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NORTHERN DISTRICT OF CALIFORNIA

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19 Society, and Sierra Club.

20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA
22 SAN FRANCISCO DIVISION

LB

23 WILD EQUITY INSTITUTE, a non-profit
24 corporation, CENTER FOR BIOLOGICAL
25 DIVERSITY, a non-profit corporation,
26 NATIONAL PARKS CONSERVATION
27 ASSOCIATION, a non-profit corporation,
28 SURFRIDER FOUNDATION, a non-profit
corporation, SEQUOIA AUDUBON, a non-
profit corporation, and SIERRA CLUB, a
non-profit corporation,

CV11 0958

Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiffs,

v.

CITY AND COUNTY OF SAN
FRANCISCO, ED LEE, Mayor of the City
and County of San Francisco, PHIL
GINSBURG, Director, City and County of
San Francisco Recreation and Park
Department,

Defendants.

1 9. Wild Equity Institute member Margaret Goodale regularly hikes near Horse
2 Stable Pond at Sharp Park where California red-legged frog egg masses are laid, enjoys looking
3 for and seeing the frog in its natural habitat in this area, and will continue to do so regularly.
4 She also enjoys looking for the elusive San Francisco garter snake in this area.

5 10. Plaintiff Center for Biological Diversity (“the Center”) is a non-profit
6 organization with offices in California, New Mexico, Arizona, Oregon, Minnesota, Chicago,
7 Washington D.C., and Alaska. The Center is dedicated to the protection of rare and imperiled
8 species and the habitats on which they depend. The Center brings this action on its own
9 institutional behalf and on behalf of its members, some of whom regularly enjoy and will
10 continue to enjoy observing and studying, and attempting to observe and study, the California
11 red-legged frog and the San Francisco garter snake at Sharp Park. The Center has expended
12 significant organizational resources on advocacy and public education efforts aimed at
13 protecting the California red-legged frog and the San Francisco garter snake at Sharp Park. The
14 interests of the Center and its members in observing, studying, and otherwise enjoying the
15 California red-legged frog and the San Francisco garter snake at Sharp Park have been, and will
16 continue to be, harmed by Defendants’ take of these species through the operation and
17 management of Sharp Park golf course.

18 11. Center for Biological Diversity member Jeff Miller regularly hikes near Horse
19 Stable Pond at Sharp Park where California red-legged frog egg masses are laid, enjoys looking
20 for and seeing the frog in its natural habitat in this area, and will continue to do so regularly.
21 He also enjoys looking for the elusive San Francisco garter snake in this area.

22 12. Plaintiff National Parks Conservation Association (“NPCA”) is a national non-
23 profit organization with offices in San Francisco, Joshua Tree, Barstow and Fresno, California,
24 in addition to offices in 14 states and Washington DC. NPCA protects and enhances America’s
25 parks for present and future generations, with over 330,000 members nationwide and over
26 49,000 members in California. NPCA accomplishes this by working on projects that protect
27 and enhance national parks, including national park properties adjacent to Sharp Park such as
28 Mori Point and Sweeney Ridge. NPCA also works to create new national parks, and has been

1 involved in campaigns to protect Sharp Park for several years. NPCA brings this action on its
2 own institutional behalf and on behalf of its members, board, and staff, some of whom
3 regularly enjoy and will continue to enjoy observing and studying, and attempting to observe
4 and study, the California red-legged frog and the San Francisco garter snake at Sharp Park. The
5 interests of NPCA and its members, board, and staff in observing, studying, and otherwise
6 enjoying the California red-legged frog and the San Francisco garter snake at Sharp Park have
7 been, and will continue to be, harmed by Defendants' take of these species through the
8 operation and management of Sharp Park golf course. NPCA, its members, board, and staff
9 have worked to protect the California red-legged frog and the San Francisco garter snake at
10 Sharp Park for several years, and have expended significant organizational resources on
11 advocacy and public education efforts aimed at protecting the California red-legged frog and
12 the San Francisco garter snake at Sharp Park.

13 13. NPCA member Bob Pilgrim regularly hikes near Horse Stable Pond at Sharp
14 Park where California red-legged frog egg masses are laid, enjoys looking for and seeing the
15 frog in its natural habitat in this area, photographing these species and their natural habitats, and
16 will continue to do so regularly. He also enjoys looking for the elusive San Francisco garter
17 snake in this area.

18 14. Plaintiff Surfrider Foundation ("Surfrider") is a grassroots, non-profit
19 environmental organization dedicated to the protection and enjoyment of the world's oceans,
20 waves and beaches for all people, through a powerful activist network. Surfrider brings this
21 lawsuit on its own behalf, on behalf of its San Francisco chapter, and on behalf of more than
22 50,000 members who live in the United States. Surfrider has over 70 local Chapters
23 nationwide, including the volunteer-based San Francisco Chapter with an office located in San
24 Francisco, California. Surfrider has a particular interest in protecting endangered species at
25 Sharp Park and Sharp Park Beach. Surfrider brings this action on its own institutional behalf
26 and on behalf of its members, board, and staff, some of whom regularly enjoy and will continue
27 to enjoy observing and studying, and attempting to observe and study, the California red-legged
28 frog and the San Francisco garter snake at Sharp Park. The interests of Surfrider and its

1 members, board, and staff in observing, studying, and otherwise enjoying the California red-
2 legged frog and the San Francisco garter snake at Sharp Park have been, and will continue to
3 be, harmed by Defendants' take of these species through the operation and management of
4 Sharp Park golf course. Surfrider, its members, board, and staff have worked to protect the
5 coastal environment, including the California red-legged frog and the San Francisco garter
6 snake, at Sharp Park for several years, and have expended significant organizational resources
7 on advocacy and public education efforts aimed at protecting the California red-legged frog and
8 the San Francisco garter snake at Sharp Park.

9 15. Surfrider member Michael Stewart regularly hikes near Horse Stable Pond at
10 Sharp Park where California red-legged frog egg masses are laid, enjoys looking for and seeing
11 the frog in its natural habitat in this area, and will continue to do so regularly. He also enjoys
12 looking for the elusive San Francisco garter snake in this area.

13 16. Plaintiff Sequoia Audubon protects native birds and other wildlife and their
14 ecosystems in San Mateo County by engaging people of all ages in conservation, education,
15 advocacy and enjoyment. Sequoia Audubon brings this action on its own institutional behalf
16 and on behalf of its members and board, some of whom regularly enjoy and will continue to
17 enjoy observing and studying, and attempting to observe and study, the California red-legged
18 frog and the San Francisco garter snake at Sharp Park. The interests of Sequoia Audubon and
19 its members, and board in observing, studying, and otherwise enjoying the California red-
20 legged frog and the San Francisco garter snake at Sharp Park have been, and will continue to
21 be, harmed by Defendants' take of these species through the operation and management of
22 Sharp Park golf course. Sequoia Audubon, its members, and board have worked to protect the
23 California red-legged frog and the San Francisco garter snake at Sharp Park for several years,
24 and has expended significant organizational resources on advocacy and public education efforts
25 aimed at protecting the California red-legged frog and the San Francisco garter snake at Sharp
26 Park.

27 17. Sequoia Audubon member Laurie Graham regularly hikes near Horse Stable
28 Pond at Sharp Park where California red-legged frog egg masses are laid, enjoys looking for

1 and seeing the frog in its natural habitat in this area, and will continue to do so regularly. She
2 also enjoys looking for the elusive San Francisco garter snake in this area.

3 18. Plaintiff the Sierra Club is a national nonprofit organization of approximately
4 600,000 members, roughly 146,000 of whom live in California. The Sierra Club is dedicated to
5 exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the
6 responsible use of the earth's ecosystems and resources; to educating and encouraging
7 humanity to protect and restore the quality of the natural and human environment; and to using
8 all lawful means to carry out these objectives. The Sierra Club's concerns encompass
9 protection of threatened and endangered species. The Club's particular interest in this case and
10 the issues which the case concerns stem from the ongoing impacts to the California red-legged
11 frog and the San Francisco garter snake.

12 **B. DEFENDANTS**

13 19. Defendant City and County of San Francisco is a California charter city and the
14 owner and operator of Sharp Park and Sharp Park Golf Course.

15 20. Defendant Ed Lee is the Mayor of San Francisco.

16 21. Defendant Phil Ginsburg is the Director of the City and County of San
17 Francisco's Recreation and Park Department.

18 **STATUTORY FRAMEWORK AND FACTS GIVING**
19 **RISE TO PLAINTIFFS' CLAIMS FOR RELIEF**

20 **A. STATUTORY AND REGULATORY FRAMEWORK**

21 22. Recognizing that all of the United States' "species of fish, wildlife, and plants
22 are of esthetic, ecological, educational, historical, recreational, and scientific value to the
23 Nation and its people," 16 U.S.C. § 1531(a)(3), Congress enacted the ESA with the express
24 purpose of providing both a "means whereby the ecosystems upon which endangered and
25 threatened species depend may be conserved, [and] . . . a program for the conservation of such
26 endangered species." *Id.* § 1531(b).

27 23. A "species" is defined by the Act to include "any subspecies of fish or wildlife
28 or plants, and any distinct population segment of any species of vertebrate fish or wildlife

1 which interbreeds when mature” Id. § 1532(16). “Fish” or “wildlife,” in turn, includes
2 “any part, product, egg, or offspring thereof, or the dead body or parts thereof.” Id. § 1532(8).

3 24. Before a species may receive protection under the ESA, it must be listed by the
4 FWS as “endangered” or “threatened.” Id. § 1533(a)(1). A species is “endangered” if it is “in
5 danger of extinction throughout all or a significant portion of its range,” id. § 1532(6), and it is
6 “threatened” if it is likely to become an endangered species within the foreseeable future
7 throughout all or a significant portion of its range.” Id. § 1532(20).

8 25. Section 9 of the ESA makes it is illegal for any “person” – whether a private or
9 government entity – to “take” any endangered species of fish or wildlife listed under the Act.
10 Id. § 1538(a)(1)(B); see also id. § 1532(13) (defining “person” to include any “municipality” or
11 other “political subdivision of a State”). The FWS has also promulgated regulations
12 prohibiting the take of species listed as threatened under the Act. 50 C.F.R. § 17.31(a).

13 26. “Take” is defined to mean harass, harm, pursue, hunt, shoot, wound, kill, trap,
14 capture, or collect, or attempt to engage in such conduct. 16 U.S.C. § 1532(19).

15 27. The FWS has further defined “harm” to include “significant habitat modification
16 or degradation which actually kills or injures fish or wildlife by significantly impairing
17 essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding or
18 sheltering.” 50 C.F.R. § 17.3.

19 28. The FWS has further defined “harass” to mean “an intentional or negligent act
20 or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as
21 to significantly disrupt normal behavioral patterns which include, but are not limited to,
22 breeding, feeding, or sheltering.” Id. § 17.3.

23 29. Section 10 of the ESA authorizes the FWS to issue ITPs to non-federal entities
24 to incidentally “take” listed species, despite the Section 9 take prohibition, under certain narrow
25 circumstances. 16 U.S.C. § 1539. Before issuing a Section 10 ITP the FWS publishes the
26 proposed permit for notice and comment, during which time the information submitted by the
27 applicant must be publicly available. Id. § 1539(c). Any ITP must also be accompanied by a
28 Habitat Conservation Plan (“HCP”) for the species. Id. § 1539(a)(2).

1 30. The ESA requires that the FWS also “develop and implement . . . ‘recovery
2 plans’ . . . for the conservation and survival of endangered species and threatened species”
3 Id. § 1533(f)(1). Such plans must include, among other items, “objective, measurable criteria
4 which, when met, would result in a determination, in accordance with the provisions of this
5 section, that the species be removed from the list” of endangered and threatened species. Id.
6 § 1533(f)(1)(B)(ii).

7 **B. FACTS GIVING RISE TO PLAINTIFFS’ CLAIMS**

8 **1. THE CALIFORNIA RED-LEGGED FROG**

9 31. The California red-legged frog, *Rana draytonii*, is the largest frog native to the
10 western United States. The species has been intertwined with California history and the lore of
11 the West in several ways. As featured in Twain’s famous story, the frog was a favorite
12 competitor in jumping frog competitions, until it was displaced by species imported from other
13 parts of the world. The California red-legged frog also became a staple of the diet of the forty-
14 niners during the California Gold Rush, and eventually became an item on the menu of San
15 Francisco’s finest dining establishments.

16 32. The California red-legged frog has now been lost from over 70% of its historic
17 range, and has suffered a 90% population decline. It is currently only found in select coastal
18 drainages from Marin County south to Baja California, with a few isolated populations in the
19 Sierra Nevada and the Transverse ranges.

20 33. In 1996, the FWS listed the California red-legged frog as a threatened species
21 under the ESA. See 50 C.F.R. § 17.11(h).

22 34. Amphibious species such as the California red-legged frog use aquatic, riparian,
23 and upland habitats to survive. During dry periods, the species may use small mammal
24 burrows for refuge.

25 35. California red-legged frogs have been observed making long-distance (1 mile)
26 movements across these habitats that are straight-line, point-to-point migrations rather than
27 using habitat corridors for moving between habitats.

1 36. California red-legged frogs breed in aquatic habitats throughout the Fall, Winter,
2 and Spring. A female will lay eggs while they are being fertilized by a male, and attach them to
3 emergent vegetation near the water surface. Each egg mass contains between 2,000-5,000
4 eggs.

5 37. If water levels recede below the level of the egg mass, the eggs will desiccate –
6 i.e., dry out – and die.

7 38. Eggs require 6-22 days to develop into tadpoles, and tadpoles require 11-20
8 weeks to metamorphose into terrestrial frogs. In some cases tadpoles may not metamorphose
9 within their first breeding season.

10 39. The FWS's Recovery Plan for the California red-legged frog states that
11 amphibians' complex life cycles create a greater risk of exposure to chemicals, and more
12 potential routes of exposure, than other vertebrates. The Recovery Plan states that harmful
13 pesticides, herbicides, and fertilizers are used throughout the range of the California red-legged
14 frog, including on golf courses, and that these chemicals may have lethal and sublethal effects
15 on frogs.

16 **2. THE SAN FRANCISCO GARTER SNAKE**

17 40. The highly endangered San Francisco garter snake, *Thamnophis sirtalis*
18 *tetrataenia*, is a flamboyantly colored species identified by its reddish-orange head with red,
19 black, and blue racing stripes on its sides and back.

20 41. Although historically found throughout the San Francisco peninsula, the species
21 is now restricted primarily to San Mateo County. The snake's preferred habitats – wetlands
22 and marshes with access to upland basking areas – have been greatly impacted by agricultural,
23 residential, commercial, and recreational development.

24 42. There may be only one to two thousand individual San Francisco garter snakes
25 remaining in the wild today: the population is so low that it is difficult to collect enough data to
26 obtain reliable population estimates.

27 43. The San Francisco garter snake was protected by federal law as an endangered
28 species in 1967, Native Fish and Wildlife, Endangered Species, 32 Fed. Reg. 4,001 (March 11,

1 1967), and became listed as an endangered species under the ESA when the Act was passed in
2 1973. 50 C.F.R. § 17.11(h).

3 44. Since the garter snake was listed, great efforts have been made to conserve the
4 species, including the issuance of a Recovery Plan in 1985. At the time the plan was written,
5 only six significant San Francisco garter snake populations were known to exist, one of which
6 was the population at Sharp Park. United States Fish and Wildlife Service, San Francisco
7 Garter Snake Recovery Plan, p. 15 (1985). Of those six populations, at least three have been
8 adversely impacted by development or other harmful activities since: the population at the San
9 Francisco Airport, the population at Cascade Ranch, and the population at Laguna Salada and
10 Sharp Park.

11 45. The earliest surveys for San Francisco garter snakes at Sharp Park occurred in
12 the 1940s. At the time, the species was found in relatively large numbers. See San Francisco
13 Recreation and Park Department, Final Draft, Significant Natural Resource Areas Management
14 Plan, p. 6.4.7 (2006). The principal biologist conducting these surveys, Wade Fox, believed the
15 individuals at Sharp Park were the purest (i.e., contained the fewest number of hybrids)
16 individuals in any population. Id. at 10. However, subsequent surveys in the 1970s and 1980s
17 indicated a population in decline, although the most recent surveys have confirmed that the
18 species continues to be present. Final Draft, Significant Natural Resource Areas Management
19 Plan, p. 6.4.7 (2006).

20 46. The continued decline of the Sharp Park population of the San Francisco garter
21 snake poses a serious impediment to the recovery of the species. The Recovery Plan states that
22 in order for the snake to be delisted the six known populations need to be secured, and four
23 additional populations need to be reestablished. San Francisco Garter Snake Recovery Plan, p.
24 15.

25 3. SHARP PARK

26 47. Sharp Park is just over 400 acres located on the coast in Pacifica, California,
27 owned and operated by the City of San Francisco and located just south of the City limits. The
28

1 Park is bifurcated by Highway 1, with a pedestrian tunnel and channelized creek running under
2 the Highway.

3 48. While urbanized areas adjoin Sharp Park’s northern and southern boundaries,
4 the Park is adjacent to two National Park properties: Mori Point borders the southwestern edge
5 of Sharp Park, and Sweeney Ridge borders Sharp Park on its southeastern and eastern edges.
6 Sharp Park is also near Milagra Ridge, a third National Park property. Mori Point, Milagra
7 Ridge, and Sweeney Ridge are all part of Golden Gate National Recreation Area (“GGNRA”).

8 49. Sharp Park contains several water features that provide habitat for the Red-
9 legged Frog and the San Francisco garter snake, including Laguna Salada, Horse Stable Pond,
10 and Sanchez Creek. Laguna Salada is a fresh to brackish lagoon fed by seasonal rains, and
11 connected by a small channel to Horse Stable Pond to the south. Sanchez Creek is a
12 channelized creek that runs into Horse Stable Pond.

13 50. Sharp Park Golf Course surrounds Laguna Salada with the exception of the
14 southwest and west sides. The northeastern portion of Sharp Park contains an abandoned rifle
15 range and an active archery range, and the hills to the east are primarily non-native forest.

16 51. To protect the golf course from freshwater flooding during winter rains, the
17 City installed an 11,500 gallon capacity pump house to drain Sharp Park Golf Course and pump
18 water out to the Pacific Ocean. The City operates the pump house annually to drain
19 floodwaters from Sharp Park Golf Course.

20 52. There are no screens installed on the pump to prevent entrainment or
21 impingement of frog eggs, tadpoles, or other wildlife. Fish and crayfish have been killed by
22 being sucked into the pump and expelled to Sharp Park beach along the Ocean.

23 53. Routine maintenance at the golf course includes frequent mowing, trapping of
24 rodents, applying pesticides, herbicides, and fertilizers, and flood management activities.

25 **C. DEFENDANTS ARE UNLAWFULLY TAKING THE CALIFORNIA**
26 **RED-LEGGED FROG AND THE SAN FRANCISCO GARTER SNAKE AT**
27 **SHARP PARK**

28 54. The California red-legged frog has been, and will continue to be, killed and
otherwise taken by ongoing activities at Sharp Park. During normal winter rains the California

1 red-legged frog begins to breed and lays eggs close to the high-water mark. The winter rains
2 also cause the golf course to flood. To eliminate the flood waters, the City pumps the water
3 from Horse Stable Pond through Sharp Park’s sea wall and into the Ocean. This causes frog
4 egg masses to become exposed to the air, killing the eggs.

5 55. In 1992, Todd Steiner—a subcontractor for the City—discovered 62 California
6 red-legged frog egg masses exposed to the air and desiccated in Horse Stable Pond. Mr.
7 Steiner concluded that the exposure was caused by water pumping operations being conducted
8 by the golf course.

9 56. In 2003, 2004, and 2005, stranded and desiccated egg masses were found by the
10 City.

11 57. In 2005, the FWS sent the City and County of San Francisco a letter explaining
12 that the city’s use of the water pump violated Section 9 of the ESA through “stranding and
13 exposure of a number of egg masses of the California red-legged frog,” which “apparently
14 caused the death of an unknown quantity of embryonic tadpoles of the completely aquatic early
15 stage of this animal’s lifecycle.” FWS Letter of Feb. 1, 2005. The FWS explained that, “[i]n
16 order to avoid further potential violation of the [ESA], we recommend that you obtain
17 authorization for incidental take as appropriate for the California red-legged frog, and also
18 the endangered San Francisco garter snake . . . which also has been documented to inhabit the
19 area.” Id. Although the City corresponded with the Service, to date the Defendants have never
20 initiated the Congressionally-mandated ITP process to authorize the take of these species under
21 the ESA. Nor has the FWS ever reversed its position that the operation of Sharp Park has
22 violated, and threatens future violations of, the ESA.

23 58. In 2008, California red-legged frog egg masses were again found desiccated and
24 stranded at Sharp Park. Biologists attempted to bend aquatic vegetation to return these eggs
25 back to the water, but they were not successful at saving all of the eggs.

26 59. The pump house at Sharp Park does not have sufficiently fine screens or
27 management protocols to prevent California red-legged frog egg masses and tadpoles from
28 being impinged or entrained and sucked out to the Ocean. Fish and crayfish have been

1 documented entrained in this manner, and the City’s contractors have indicated that California
2 red-legged frog eggs and tadpoles face similar threats. In 2010 the City replaced an engine at
3 the pump house, producing additional risks that egg masses and tadpoles will be unlawfully
4 taken.

5 60. The San Francisco garter snake also has been, and will continue to be, killed and
6 otherwise taken by activities at Sharp Park. As early as the 1940s Dr. Wade Fox, upon finding
7 a dead San Francisco garter snake at Sharp Park, noted in his field journal that the snake was
8 “probably killed by golfers—they probably die frequently in this manner.”

9 61. In 2005, a dead San Francisco garter snake was found at Sharp Park Golf Course
10 by a Park Service volunteer. The body was collected by Park Service staff, and given to the
11 FWS. The agency later concluded that the individual was killed by a lawn mower at Sharp
12 Park. United States Fish and Wildlife Service, San Francisco Garter Snake, (*Thamnophis*
13 *sirtalis tetrataenia*) 5-Year Review: Summary and Evaluation, p. 17 (2006).

14 62. In addition to the confirmed killing of these species, the following ongoing
15 activities, among others, also threaten additional take of the California red-legged frog and the
16 San Francisco garter snake at Sharp Park: the manipulation of water levels at Laguna Salada,
17 Sanchez Creek, and Horse Stable pond; the use of pesticides and herbicide on the property;
18 nutrient overload caused by fertilizer; traps set for gophers and destruction of gopher burrows
19 used by the species as hiding or resting areas; the use of mowing equipment which threatens to
20 kill both species and degrades their habitat; and the use of golf carts on pathways used as
21 basking habitat.

22 63. In response to the concerns expressed by the FWS and others, Defendants have
23 purported to take steps in the past to ameliorate threats to the species, but takes have continued
24 to occur. Most recently, Defendants prepared a draft “Endangered Species Compliance Plan
25 for Sharp Park Golf Course” (“Compliance Plan”). Although a “Final Draft” of the
26 Compliance Plan was issued in December 2009, the plan has never been finalized.

1 64. Such a Plan cannot serve as a substitute for the Congressionally-mandated ITP
2 required to authorize take of the California red-legged frog and the San Francisco garter snake
3 under the ESA.

4 65. Even if the Compliance Plan were finalized and fully implemented, Defendants'
5 activities at Sharp Park would continue to threaten take of these two species. For example,
6 even under the Plan the routine mowing at the Park threatens to continue to take both species.

7 66. The Compliance Plan also does not protect California red-legged frog egg
8 masses and tadpoles from being trapped and killed in the pump system, and continues to
9 threaten take of California red-legged frog egg masses through manipulation of water levels in
10 the Park's water bodies.

11 67. The City is also planning to pump the water levels in Laguna Salada to very low
12 levels to allow more water storage capacity. These low water levels will further reduce
13 foraging and breeding habitat availability for both species, threatening additional take through
14 harm and harassment.

15 68. In 2011, over 107 California red-legged frog egg masses were placed at risk of
16 stranding due to water management and pumping at Sharp Park, and many were exposed to the
17 air. As recently as February 22, 2011, Plaintiffs and others identified a California red-legged
18 frog egg mass completely exposed to the air and at risk of imminent desiccation after massive
19 pumping operations drained Sharp Park's Laguna Salada and Horse Stable Pond.

20 **D. PLAINTIFFS' NOTICE OF INTENT TO SUE**

21 69. Several of the Plaintiffs have previously provided formal notice of Defendants'
22 ESA violations on several occasions. Most recently, Plaintiffs provided such notice by letter
23 dated November 18, 2010. To date, Defendants have not responded to any of Plaintiffs' notice
24 letters. Although the FWS has issued more than twenty ITPs associated with the take of either
25 the California red-legged frog or the San Francisco garter snake, on information and belief
26 Defendants have not applied for an ITP to authorize the take California red-legged frogs or San
27 Francisco garter snakes at Sharp Park.

1 **PLAINTIFFS' CLAIM FOR RELIEF**

2 70. Each and every allegation set forth above is incorporated herein by reference.

3 71. By taking the California red-legged frog and the San Francisco garter snake
4 within the meaning of the ESA and its implementing regulations, without obtaining an ITP,
5 Defendants' operation and management of Sharp Park violates the ESA. 16 U.S.C. § 1538;
6 C.F.R. § 17.31.

7 WHEREFORE, Plaintiffs respectfully request that this Court:

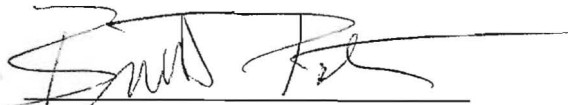
8 1. Declare that Defendants are violating the ESA by illegally taking the California
9 red-legged frog and the San Francisco garter snake without an ITP;

10 2. Enjoin Defendants from engaging in operations and activities that cause take of
11 the California red-legged frog and the San Francisco garter snake at Sharp Park unless and until
12 Defendants obtain an ITP;

13 3. Award Plaintiffs their costs and attorneys' fees, including expert witness fees;
14 and

15 4. Grant Plaintiffs such other and further relief as this Court may deem just and
16 proper.

17 Respectfully submitted this 2nd day of March, 2011,

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