suitable to
7 provide [such] mitigation are not requirements listed in the Project BO." WRA's August 16 letter also
8 specifically addressed each of the additional criteria identified in Fish & Wildlife's August 6 letter and
9 explained why those criteria do not disqualify Ridge Top's Conservation Bank as a mitigation source.

10 36. Fish & Wildlife's September 3, 2013 letter to Caltrans and the Solano Transportation
11 Authority, apparently prompted by WRA's August 16 letter, states that it was written "to clarify and
12 supplement" the August 6 letter. In fact, the September 3 letter, while reiterating Fish & Wildlife's
13 determination that Ridge Top's proposal to provide habitat mitigation for the California red-legged frog
14 at Ridge Top's Conservation Bank is not acceptable, states as reasons for Fish & Wildlife's
15 determination reasons that are very different from those set forth in Fish & Wildlife's August 6 letter.
16 The September 3 letter is also internally inconsistent and confusingly vague. For these additional
17 reasons, the Unlawful Fish & Wildlife Determination set forth in Fish & Wildlife's letters of August 6
18 and September 3 is not only contrary to law, but arbitrary, capricious and an abuse of Fish & Wildlife's
19 discretion.

20 37. As purported justification for the Unlawful Fish & Wildlife Determination, the September
21 3 letter relies on certain ideas for habitat mitigation measures mentioned in parts of the 4/16/12
22 Biological Opinion other than the part entitled and setting forth "Proposed Conservation Measures" and
23 specified in the Incidental Take Statement included in that Biological Opinion. That mention of those
24 other mitigation ideas in the 4/16/12 Biological Opinion demonstrates that Fish & Wildlife considered
25 them during the course of consultation leading to that Biological Opinion, but those ideas ultimately were
26 not included among the mitigation requirements specified in the Incidental Take Statement. In other
27 words, during the consultation process -- and before consultation "terminated with the issuance of the
28 biological opinion," see 40 CF 402.14 (l)(1) -- Fish & Wildlife decided not to make those ideas

1 requirements for habitat mitigation.

2 38. The Unlawful Fish & Wildlife Determination is also contrary to law for another reason.
3 Pursuant to Section 4 of the Endangered Species Act, 16 U.S.C. § 1533, Fish & Wildlife has designated
4 various areas of California as “critical habitat” for the California red-legged frog. That critical habitat for
5 the frog includes areas in the vicinity of the Caltrans highway project that are referred to as “SOL-1,” ”
6 SOL-2” and “SOL-3.” Section 4 of the Endangered Species Act provides that the designated critical
7 habitat for an endangered species like the California red-legged frog can only be revised “by regulation
8 promulgated in accordance with subsection (b) of this section,” which subsection in turn requires that any
9 such revision be made “on the basis of the best scientific data available and after taking into
10 consideration the economic impact, the impact on national security, and any other relevant impact.” See
11 16 U.S.C. § 1533 (a)(3)(A)(ii) & (b)(2).

12 39. The 4/16/12 Biological Opinion recognizes the relevant critical habitat area for the
13 California red-legged frog, and the Proposed Conservation Measures and the Incidental Take Statement
14 included in the Biological Opinion require that mitigation be “within a California red-legged frog critical
15 habitat unit or within the vicinity of a frog critical habitat.” Contrary to that part of the Proposed
16 Conservation Measures and the Incidental Take Statement, Fish & Wildlife’s September 3, 2013, letter
17 purports to require that habitat mitigation for impacts of the I-80/I-680/SR 12 Interchange project on the
18 California red-legged frog must be provided within the areas referred to as SOL-2 or SOL-3. That
19 requirement is in essence a conclusion that only those areas (and not SOL-1) constitute critical habitat for
20 the frog, contrary to the Endangered Species Act’s requirement that any revision to designated critical
21 habitat be made “by regulation promulgated in accordance with subsection (b) of this section [16 U.S.C.
22 § 1533].”

23 **Harm to Ridge Top**

24 40. The Solano Transportation Authority has determined and both it and Caltrans continue to
25 believe, notwithstanding the Unlawful Fish & Wildlife Determination, that Ridge Top’s proposal to
26 provide habitat mitigation at the Conservation Bank with respect to the California red-legged frog
27 satisfies the requirements of the Solano RFP, including the basic requirement that such habitat mitigation
28 satisfy the mitigation requirements duly set forth in the 4/16/12 Biological Opinion.

1 41. Caltrans and the Solano Transportation Authority, having notified Ridge Top that it is the
2 “Apparent Successful Proposer” in response to the Solano RFP, remain ready and able to enter into a
3 contract with Ridge Top and thereby obtain the mitigation at the Conservation Bank proposed by Ridge
4 Top, including habitat mitigation for the California red-legged frog.

5 42. If the Unlawful Fish & Wildlife Determination is invalidated and Fish & Wildlife instead
6 complies with the Endangered Species Act and its implementing regulations, Caltrans, the Solano
7 Transportation Authority and Ridge Top will be able to obtain all approvals and take all steps necessary
8 to proceed to enter into a contract pursuant to which Ridge Top would provide at the Conservation Bank
9 the habitat mitigation described in the Solano RFP, including habitat mitigation for the California red-
10 legged frog.

11 43. However, unless the Court grants the relief Ridge Top seeks here, there is a real risk that
12 Caltrans and the Solano Transportation Authority, given other deadlines governing the I-80/I-680/SR 12
13 Interchange project, will seek to obtain the necessary habitat mitigation elsewhere.

14 44. It would not be appropriate, lawful or consistent with the Solano RFP, for Caltrans or the
15 Solano Transportation Authority to obtain the mitigation described in the Solano RFP, including habitat
16 mitigation for the California red-legged frog, from any source other than Ridge Top pursuant to its
17 proposal to provide such mitigation at its Conservation Bank.

18 45. It also would be unlawful for Fish & Wildlife to grant any approval for Caltrans and/or the
19 Solano Transportation Authority to obtain the mitigation described in the Solano RFP, including habitat
20 mitigation for the California red-legged frog, from any source other than Ridge Top.

21 **FIRST CLAIM FOR RELIEF**

22 46. Plaintiff Ridge Top repeats and realleges the allegations in paragraphs 1 through 45 above.

23 47. Ridge Top’s proposal in response to the Solano RFP satisfies the requirements for habitat
24 mitigation with respect to the California red-legged frog which are specified in the Proposed
25 Conservation Measures and the Incidental Take Statement included in the 4/16/12 Biological Opinion as
26 required by the Endangered Species Act and its implementing regulations.

27 48. The determination made by Fish & Wildlife in its August 6 and September 3, 2013 letters,
28 that Ridge Top’s proposal in response to the Solano RFP will not provide acceptable mitigation for the

1 adverse effects of the I-80/I-680/SR 12 Interchange project on the California red-legged frog – that is, the
2 Unlawful Fish & Wildlife Determination mentioned above – constitutes final agency action that is
3 subject to judicial review under the APA.

4 49. The Unlawful Fish & Wildlife Determination, which purports to impose requirements for
5 habitat mitigation other than those specified in the Proposed Conservation Measures and the Incidental
6 Take Statement included in the 4/16/12 Biological Opinion, is for that reason contrary to law, as well as
7 arbitrary, capricious and an abuse of Fish & Wildlife’s discretion.

8 50. By reason of the foregoing, and pursuant to the APA, see 5 U.S.C. § 706, the Court should
9 invalidate the Unlawful Fish & Wildlife’s Determination, and enjoin Fish & Wildlife and its Director
10 both from 1) taking any further action that prevents Caltrans and the Solano Transportation Authority
11 from obtaining habitat mitigation from Ridge Top pursuant to Ridge Top’s winning proposal submitted
12 in response to the Solano RFP, and 2) taking any action that would directly or indirectly grant approval
13 for Caltrans and/or the Solano Transportation Authority to obtain the mitigation described in the Solano
14 RFP, including habitat mitigation for the California red-legged frog, from any source other than Ridge
15 Top.

16 **SECOND CLAIM FOR RELIEF**

17 51. Plaintiff Ridge Top repeats and realleges the allegations in paragraphs 1 through 50 above.

18 52. The determination made by Fish & Wildlife in its August 6 and September 3, 2013 letters,
19 that Ridge Top’s proposal in response to the Solano RFP will not provide acceptable mitigation for the
20 adverse effects of the I-80/I-680/SR 12 Interchange project on the California red-legged frog – that is, the
21 Unlawful Fish & Wildlife Determination mentioned above – rests in part on the requirement that Fish &
22 Wildlife purports to impose in its September 3 letter that habitat mitigation for impacts of the I-80/I-
23 680/SR 12 Interchange project on the California red-legged frog must be provided within the frog critical
24 habitat, which it has narrowed to the areas known as “SOL-2” or “SOL-3.”

25 53. That purported requirement is contrary to law for two reasons. First, it differs from the
26 mitigation requirements specified in the Incidental Take Statement included in the 4/16/12 Biological
27 Opinion, which authorized mitigation “within a California red-legged frog critical habitat unit or within
28 the vicinity of a frog critical habitat.” Second, this new purported requirement is also contrary to law

1 (and imposed without observance of procedure required by law) because it represents a revision to the
2 designated critical habitat for the California red-legged frog, and the Endangered Species Act requires
3 that any such revision be made “by regulation promulgated in accordance with subsection (b) of this
4 section [16 U.S.C. § 1533],” which subsection in turn requires that any such revision be made “on the
5 basis of the best scientific data available and after taking into consideration the economic impact, the
6 impact on national security, and any other relevant impact.”

7 54. By letter dated September 13, 2013, pursuant to the citizen suit provisions of the
8 Endangered Species Act, 16 U.S.C. §1540 (g), Ridge Top duly gave notice of its intent to bring a citizen
9 suit to enforce the Act’s requirements, including the requirement that revisions to designations of critical
10 habitat be made only by regulation in the manner set forth in 16 U.S.C. §1533 (a) & (b).

11 55. By reason of the foregoing, and pursuant to both the APA, 5 U.S.C. § 706, and the citizen
12 suit provisions of the Endangered Species Act, 16 U.S.C. § 1540 (g), the Court should invalidate the
13 Unlawful Fish & Wildlife’s Determination, and enjoin Fish & Wildlife and its Director both from 1)
14 taking any further action that prevents Caltrans and the Solano Transportation Authority from obtaining
15 habitat mitigation from Ridge Top pursuant to Ridge Top’s winning proposal submitted in response to
16 the Solano RFP, and 2) taking any action that would directly or indirectly grant approval for Caltrans
17 and/or the Solano Transportation Authority to obtain the mitigation described in the Solano RFP,
18 including habitat mitigation for the California red-legged frog, from any source other than Ridge Top.

19 **RELIEF REQUESTED**

20 For the reasons set forth above, Plaintiff Ridge Top respectfully requests that the Court grant the
21 following relief:

22 A. A declaratory judgment invalidating the determination made by Defendant Fish &
23 Wildlife in its August 6 and September 3, 2013 letters that Ridge Top’s proposal in response to the
24 Solano RFP will not provide acceptable mitigation for the adverse effects of the I-80/I-680/SR 12
25 Interchange project on the California red-legged frog – that is, the Unlawful Fish & Wildlife
26 Determination mentioned above.

27 B. An injunction that 1) prevents Defendant Fish & Wildlife and its Director from taking any
28 action that prevents Caltrans and the Solano Transportation Authority from obtaining habitat mitigation

1 from Ridge Top pursuant to Ridge Top's winning proposal submitted in response to the Solano RFP, and
2 2) prevents Fish & Wildlife from taking any action that would directly or indirectly grant approval for
3 Caltrans and/or the Solano Transportation Authority to obtain the mitigation described in the Solano
4 RFP, including habitat mitigation for the California red-legged frog, from any source other than Ridge
5 Top.

6 C. Attorneys' fees and other litigation expenses pursuant to 16 U.S.C. 1540 (g)(4).

7 D. Such other and further relief as the Court may deem just and proper.

8 Respectfully submitted,

9 DATED: November 26, 2013

GREENBERG TRAURIG, LLP

10
11 By /s/ Anthony J. Cortez

Kurt A. Kappes

Jerry Stouck

Anthony J. Cortez

Attorneys for Plaintiff

RIDGE TOP RANCH, LLC