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COASTAL RANCHES CONSERVANCY

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

15 COASTAL RANCHES
16 CONSERVANCY, a California non-profit,

17 Plaintiff,

18 vs.

19
20 CALIFORNIA DEPARTMENT OF
21 TRANSPORTATION; TONY
22 TAVARES, in his official capacity as
23 Director of the California Department of
24 Transportation; CALPORTLAND
25 CONSTRUCTION, a California
26 corporation,

27 Defendants.
28

Case No.:

**COMPLAINT FOR
DECLARATORY
AND INJUNCTIVE RELIEF**

**(Endangered Species Act, 16 U.S.C.
§1531 et seq.)**

1 Coastal Ranches Conservancy (the “Conservancy” or “Plaintiff”), by and
2 through their counsel, hereby allege:

3 **I. JURISDICTION**

4 1. Plaintiff brings this action under the Endangered Species Act (“ESA”)
5 against the California Department of Transportation and Tony Tavares, in his official
6 a capacity as Director of the Department of Transportation (collectively, “Caltrans”)
7 and CalPortland Construction (“CalPortland”).

8 2. This Court has jurisdiction over this action pursuant to 16 U.S.C. §
9 1540(c), (g) (Endangered Species Act citizen suit); 28 U.S.C. § 1331 (federal question);
10 and 28 U.S.C. §§ 2201–2202 (power to issue declaratory judgments in cases of actual
11 controversy).

12 3. This Court has jurisdiction over Plaintiff’s claims against Caltrans and
13 CalPortland (collectively, “Defendants”) as, “the several district courts of the United
14 States, including the courts enumerated in section 460 of Title 28 U.S.C. shall have
15 jurisdiction over any actions arising under” the ESA. 16 U.S.C. § 1540 (c).

16 4. Venue is proper in the Central District of California pursuant to 16 U.S.C.
17 § 1540(g)(3)(A) and 28 U.S.C. § 1391(b)(2), because a substantial part of the events or
18 omissions giving rise to Plaintiffs’ claims occurred in this District.

19 5. Plaintiffs provided Defendants with a notice of intent to file suit under the
20 ESA (“Notice Letter”) on August 31, 2023, by certified mail, pursuant to 16 U.S.C. §
21 1540(g)(2)(A)(i). Plaintiffs also sent the Notice Letter to the Secretary of the Interior.
22 A copy of this Notice is attached hereto as Exhibit A and fully incorporated herein by
23 reference.

24 6. More than sixty days (60) have passed since Defendants were served with
25 the Notice Letter, and Defendants have failed to remedy their violations.

26 7. There is no preclusion of this action because the United States has not
27 commenced an action to impose a penalty, nor has it commenced or is it diligently
28

1 prosecuting a criminal action to redress the violations alleged in this Complaint. *See* 16
2 U.S.C. § 1540(g)(2)(A)(ii)–(iii).

3 8. The ESA violations, described herein, continue to occur through the
4 present, and an actual, justiciable controversy exists within the meaning of 28 U.S.C.
5 § 2201(a).

6 **II. INTRODUCTION**

7 9. Highway 101 runs parallel and adjacent to Gaviota Creek from the
8 Gaviota Tunnel to Gaviota State Beach.

9 10. In the spring and summer of 2023, Caltrans began planning and
10 implementing the Gaviota Creek Scour Repair Project (“Project”) to repair portions of
11 Highway 101 along Gaviota Creek.

12 11. Caltrans retained CalPortland to implement and construct the Project, and
13 CalPortland has done so.

14 12. Although Caltrans has known for some years that Gaviota Creek was
15 scouring Highway 101, Caltrans failed to act to prevent damage during the 2022-2023
16 wet season.

17 13. After further damage occurred in early 2023, Caltrans designed this
18 Project and deemed it an “emergency.”

19 14. Accordingly, Caltrans failed to consult with NOAA Fisheries, otherwise
20 known as the National Marine Fisheries Service (“NMFS”), under Section 7 of the
21 ESA to assess the impacts on endangered Southern California Steelhead (“Steelhead”)
22 before implementing the Project.

23 15. While implementing the Project, Defendants completely diverted and
24 dewatered a section of Gaviota Creek, which barred endangered Steelhead from
25 accessing key habitat to shelter and seek refuge during the hot summer months.

26 16. As part of the Project, Defendants attempted to relocate Steelhead from
27 the dewatered segment of Gaviota Creek.

28 17. Defendants killed at least three Steelhead during the relocation effort.

1 18. Moreover, the Project has resulted in additional fish barriers being placed
2 and left within Gaviota Creek, continuing to block passage and harm Steelhead.

3 19. The Conservancy seeks declaratory relief and an injunction compelling
4 Caltrans to remove any barriers and any other harm resulting from the Project and
5 mitigating the take of Steelhead already caused by the Project.

6 **III. THE PARTIES**

7 **A. COASTAL RANCHES CONSERVANCY**

8 20. The Conservancy is a California 501(c)(3) non-profit public benefit
9 corporation.

10 21. The Conservancy was formed in 2003 by a group of Gaviota property
11 owners to protect and improve natural resources on the Gaviota Coast.

12 22. The Conservancy's headquarters is located at: 68 Hollister Ranch Rd.,
13 Gaviota, CA 93117.

14 23. The Conservancy supports nature conservation, restoration, and education
15 on the Gaviota Coast by working with landowners, public agencies, and other non-
16 profit organizations.

17 24. The focus of the Conservancy is exclusively on the Gaviota Coast, which
18 represents most of the remaining rural coastline in Southern California. The
19 Conservancy works to conserve and protect this coastline.

20 25. The Conservancy's members work, live, and recreate on the Gaviota
21 Coast, including near and in Gaviota Creek and the Gaviota Creek Estuary.

22 26. One or more of the Conservancy's members is injured by Defendants'
23 actions, which resulted in the take of Southern California Steelhead and ongoing harm
24 to the species' habitat in Gaviota Creek.

25 **B. CALIFORNIA DEPARTMENT OF TRANSPORTATION**

26 27. Caltrans is a California state agency.

27 28. Tony Tavares is the Director of Caltrans.

28

1 29. Caltrans manages California’s highways and freeways, including
2 Highway 101.

3 30. Caltrans approved and implemented the Project.

4 **C. CALPORTLAND CONSTRUCTION**

5 31. CalPortland Construction is a corporation registered in the State of
6 California.

7 32. CalPortland was retained by Caltrans to implement and construct the
8 Project.

9 33. CalPortland has and is continuing to implement and construct the Project.

10 **IV. STATUTORY BACKGROUND**

11 34. Finding that “fish, wildlife, and plants are of esthetic, ecological,
12 educational, historical, recreational, and scientific value to the Nation and its people,”
13 Congress enacted the ESA in order to “provide a program for the conservation of . . .
14 endangered species and threatened species,” and to “provide a means whereby the
15 ecosystems upon which endangered species and threatened species depend may be
16 conserved.” 16 U.S.C. § 1531(a)(3),(b).

17 35. The ESA, in turn, defines “conservation” as “the use of all methods and
18 procedures that are necessary to bring any endangered species or threatened species to
19 the point at which the measures provided pursuant to this chapter are no longer
20 necessary.” 16 U.S.C. § 1532(3). Accordingly, the primary purpose of the ESA is not
21 simply to prevent the extinction of imperiled species, but to recover them to the point
22 where the protections of the ESA are not needed. *Babbitt v. Sweet Home Chapter of*
23 *Cmtys. for a Great Or.*, 515 U.S. 687, 699 (1995) (*citing TVA v. Hill*, 437 U.S. 153,
24 184) (1978)) (noting that the “plain intent of Congress in enacting [the ESA] . . . was
25 to halt and reverse the trend towards species extinction, whatever the cost”). One
26 significant way in which the ESA implements these goals is through Section 9’s
27 prohibition on take.

28

1 36. Section 9 of the ESA prohibits the “taking” of any endangered species. 16
2 U.S.C. §1538(a). The ESA defines the term “take” broadly to include “harass, *harm*,
3 pursue, hunt, shoot, wound, *kill*, trap, capture, or collect, or to attempt to engage in any
4 such conduct.” *Id.* § 1532(19) (emphasis added).

5 37. “Take” includes indirect as well as direct harm and need not be
6 purposeful. *See Sweet Home*, 515 U.S. at 704.

7 38. “Harm” is further defined by NMFS regulations as an act which actually
8 kills or injures fish or wildlife, including for example: “significant habitat modification
9 or degradation which actually kills or injures fish or wildlife by significantly *impairing*
10 *essential behavioral patterns*, including, breeding, *spawning*, rearing, migrating,
11 feeding or *sheltering*.” 50 C.F.R. § 222.102 (1999) (emphasis added).

12 39. Harassment occurs when there is a “probability” or “likelihood” that a
13 person’s actions are disrupting one or more behavioral patterns that are essential to the
14 species’ life history. *Strahan v. Roughead*, 910 F.Supp.2d 358, 366-67 (D. Mass.
15 2012); *Palila v. Hawaii Dep’t of Land & Natural Resources*, 639 F.2d 495, 497 (9th
16 Cir. 1981); 50 C.F.R. § 17.3.

17 40. For take to be lawful under the ESA, it must be conducted pursuant to,
18 and in compliance with, a valid Incidental Take Permit under ESA Section 10, 16
19 U.S.C. § 1539, or an Incidental Take Statement under ESA Section 7, 16 U.S.C. § 1536.

20 41. There is no exception to Section 9’s take prohibition for an emergency. 16
21 U.S.C. § 1538.

22 **V. FACTUAL BACKGROUND**

23 **A. ONCORHYNCHUS MYKISS: THE STEELHEAD AND RAINBOW TROUT**

24 42. Coastal populations of the salmonid fish *Oncorhynchus mykiss* naturally
25 occur as either a resident freshwater form (the rainbow trout) or as a sea-run
26 (anadromous) form (the Steelhead). Peter B. Moyle, *Inland Fishes of California*
27 *Revised and Expanded* (2002); *see also* David A. Boughton *et al.*, *Steelhead of the*
28 *Southcentral/Southern California Coast: Population Characterization for Recovery*

1 *Planning NOAA Technical Memorandum NOAA-TM-NMFS-SWFSC-394* (2006);
2 National Marine Fisheries Service (“NMFS”), *Southern California Steelhead Recovery*
3 *Plan* (2012) (“2012 Recovery Plan”); Neala W. Kendall et al., *Anadromy and*
4 *Residency in Steelhead and Rainbow Trout (Oncorhynchus mykiss): A Review of the*
5 *Processes and Patterns*, 73 *Can. J. of Fisheries and Aquatic Sci.* 319, (2015).

6 43. The Steelhead life cycle involves three main stages: 1) adult spawning and
7 the development of eggs and juveniles in streams and rivers; 2) migration of juveniles
8 from natal streams to the ocean, sometimes with substantial residence in estuaries,
9 while undergoing physiological and morphological changes for life in the marine
10 environment (smoltification); and 3) the growth of oceanic Steelhead into mature
11 adults, which then return to their natal or other accessible streams or rivers for
12 spawning. *Inland Fishes of California Revised and Expanded*.

13 44. Generally, the freshwater juvenile stages last for one (1) to two (2) years
14 and the developing marine stages for one (1) to four (4) years (typically two (2) years
15 in southern California).

16 45. Adult Steelhead in the ocean are able to find their way back to coastal
17 waters and then to their own natal streams. *See generally* Thomas P. Quinn, *The*
18 *Behavior and Ecology of Pacific Salmon and Trout*, (2005); Kenneth J. Lohmann, *The*
19 *Sensory Ecology of Ocean Navigation*, 211 *J. of Experimental Biology* 1719, (2008);
20 Nathan F. Putman et al., *Evidence for Geomagnetic Imprinting as a Homing*
21 *Mechanism in Pacific Salmon*, 23 *Current Biology* 312, (2013).

22 46. After a year or two of feeding and growth in streams, juvenile Steelhead
23 change into smolts, which enables them to migrate into, live, and grow in ocean
24 environments. These changes encompass a streamlining of body form, increased tail
25 fin depth, blackened tail fin margin, silver color, and adjustments that allow the fish to
26 tolerate seawater. Some of these changes can occur before and during the migration of
27 juveniles from freshwater environments to estuaries, and these smolts may spend time
28 in estuaries before moving into the ocean, or back up into freshwater. *See generally*

1 Peggy J. Busby *et al.*, *Status review of West Coast Steelhead from Washington, Idaho,*
2 *Oregon, and California*, (1996); Sean A. Hayes *et al.*, *Steelhead Growth in a Small*
3 *Central California Watershed: Upstream and Estuarine Rearing Patterns*, 137
4 *Transactions of the American Fisheries Society* (2008); W. H. Satterthwaite *et al.*,
5 *State-dependent Migration Timing and Use of Multiple Habitat Types in Anadromous*
6 *Salmonids*, 141 *Transactions of the American Fisheries Society* 781, (2012); Cachuma
7 Operation and Maintenance Board (“COMB”), 2011 Annual Monitoring Summary and
8 Trend Analysis for the Biological Opinion for the Operation and Maintenance of the
9 Cachuma Project on the Santa Ynez River in Santa Barbara County, California, (2013).

10 47. Like most salmonids, Steelhead require flowing waters with cool to cold
11 water temperatures, high oxygen levels, and good water quality. The ability of
12 individual Steelhead to survive, tolerate, or thrive at a particular temperature depends
13 on their recent thermal history (i.e., acclimation), availability of thermal refuges
14 (generally cold springs), length of exposure time, daily temperature fluctuations,
15 genetic background, life stage, interactions with other individuals and species, food
16 availability, and stress from other factors (e.g., pollution). *See generally* Christopher
17 A. Myrick, *Temperature, genetic, and ration effects on juvenile rainbow trout*
18 *(Oncorhynchus mykiss) bioenergetics* (1998); Christopher A. Myrick & Joseph J. Cech,
19 *Effects of Temperature on the Growth, Food Consumption, and Thermal Tolerance of*
20 *Age-0 Nimbus-Strain Steelhead*, 67 *North American Journal of Aquaculture* 324,
21 (2005); Katherine Carter, *The Effects of Temperature on Steelhead Trout, Coho*
22 *Salmon, and Chinook Salmon Biology and Function by Life Stage. Implications for*
23 *Klamath Basin TMDLs*, (2005b); David A. Boughton *et al.*, *Stream Temperature and*
24 *the Potential Growth and Survival of Juvenile Oncorhynchus Mykiss in a Southern*
25 *California Creek*, 52 *Freshwater Biology* 1,353, (2007).

26 **B. SOUTHERN CALIFORNIA STEELHEAD**

27 48. Steelhead are near the southern limits of their range in southern California.
28 Native Steelhead populations in this region, extending from the Santa Maria River to

1 the border with Mexico, have a variety of distinctive behavioral, physiological, and
2 genetic traits.

3 49. Since 1997, NMFS has protected the anadromous component of Southern
4 California Steelhead as a federally listed endangered species, that is, a species at risk
5 of extinction, under the Endangered Species Act. *See* 2012 Recovery Plan; Peggy J.
6 Busby *et al.*, *Status review of West Coast Steelhead from Washington, Idaho, Oregon,*
7 *and California U.S. Department of Commerce, NOAA Technical Memorandum* (1996.)

8 50. The flexible life histories of Steelhead populations (resident/anadromous,
9 variable age at out-migration, variable age at maturity, etc.) allow them to persist
10 through the floods, droughts, and wildfires common to southern California. Each life
11 history form buffers the other from environmental disturbances, with resident trout
12 surviving in headwaters during dry times with no river connections to the ocean and no
13 flows adequate for Steelhead passage, whereas sea-run Steelhead can re-establish or
14 augment resident trout populations reduced by floods, droughts, or wildfires. Because
15 the size and fecundity of adult sea-run Steelhead are much greater than those of adult
16 resident trout, even a few sea-run Steelhead can greatly increase trout populations in
17 headwater streams. *See generally* Moyle *supra*.

18 51. Despite adaptations for dealing with a variable and sometimes harsh
19 environment, widespread development has reduced historical Southern California
20 Steelhead runs from tens of thousands to current runs that amount to a few individuals,
21 and probably less than 500 sea-run individuals region-wide. 2012 Recovery Plan; *see*
22 *also* Peter B. Moyle *et al.*, *Rapid decline of California's native inland fishes: a status*
23 *assessment*, 144 *Biological Conservation* 2414, (2011); Peter B. Moyle, *Salmon,*
24 *steelhead, and trout in California: status of an emblematic fauna*, (2008); Peter
25 Alagona, *A History of Steelhead and Rainbow Trout (Oncorhynchus mykiss) in the*
26 *Santa Ynez River Watershed, Santa Barbara County, California*, 111 *Bull. of the*
27 *Southern Cal. Acad. of Sciences* 163, (2012).

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1 **C. GAVIOTA CREEK**

2 52. Gaviota Creek is the largest watershed in coastal southern Santa Barbara
3 County with approximately 32 miles of high-quality stream habitat.

4 53. Through an extensive population survey in 2002, NMFS determined that
5 Steelhead are present in Gaviota Creek. *See* National Marine Fisheries Service,
6 Southern California Steelhead Recovery Plan, available at:
7 <https://repository.library.noaa.gov/view/noaa/15988> (“NMFS Report 2012”) at 2-6.

8 54. Gaviota Creek is designated critical habitat for Steelhead. *See* Endangered
9 and Threatened Species; Designation of Critical Habitat for Seven Evolutionary
10 Significant Units of Pacific Salmon and Steelhead in California, 70 Fed. Reg. 52487
11 (Sept. 2, 2005).

12 55. Gaviota Creek is part of the Conception Coast Biogeographic Population
13 Group (“BPG”). NMFS Report 2012 at 10-1. “Culverts and road crossings (along with
14 other fish passage barriers such as small dams) are widespread throughout the
15 Conception Coast BPG region, cutting off or severely reducing access to upstream
16 spawning and rearing habitats for Steelhead.” *Id.* at 10-11.

17 56. The main threats to Steelhead in Gaviota Creek include roads and passage
18 barriers. NMFS Report 2012 at 10-10; *see also* NMFS, 2023 5-Year Review: Summary
19 and Evaluation of Southern California Steelhead, May 2, 2023, available at:
20 [https://www.fisheries.noaa.gov/resource/document/2023-5-year-review-summary-](https://www.fisheries.noaa.gov/resource/document/2023-5-year-review-summary-evaluation-southern-california-steelhead)
21 [evaluation-southern-california-steelhead](https://www.fisheries.noaa.gov/resource/document/2023-5-year-review-summary-evaluation-southern-california-steelhead) (“2023 Review”), at pp. 62, 67.

22 57. While Gaviota Creek offers great potential habitat for a larger population
23 of Steelhead, numerous barriers presently limit the passage of fish upstream from the
24 ocean.

25 58. The Southern California Steelhead Recovery Plan identifies removal of
26 passage barriers within the Gaviota watershed as a critical recovery action. (NMFS
27 Report 2012 at 10-22; *see also* NMFS, 2023 Review at p. 70 [identifying
28

1 implementation of fish passage project on Gaviota Creek as a future action to be taken
2 over the next five years].)

3 59. Pursuant to legislative mandate, Caltrans has identified fourteen (14) fish
4 passage barriers on Gaviota Creek as a statewide priority for removal. (Caltrans, 2020
5 Fish Passage Annual Legislative Report, Oct. 2021, at pp. 35-36.) These barriers
6 significantly impede Steelhead migration to and from more than 25 miles of quality
7 upstream habitat. The modification of these structures to allow fish to pass is necessary
8 to re-establish a healthy steelhead population.

9 60. Caltrans is currently planning the Gaviota Creek Improvement Project to
10 remove fish barriers on Gaviota Creek. *See* Gaviota Creek Improvement Project –
11 Notice of Preparation, Oct. 18, 2022, at p.1. Another primary purpose of the project is
12 to “stabilize structures that support the U.S. 101 highway shoulder and embankment.”
13 *Id.* These improvements are necessary because “scour has undermined several existing
14 grade control structures, culverts, sack-concrete bank protection, and retaining walls in
15 Gaviota Creek.” *Id.*

16 61. The Conservancy and other organizations pointed out the imminent failure
17 of the retaining wall approximately 3.5 years ago.

18 62. Caltrans is currently working through the planning and approval process
19 for the Gaviota Creek Improvement Project.

20 **D. THE PROJECT AND TAKE OF STEELHEAD**

21 63. In May 2023, Caltrans began seeking approval to implement the Gaviota
22 Creek Scour Repair Project (“Project”).

23 64. The Caltrans Project Identifier Number for the Project is 0523000150.

24 65. The Project area is located on State Highway 101, adjacent to and within
25 Gaviota Creek, near the unincorporated community of Gaviota in Santa Barbara
26 County, California.

27
28

1 66. According to Defendants, the Project includes, *inter alia*, demolishing an
2 existing median barrier, installing a new 550-foot-long secant wall and rock slope
3 protection, and repaving and landscaping.

4 67. Caltrans stated that heavy storms in January 2023 caused flows in Gaviota
5 Creek to damage existing revetments and compromised the stability of Highway 101.
6 (Caltrans, Emergency Highway Repair Interagency Emergency Notification Form,
7 May 18, 2023, at p.1.)

8 68. However, scouring and damage to Highway 101 was not simply a result
9 of a sudden disaster, but rather was a known and existing issue for years prior to the
10 Project.

11 69. As part of the Project, Defendants are dewatering and diverting segments
12 of Gaviota Creek.

13 70. The bypass system uses a coffer dam at the upstream end and conveys
14 stream water in a 36-inch diameter plastic pipe. The pipe is approximately 1,000 feet
15 long.

16 71. The pipe is a barrier to Steelhead moving up or downstream, which is
17 essential for Steelhead to survive the hot dry summer months when they must find
18 pools of cool water. Dewatering and diverting Gaviota Creek is destroying essential
19 refugia pools within the Project's footprint.

20 72. Prior to undertaking the Project, Caltrans sought and acquired coverage
21 under the Regional General Permit 63 ("RGP63"). That permit includes conditions
22 imposed by NMFS to protect Steelhead. However, RGP63 makes clear that
23 "Authorization of an activity by the RGP does NOT authorize the 'take' of a listed
24 threatened or endangered species, as defined under the Federal ESA. (DEPARTMENT
25 OF THE ARMY REGIONAL GENERAL PERMIT NUMBER 63 FOR REPAIR
26 AND PROTECTION ACTIVITIES IN EMERGENCY SITUATIONS, § 9.)

27 73. Caltrans did not obtain an incidental take permit issued pursuant to
28 U.S.C. § 1539(a)(1) prior to implementing the Project.

1 74. CalPortland did not obtain an incidental take permit issued pursuant to 16
2 U.S.C. § 1539(a)(1) prior to implementing the Project.

3 75. NMFS did not issue an incidental take statement, pursuant to 16 U.S.C. §
4 1536, allowing for the incidental take of Steelhead prior to the Project being
5 implemented.

6 76. Neither Caltrans nor CalPortland have ever had a permit to take Steelhead
7 before, during, or after the implementation of the Project.

8 77. Defendants' implementation of the Project, in particular the dewatering
9 and diversion of Gaviota Creek, has resulted in direct killing, trapping, harming, and
10 harassment of Steelhead.

11 78. According to the Gaviota Secant Wall Emergency Project Draft Species
12 Relocation Report ("Relocation Report"), the Project has resulted in the mortality of at
13 least three individual Steelhead.

14 79. The Relocation Report states that sixteen Steelhead were relocated during
15 the Repair Project. To relocate Steelhead, "D-shaped dipnets were used to capture the
16 fish as water levels were reduced in each pool. Species were generally moved by hand
17 and bucket, each filled with water from the creek and equipped with a portable aerator."
18 Thus, Defendants trapped Steelhead to move them away from the Project site.

19 80. Prior to conducting the Project, Caltrans did not inform NMFS that the
20 Project would involve dewatering and diverting Gaviota Creek.

21 81. Prior to conducting the Project, Caltrans did not inform NMFS that the
22 Project would involve trapping and relocating Steelhead.

23 82. Prior to conducting the Project, Caltrans did not inform the California
24 Department of Fish & Wildlife that the Project would involve dewatering and diverting
25 Gaviota Creek.

26 83. Prior to conducting the Project, Caltrans did not inform the California
27 Department of Fish & Wildlife that the Project would involve trapping and relocating
28 Steelhead.

1 84. Throughout the Project, the diversion has served as a barrier to Steelhead
2 movement and passage through the Project area.

3 85. The Project has not yet been completed, and the diversion remains in place
4 on the date this Complaint is filed.

5 86. As a result of the Project, large boulders have been placed in the middle
6 of Gaviota Creek.

7 87. The Conservancy is informed, believes, and alleges that the Defendants
8 are leaving the boulders in place when the Project is completed.

9 88. The boulders are a barrier to fish passage.

10 89. The Project has harmed and harassed, and continues to harm and harass,
11 Steelhead by impairing essential behaviors, such as summer rearing habitat, sheltering,
12 and migration.

13 **FIRST CAUSE OF ACTION**

14 **Against Defendants California Department of Transportation and Tony**
15 **Tavares, in his official capacity as Director of California Department of**
16 **Transportation, pursuant to Endangered Species Act, 16 U.S.C. §1540, for**
17 **Violations of the Endangered Species Act Section 9, 16 U.S.C. § 1538**

18 90. Plaintiffs incorporate each paragraph of this Complaint, herein.

19 91. Caltrans has violated and is violating ESA Section 9's prohibition on the
20 unauthorized take of Steelhead by harassing, wounding, killing, trapping, stranding
21 and/or capturing Steelhead, and/or causing significant habitat modification and
22 degradation for Steelhead which kills, injures, or deleteriously impacts the species by
23 significantly impairing essential behavioral patterns, including breeding, spawning,
24 rearing, migrating, feeding, or sheltering, without incidental take permit authorization.
25 16 U.S.C. §§ 1538(a)(1)(B), 1532(19), 1539; 50 C.F.R. § 222.102; 50 C.F.R. § 17.3.

26 92. Caltrans, as the state agency implementing the Project, is required to
27 comply with ESA Section 9, 16 U.S.C. § 1538, and its implementing regulations.

28 93. The Project has resulted in take of Southern California Steelhead, in
violation of ESA Section 9.

1 94. The Project continues to cause take of Southern California Steelhead, in
2 violation of ESA Section 9.

3 95. The take caused by the Project injures and causes irreparable harm to the
4 Conservancy and its members.

5 96. The Conservancy has no plain, speedy, or adequate remedy in the ordinary
6 course of law because the United States will continue to violate ESA Section 9, 16
7 U.S.C. § 1538, unless compelled to comply by the Court.

8 97. Thus, an actual controversy between the Conservancy and Caltrans exists
9 concerning Caltrans' compliance with the ESA.

10 **SECOND CAUSE OF ACTION**

11 **Against Defendant CalPortland Construction, pursuant to Endangered Species**
12 **Act, 16 U.S.C. §1540, for Violations of the Endangered Species Act Section 9, 16**
13 **U.S.C. § 1538**

14 98. Plaintiffs incorporate each paragraph of this Complaint, herein.

15 99. CalPortland Construction has violated and is violating ESA Section 9's
16 prohibition on the unauthorized take of Steelhead by harassing, wounding, killing,
17 trapping, stranding and/or capturing Steelhead, and/or causing significant habitat
18 modification and degradation for Steelhead which kills, injures, or deleteriously
19 impacts the species by significantly impairing essential behavioral patterns, including
20 breeding, spawning, rearing, migrating, feeding, or sheltering, without incidental take
21 permit authorization. 16 U.S.C. §§ 1538(a)(1)(B), 1532(19), 1539; 50 C.F.R. §
22 222.102; 50 C.F.R. § 17.3.

23 100. CalPortland, as the contractor implementing and constructing the Project,
24 is required to comply with ESA Section 9, 16 U.S.C. § 1538, and its implementing
25 regulations.

26 101. The Project has resulted in take of Southern California Steelhead, in
27 violation of ESA Section 9.
28

1 102. The Project continues to cause take of Southern California Steelhead, in
2 violation of ESA Section 9.

3 103. The take caused by the Project injures and causes irreparable harm to the
4 Conservancy and its members.

5 104. The Conservancy has no plain, speedy, or adequate remedy in the ordinary
6 course of law because the United States will continue to violate ESA Section 9, 16
7 U.S.C. § 1538, unless compelled to comply by the Court.

8 105. Thus, an actual controversy between the Conservancy and CalPortland
9 exists concerning Caltrans' compliance with the ESA.

10 WHEREFORE, Plaintiffs pray for the following relief:

11 **PRAYER FOR RELIEF**

12 106. The Conservancy respectfully requests that this Court grant the following
13 relief:

14 107. A Declaratory Judgment that Caltrans has violated and is in violation of
15 ESA Section 9 by taking listed Steelhead without authorization;

16 108. A Declaratory Judgment that CalPortland Construction has violated and
17 is in violation of ESA Section 9 by taking listed Steelhead without authorization;

18 109. An Injunction prohibiting Caltrans from violating ESA Section 9 and
19 ordering Caltrans to mitigate for the take that has already occurred;

20 110. An Injunction prohibiting CalPortland from violating ESA Section 9 and
21 ordering Caltrans to mitigate for the take that has already occurred;

22 111. An award of Plaintiffs' reasonable attorneys' fees and costs as authorized
23 under 16 U.S.C. § 1540(g)(4); and

24 112. Any such other relief as the Court deems just and proper.
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1 DATED: November 2, 2023

Respectfully submitted,

2 AQUA TERRA AERIS LAW GROUP

3
4 s/ Erica A. Maharg

5 Erica A. Maharg

6 Attorneys for Plaintiffs Coastal Ranches
7 Conservancy

8 SYCAMORE LAW

9
10 s/ Daniel Cooper

11 Daniel Cooper

12 Attorneys for Plaintiffs Coastal Ranches
13 Conservancy

14 **ATTESTATION**

15 I, Erica A. Maharg, attest that all other signatories listed, and on whose behalf the
16 filing is submitted, concur in the filing's content and have authorized the filing.

17
18
19 DATED: November 2, 2023

s/ Erica A. Maharg