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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**
TUCSON DIVISION

12 Center for Biological Diversity,

13 Plaintiff,

14 v.
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16 U.S. Fish and Wildlife Service; Brian
17 Nesvik, in his official capacity as Director
of the U.S. Fish and Wildlife Service; and
18 Doug Burgum, in his official capacity as
Secretary of the U.S. Department of the
19 Interior,

20 Defendants.
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Case No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

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24 1. Plaintiff Center for Biological Diversity (the “Center”) brings this case
25 challenging the U.S. Fish and Wildlife Service’s (the “Service”) failure to issue a timely
26 12-month finding on the Center’s petition to list the yellow-spotted woodland salamander
27 (*Plethodon pauleyi*), in violation of the Endangered Species Act’s (“ESA” or “Act”)
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1 nondiscretionary, congressionally mandated deadline. The Service’s failure to meet the
2 ESA deadline for the yellow-spotted woodland salamander delays lifesaving protections
3 for the salamander, increasing its risk of extinction.
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5 2. Plaintiff brings this lawsuit for declaratory and injunctive relief, seeking an
6 Order declaring that the Service violated section 4(b)(3)(B) of the ESA, 16 U.S.C. §
7 1533(b)(3)(B), by failing to timely issue a 12-month finding for the yellow-spotted
8 woodland salamander and directing the Service to issue the finding by a date certain.
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10 **JURISDICTION**

11 3. This Court has jurisdiction over this action pursuant to 16 U.S.C. § 1540(c),
12 (g) (ESA citizen suit provision) and 28 U.S.C. § 1331 (federal question). This Court has
13 authority to issue declaratory and injunctive relief pursuant to the ESA, 16 U.S.C. §
14 1540(g); 28 U.S.C. §§ 2201–2202; and 5 U.S.C. § 706(2).
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16 4. Plaintiff provided Defendants with 60-days’ notice of their ESA violations,
17 as required by 16 U.S.C. § 1540(g)(2)(C), by a letter to the Service dated May 5, 2025.
18 Defendants have not remedied the violations set out in the notice letter, and an actual
19 controversy exists between the parties within the meaning of the Declaratory Judgment
20 Act, 28 U.S.C. § 2201.
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22 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(c) because
23 Plaintiff resides in this judicial district.
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1 **PARTIES**

2 6. Plaintiff the Center for Biological Diversity is a national, non-profit
3 conservation organization that works through science, law, and policy to protect
4 imperiled wildlife and their habitat. The Center is incorporated in California and
5 headquartered in Tucson, Arizona, with offices throughout the United States. The Center
6 has more than 101,000 active members throughout the country.
7

8 7. The Center brings this action on behalf of its members who derive
9 recreational, educational, scientific, professional, and other benefits from the yellow-
10 spotted woodland salamander and its habitat. Plaintiff's members' interests in protecting
11 and recovering the salamander and its habitat are directly harmed by the Service's failure
12 to issue a timely 12-month finding, delaying critical protections under the ESA that can
13 put the yellow-spotted woodland salamander on a path to recovery.
14

15 8. For example, Center member Frank Gebhard is a naturalist, photographer,
16 and documentarian currently filming a documentary about the salamanders of the
17 Appalachians. Mr. Gebhard sees the world through the salamanders who have opened his
18 world to the wonders of ecology. He visited the Bluestone River Gorge in the spring
19 specifically to search for the yellow-spotted woodland salamander and has recently
20 returned to their habitat three times, with two successful observations during which he
21 photographed and filmed the salamander. He has specific plans to return to the
22 salamander's habitat in April 2026 to capture photographs for a field guide that he is co-
23 authoring on the salamanders of the central Appalachians. The Service's failure to protect
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1 the salamander harms Mr. Gebhard's professional interest because it increases the
2 salamander's risk of extinction, making it harder to locate an already elusive species and
3 impairing Mr. Gebhard's interest in documenting the salamander. The Service's delay
4 also harm his aesthetic, moral, recreational, and spiritual interests. Mr. Gebhard's life
5 revolves around salamanders, and the yellow-spotted woodland salamander is his favorite
6 species. He spends much of his time preparing for the difficult hikes to reach the yellow-
7 spotted woodland salamander's habitat, and he educates the public about the salamander
8 through his photography and videography.

11 9. Center member Brady O'Brien is a wildlife enthusiast, naturalist, and
12 photographer specializing in Appalachian salamanders. He has spent significant time
13 recreating and exploring in the yellow-spotted woodland salamander's habitat including
14 near Pipestem Resort State Park and he intends to return in spring 2026 and winter 2026
15 to search for the salamander and recreate in its habitat. Mr. O'Brien's professional and
16 aesthetic interests in the yellow-spotted woodland salamanders are harmed by the
17 Service's delay because as the salamander becomes further imperiled and harder to
18 locate, Mr. O'Brien's ability to photograph them is thwarted. This harms his professional
19 pursuits and his mission to educate others about Appalachian biodiversity. His wildlife
20 photography is largely driven by his faith, and therefore, his interest in protecting God's
21 creatures is harmed by the Service's delay in protecting the salamander. As an avid
22 naturalist and educator, the loss of this species will also harm his interests in recreating
23 and spending time in the salamander's habitat.

1 10. Defendants' violation of the ESA's deadline has delayed ESA protections
2 for the yellow-spotted woodland salamander. This inaction harms Plaintiff's members'
3 interests in the salamander by permitting the species' continued trajectory toward
4 extinction, thereby decreasing the likelihood that the Center's members will encounter
5 the species as part of their personal and professional excursions. These injuries are actual,
6 concrete injuries presently suffered by Plaintiff's members, are directly caused by
7 Defendants' acts and omissions, and will continue unless the Court grants relief. The
8 relief sought would redress these injuries by providing ESA protection for the yellow-
9 spotted woodland salamander, thus promoting its conservation and recovery. Plaintiff and
10 its members have no other adequate remedy at law.

11 11. Defendant U.S. Fish and Wildlife Service is the agency within the
12 Department of the Interior charged with implementing the ESA for the yellow-spotted
13 woodland salamander. The Secretary of the Interior has delegated administration of the
14 ESA to the Service. 50 C.F.R. § 402.01(b).

15 12. Defendant Brian Nesvik is the Director of the Service and is charged with
16 ensuring that agency decisions comply with the ESA. Defendant Nesvik is sued in his
17 official capacity.

18 13. Defendant Doug Burgum is the Secretary of the U.S. Department of the
19 Interior ("Secretary") and has the ultimate responsibility to administer and implement the
20 provisions of the ESA. Defendant Burgum is sued in his official capacity.
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STATUTORY FRAMEWORK

14. The Endangered Species Act, 16 U.S.C. §§ 1531–1544, is “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). Its fundamental purposes are “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved [and] to provide a program for the conservation of such endangered species and threatened species.” 16 U.S.C. § 1531(b).

15. The ESA defines a “species” as “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” *Id.* § 1532(16).

16. A species is “endangered” when it “is in danger of extinction throughout all or a significant portion of its range.” *Id.* § 1532(6). A species is “threatened” when it is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” *Id.* § 1532(20).

17. The ESA requires the Service to determine whether any species is endangered or threatened because of any one of, or combination of, the following factors: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. *Id.* § 1533(a)(1).

1 18. If the Service determines that the species is not endangered throughout all
2 its range, the ESA requires the agency to examine whether it is endangered or threatened
3 throughout any “significant portion” of its range. *Id.* §§ 1532(6), (20).
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5 19. The Service must base all listing determinations “solely on the basis of the
6 best scientific and commercial data available.” *Id.* § 1533(b)(1)(A).
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8 20. To ensure the timely protection of species at risk of extinction, Congress set
9 forth a detailed process whereby interested persons may petition the Service to list a
10 species as endangered or threatened. *Id.* § 1533(b)(3). In response, the Service must
11 publish a series of three decisions according to statutory deadlines. First, within 90 days
12 of receipt of a listing petition, the Service must publish an initial finding as to whether the
13 petition, “presents substantial scientific or commercial information indicating that the
14 petitioned action may be warranted.” *Id.* § 1533(b)(3)(A). If the Service determines that
15 the petition does not present substantial information indicating that listing may be
16 warranted, the petition is rejected, and the process concludes.
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18 21. If the Service determines that a petition presents substantial information
19 indicating that listing “may be warranted,” the agency must publish that finding and
20 proceed with a scientific review of the species’ status, known as a “status review.” *Id.*
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22 22. Upon completing the status review, and within 12 months of receiving the
23 petition, the Service must publish a “12-month finding” with one of three listing
24 determinations: (1) listing is “warranted”; (2) listing is “not warranted”; or (3) listing is
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1 “warranted but precluded” by other proposals for listing species, provided certain
2 circumstances are met. *Id.* § 1533(b)(3)(B).

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4 23. If the Service determines that listing is “warranted,” the agency must
5 publish that finding in the Federal Register along with the text of a proposed regulation to
6 list the species as endangered or threatened and to designate critical habitat for the
7 species. *Id.* § 1533(a)(3)(A), (b)(3)(B)(ii). Within one year of publication of the proposed
8 listing rule, the Service must publish in the Federal Register the final rule implementing
9 its determination to list the species and designate critical habitat. *Id.* § 1533(b)(6)(A).

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11 24. If the Service instead issues a finding that listing the species is “not
12 warranted,” the process concludes, and that finding is a final agency action subject to
13 judicial review. *Id.* § 1533(b)(3)(C)(ii).

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15 25. The ESA has a suite of substantive and procedural legal protections that
16 apply to species once they are listed as endangered or threatened. For example, section
17 4(a)(3) of the Act requires the Service to designate “critical habitat” for each endangered
18 and threatened species. *Id.* § 1533(a)(3).

19
20 26. In addition, ESA section 7(a)(2) requires all federal agencies to ensure that
21 their actions do not “jeopardize the continued existence” of any endangered or threatened
22 species or “result in the destruction or adverse modification” of any listed species’ critical
23 habitat. *Id.* § 1536(a)(2).

24
25 27. ESA section 9 prohibits, among other actions, “any person” from causing
26 the “take” of any protected fish or wildlife without lawful authorization from the Service.
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1 *Id.* §§ 1538(a)(1)(B), 1539; *see also id.* § 1532(19) (defining “take”). Other provisions
2 require the Service to “develop and implement” recovery plans for listed species, *id.* §
3 1533(f); authorize the Service to acquire land for the protection of listed species, *id.* §
4 1534; and authorize the Service to make federal funds available to states to assist in the
5 conservation of endangered and threatened species, *id.* § 1535(d).
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8 **FACTUAL BACKGROUND**



22 Photo Courtesy: Frank Gebhard

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24 28. The yellow-spotted woodland salamander (*Plethodon pauleyi*), pictured
25 above, is named after its unique appearance; its back is marked with two rows of yellow
26 spots. The salamander is one of the most endangered salamanders on the planet, with
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1 only 65 individuals observed in the past twenty years. And there are likely only a few
2 hundred salamanders left, all threatened by coal mining.

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4 29. The salamander is a microhabitat specialist occurring only in West
5 Virginia, Virginia, Kentucky, and Tennessee in shale and sandstone rocks, making it
6 particularly vulnerable to habitat loss and fragmentation from mining because these areas
7 are targeted by mountain top removal mining, which uses explosives that blast apart
8 mountains to access coal seams. For example, mountain top removal has destroyed more
9 than 500 mountains and 1.4 million acres of forests in Appalachia.

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11 30. Specifically, the yellow-spotted woodland salamander occurs on 21 isolated
12 rock outcrops in central Appalachia targeted by industrial mining.

13
14 31. Two known *P. pauleyi* occurrences were wiped out by mining, and many
15 others have likely been obliterated. A new mountaintop removal mining operation on
16 1,085 acres in Raleigh County, West Virginia was recently permitted near one of the
17 remaining sites where the yellow-spotted woodland salamander is found. And three new
18 surface mining permits were issued this year in Letcher County, Ky., near four *P. pauleyi*
19 populations, and seven new mining permits were issued in Harlan County, Ky., near
20 another *P. pauleyi* population.

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22 32. The salamander has already lost significant portions of its range to mining,
23 and it will continue to face destruction, modification, and curtailment of its range.
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1 33. Other threats include overutilization, disease, predation, invasive species,
2 pollution, and impacts from climate change. Its vulnerability is compounded by its low
3 dispersal.
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5 **Listing Petition and Response**

6 34. The Center and partners petitioned the Service to list the yellow-spotted
7 woodland salamander on August 24, 2022. The Center's petition documented threats to
8 the salamander, primarily from coal mining and the impacts of the industry (mountain top
9 removal blasts destroy the salamanders' habitat), as well as threats from clear-cut
10 logging, roads, poaching for the wildlife trade, disease, climate change, invasive species,
11 harm to its habitat from pollution, and a lack of adequate regulatory mechanisms. The
12 Center's petition also underscored the species' inherent vulnerability given its small,
13 isolated population.
14

15 35. The Service found that the yellow-spotted woodland salamander may
16 warrant listing on January 25, 2024. 89 Fed. Reg. 4884 (Jan. 25, 2024). Specifically, the
17 Service found the Center's petition presented substantial information that indicated listing
18 may be warranted due to threats from mining operations, land clearing, climate change,
19 collection, predation, disease, invasive species, pollution, and recreation. *Id.* at 4889.
20 Because the Service found that the petition may be warranted in its 90-day finding, its 12-
21 month finding was due one year after receipt of the Center's petition. The deadline for
22 publication of the 12-month finding was August 24, 2023, but the Service has not yet
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1 made a 12-month finding for the yellow-spotted woodland salamander. The finding is
2 thus past due.

3 4 **CLAIM FOR RELIEF**

5 **Violation of the ESA for Failure to Publish a Timely 12-Month Finding for the** 6 **yellow-spotted woodland salamander**

7 36. Plaintiff re-alleges and incorporates all allegations set forth in the preceding
8 paragraphs.

9 37. The ESA requires the Service to publish a 12-month finding within 12-
10 months of receiving a petition to list a species under the Act when the Service has made a
11 positive 90-day finding that listing may be warranted. 16 U.S.C. § 1533(b)(3)(B).
12

13 38. In response to the Center's 2022 petition to list the yellow-spotted
14 woodland salamander as endangered under the ESA, the Service issued a positive 90-day
15 finding for the salamander in 2024, and thus its 12-month finding was due 12 months
16 after the petition was submitted—August 24, 2023.
17

18 39. Defendants have not made the statutorily required 12-month finding for the
19 yellow-spotted woodland salamander.
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21 40. Defendants failed to perform their nondiscretionary duty to timely publish a
22 12-month finding in violation of the ESA. 16 U.S.C. § 1533(b)(3)(B).
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24 **REQUEST FOR RELIEF**

25 WHEREFORE, Plaintiff respectfully requests that the Court enter judgment
26 providing the following relief:
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- 1 1. Declare that Defendants violated the ESA by failing to issue a timely 12-month
2 finding in response to the Center's petition to list the yellow-spotted woodland
3 salamander as an endangered species under the ESA;
- 4 2. Provide injunctive relief compelling Defendants to issue the 12-month finding
5 by a date certain;
- 6 3. Retain continuing jurisdiction to review Defendants' compliance with all
7 judgments and orders herein;
- 8 4. Grant Plaintiff its reasonable attorneys' fees and costs as provided by the ESA,
9 16 U.S.C. § 1540(g)(4); and
- 10 5. Provide such other relief as the Court deems just and proper.

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14 Respectfully submitted and dated this 15th day of January 2026.

15
16 *s/ Camila Cossío*

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