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12 **UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**
14 **TUCSON DIVISION**

14 Center for Biological Diversity, a non-
15 profit organization

16 Plaintiff,

17 v.
18

19 U.S. Fish and Wildlife Service; Brian
20 Nesvik, in his official capacity as Director
of the U.S. Fish and Wildlife Service; and
21 Doug Burgum, in his official capacity as
Secretary of the U.S. Department of the
22 Interior,

23 Defendants.
24

Case No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

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26 1. Plaintiff Center for Biological Diversity (the “Center”) brings this case
27 challenging the U.S. Fish and Wildlife Service’s (“FWS”) failure to issue timely 12-
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1 month findings on the petitions to list the Amargosa toad and the Oasis Valley speckled
2 dace, in violation of the Endangered Species Act's ("ESA" or "Act") nondiscretionary,
3 congressionally mandated deadline. FWS's failure to meet the ESA deadline for the
4 Amargosa toad and the Oasis Valley speckled dace delays lifesaving protections for these
5 species, thereby increasing their risk of extinction.

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7 2. Anthropogenic stressors, including loss of habitat from groundwater
8 pumping for nearby gold mines, are pushing these animals toward extinction. Native only
9 to Southern Nevada, the Amargosa toad and Oasis Valley speckled dace occur in small
10 spring-fed waters that are at risk of disappearing due to extraction projects.

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12 3. The Center brings this lawsuit for declaratory and injunctive relief, seeking
13 an Order declaring that FWS violated Section 4(b)(3)(B) of the ESA, 16 U.S.C. §
14 1533(b)(3)(B), by failing to timely issue a 12-month finding for the Amargosa toad and
15 the Oasis Valley speckled dace and directing FWS to issue the findings by a date certain.

16 **JURISDICTION**

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18 4. This Court has jurisdiction over this action pursuant to 16 U.S.C. § 1540(c),
19 (g) (ESA citizen suit provision) and 28 U.S.C. § 1331 (federal question). This Court has
20 authority to issue declaratory and injunctive relief pursuant to the ESA, 16 U.S.C. §
21 1540(g); 28 U.S.C. §§ 2201–2202; and 5 U.S.C. § 706(2).

22
23 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(c) because
24 Plaintiff resides in and has its principal place of business in this judicial district.

25 **PARTIES**

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

7 7. The Center brings this action on behalf of its members who derive
8 recreational, educational, scientific, professional, and other benefits from these species
9 and their habitats. Plaintiff's members' interests in protecting and recovering the
10 Amargosa toad and the Oasis Valley speckled dace and their habitats are directly harmed
11 by FWS's failure to timely issue the 12-month findings, delaying critical protections
12 under the ESA that can put these species on a path to recovery.
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14 8. Center member Matthew Tanager works for the Great Basin Resource
15 Watch, an organization dedicated to protecting the waters and wildlife of the Great Basin.
16 He has observed the Oasis Valley speckled dace in its habitat near the Amargosa River
17 twice in 2024, he visited again in 2025, and in early 2026 he viewed the fish swimming
18 in their spring habitat. Although he has not viewed the Amargosa toad, Mr. Tanager has
19 searched for the toads in spring sites in northern and northeastern Oasis Valley in the
20 winter of 2025 and again in 2026. He returns to Oasis Valley about 3-4 times a year with
21 the specific goal of observing and searching for Oasis Valley speckled dace and
22 Amargosa toads. He has specific plans to return to Oasis Valley and recreate in the
23 species' habitat with his wife in December 2026. Mr. Tanager takes pride knowing these
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1 species exist as hardy survivors of the desert and knowing that they exist brings him joy
2 when he recreates in their habitat. If the population of the Oasis Valley speckled dace and
3 Amargosa toad were to further decline, his enjoyment visiting Oasis Valley and the
4 Amargosa River would lessen the enjoyment he receives from being in nature and in
5 proximity to these species.
6

7 9. Defendants' violation of the ESA's deadline has delayed ESA protections
8 for the Amargosa toad and the Oasis Valley speckled dace. This inaction harms
9 Plaintiff's members' interests in the species by permitting the species' continued
10 trajectory toward extinction, thereby decreasing the likelihood that the Center's members
11 will encounter the species as part of their personal and professional excursions. These
12 injuries are actual, concrete injuries presently suffered by Plaintiff's members, are
13 directly caused by Defendants' acts and omissions, and will continue unless the Court
14 grants relief. The relief sought would redress these injuries by providing ESA protection
15 for the Amargosa toad and the Oasis Valley speckled dace, thus promoting their
16 conservation and recovery. Plaintiff and its members have no other adequate remedy at
17 law.
18

19 10. Defendant U.S. Fish and Wildlife Service is the agency within the
20 Department of the Interior charged with implementing the ESA for the Amargosa toad
21 and the Oasis Valley speckled dace. The Secretary of the Interior has delegated
22 administration of the ESA to FWS. 50 C.F.R. § 402.01(b).
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1 11. Defendant Brian Nesvik is the Director of FWS and is charged with
2 ensuring that agency decisions comply with the ESA. Defendant Nesvik is sued in his
3 official capacity.
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5 12. Defendant Doug Burgum is the Secretary of the U.S. Department of the
6 Interior (“Secretary”) and has the ultimate responsibility to administer and implement the
7 provisions of the ESA. Defendant Burgum is sued in his official capacity.
8

9 **STATUTORY FRAMEWORK**

10 13. The Endangered Species Act, 16 U.S.C. §§ 1531–1544, is “the most
11 comprehensive legislation for the preservation of endangered species ever enacted by any
12 nation.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). Its fundamental purposes
13 are “to provide a means whereby the ecosystems upon which endangered species and
14 threatened species depend may be conserved [and] to provide a program for the
15 conservation of such endangered species and threatened species.” 16 U.S.C. § 1531(b).
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18 14. The ESA defines a “species” as “any subspecies of fish or wildlife or
19 plants, and any distinct population segment of any species of vertebrate fish or wildlife
20 which interbreeds when mature.” 16 U.S.C. § 1532(16).
21

22 15. A species is “endangered” when it “is in danger of extinction throughout all
23 or a significant portion of its range.” 16 U.S.C. § 1532(6). A species is “threatened” when
24 it is “likely to become an endangered species within the foreseeable future throughout all
25 or a significant portion of its range.” *Id.* § 1532(20).
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1 16. The ESA requires FWS to determine whether any species is endangered or
2 threatened because of any one of, or combination of, the following factors: (A) the
3 present or threatened destruction, modification, or curtailment of its habitat or range; (B)
4 overutilization for commercial, recreational, scientific, or educational purposes; (C)
5 disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other
6 natural or manmade factors affecting its continued existence. 16 U.S.C. § 1533(a)(1).
7
8

9 17. If FWS determines that the species is not endangered throughout all of its
10 range, the ESA requires the agency to examine whether it is endangered or threatened
11 throughout any “significant portion” of its range. 16 U.S.C. §§ 1532(6), (20).
12

13 18. FWS must base all listing determinations “solely on the basis of the best
14 scientific and commercial data available.” 16 U.S.C. § 1533(b)(1)(A).
15

16 19. To ensure the timely protection of species at risk of extinction, Congress set
17 forth a detailed process whereby interested persons may petition FWS to list a species as
18 endangered or threatened and, in response, FWS must publish a series of three decisions
19 according to statutory deadlines. 16 U.S.C. § 1533(b)(3). First, within 90 days of receipt
20 of a listing petition, FWS must publish an initial finding as to whether the petition,
21 “presents substantial scientific or commercial information indicating that the petitioned
22 action may be warranted.” *Id.* § 1533(b)(3)(A). If FWS determines that the petition does
23 not present substantial information indicating that listing may be warranted, the petition
24 is rejected, and the process concludes.
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1 20. If FWS determines that a petition presents substantial information
2 indicating that listing “may be warranted,” the agency must publish that finding and
3 proceed with a scientific review of the species’ status, known as a “status review.” 16
4 U.S.C. § 1533(b)(3)(A).

6 21. Upon completing the status review, and within 12 months of receiving the
7 petition, FWS must publish a “12-month finding” making one of three listing
8 determinations: (1) listing is “warranted”; (2) listing is “not warranted”; or (3) listing is
9 “warranted but precluded” by other proposals for listing species, provided certain
10 circumstances are met. 16 U.S.C. § 1533(b)(3)(B).

13 22. If FWS determines that listing is “warranted,” the agency must publish that
14 finding in the Federal Register along with the text of a proposed regulation to list the
15 species as endangered or threatened and to designate critical habitat for the species. 16
16 U.S.C. § 1533(a)(3)(A), (b)(3)(B)(ii). Within one year of the proposed listing rule
17 publication, FWS must publish in the Federal Register the final rule implementing its
18 determination to list the species and designate critical habitat. *Id.* § 1533(b)(6)(A).

20 23. If FWS instead issues a finding that listing the species is “not warranted,”
21 the process concludes, and that finding is a final agency action subject to judicial review.
22 16 U.S.C. § 1533(b)(3)(C)(ii).

24 24. The ESA has a suite of substantive and procedural legal protections that
25 apply to species once they are listed as endangered or threatened. For example, Section
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1 4(a)(3) of the Act requires FWS to designate “critical habitat” for each endangered and
2 threatened species at the time it lists the species. 16 U.S.C. § 1533(a)(3).

3
4 25. Once a species is listed under the Act, all other Federal agencies are
5 required to “utilize their authorities in furtherance of the purposes of this Act by carrying
6 out programs for the conservation of endangered species and threatened species.” 16
7 U.S.C. § 1536(a)(1).

8
9 26. In addition, ESA Section 7(a)(2) requires all federal agencies to ensure that
10 their actions do not “jeopardize the continued existence” of any endangered or threatened
11 species or “result in the destruction or adverse modification” of any listed species’ critical
12 habitat. 16 U.S.C. § 1536(a)(2).

13
14 27. ESA Section 9 prohibits, among other actions, “any person” from causing
15 the “take” of any protected fish or wildlife without lawful authorization from FWS. 16
16 U.S.C. §§ 1538(a)(1)(B), § 1539; *see also* 16 U.S.C. § 1532(19) (defining “take”). Other
17 provisions require FWS to “develop and implement” recovery plans for listed species, *id.*
18 § 1533(f); authorize FWS to acquire land for the protection of listed species, *id.* § 1534;
19 and authorize FWS to make federal funds available to states to assist in the conservation
20 of endangered and threatened species, *id.* § 1535(d).

21 22 **FACTUAL BACKGROUND**

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25 28. The Amargosa toad (*Anaxyrus nelsoni*) is found along an approximately
26 14-mile stretch of the Amargosa River and nearby interconnected tributary springs in
27 Southern Nevada’s Oasis Valley.
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1 29. The toad population is small, with the number of toads possibly not
2 exceeding about 2,000 individuals. The toad is a quiet, brownish toad that only lives in
3 the Oasis Valley, a rare and biologically diverse wetland area along the Upper Amargosa
4 River, on the crux of the Great Basin and Mojave deserts.

6 30. The Amargosa toad is imminently threatened by seven gold mining
7 projects, including what is potentially the largest greenfield gold discovery in the United
8 States in more than a decade.

10 31. Through dewatering and groundwater pumping for operational use, gold
11 mining threatens to reduce the quantity of spring discharge in Oasis Valley, resulting in
12 the degradation and loss of the toad's spring-fed habitat.

14 32. Other major threats include ongoing water abstraction and diversion
15 impacts, non-native ungulate grazing, invasive species, off-road vehicles, and climate
16 change.

18 33. The Oasis Valley speckled dace (*Rhinichthys nevadensis nevadensis*) is a
19 rare fish that only lives in the springs that feed the Amargosa River in Beatty, Nevada.

20 34. The Oasis Valley speckled dace is one of four populations of the Amargosa
21 speckled dace, with the others living in Ash Meadows National Wildlife Refuge in
22 Nevada and two locations in California. Having been isolated from each other for so
23 long, the species have taken on distinct genetic characteristics that differentiate them
24 from each other.
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1 35. The Oasis Valley speckled dace is existentially threatened by numerous
2 proposed gold mines adjacent to the Amargosa River. If the mines are built, dewatering
3 and groundwater pumping from their operations could dry up the springs the fish relies
4 on for survival.

6 36. There are six additional proposed gold mines in the immediate area. A
7 hydrologic analysis found that cumulative pumping for all these mines would draw down
8 groundwater that feeds the Amargosa River across its entire length in Oasis Valley,
9 potentially driving the Oasis Valley speckled dace to extinction.



Amargosa toad in its aquatic habitat.

Listing Petition and Response

26 37. As a result of the science documenting the escalating threats to the
27 Amargosa toad, on May 29, 2024, the Center petitioned FWS to list the Amargosa toad
28

1 on an emergency basis given the rare endemicity of the species and the immediate threats
2 to its existence from multiple mining projects.

3
4 38. On January 21, 2025, FWS found the petition may be warranted. 90 Fed.
5 Reg. 7038 (Jan. 21, 2025). Specifically, FWS found the Center's petition presented
6 substantial information that indicated listing may be warranted due to threats from gold
7 mining as well as threats from solar energy development, wild burros, livestock grazing,
8 off-road vehicles, road maintenance and runoff, invasive plants, water abstraction and
9 diversion, chytridiomycosis, predation by bullfrogs and nonnative crayfish, hybridization
10 with Woodhouse's toad (*Anaxyrus woodhousii*), climate change, and stochastic events.
11
12 *Id.* at 7040.

13
14 39. Because FWS found that the petition may be warranted in its 90-day
15 finding, its 12-month finding was due one year after receipt of the Center's petition.

16
17 40. As a result of the science documenting the escalating threats to the Oasis
18 Valley speckled dace, on July 2, 2024, the Center petitioned FWS to list the Oasis Valley
19 speckled dace (at the time it was thought to be a distinct population segment of the
20 Amargosa speckled dace).

21
22 41. The Center's petition documented threats to the dace primarily from
23 dewatering of the Amargosa River and its tributaries due to excessive groundwater
24 extraction.

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26 42. On January 21, 2025, FWS found the petition may be warranted. 90 Fed.
27 Reg. 7042. Specifically, FWS found the Center's petition presented substantial
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1 information that indicated listing may be warranted due to threats from gold mining as
2 well as threats from solar energy development, water diversions, livestock grazing, wild
3 burros, invasive species, climate change, and the effects of having isolated populations.
4 *Id.* at 7043.

6 43. Because FWS found that the petition may be warranted in its 90-day
7 finding, its 12-month finding was due one year after receipt of the Center's petition.
8

9 44. It has now been more than two years since FWS received the Center's
10 petitions to protect the Amargosa toad and the Oasis Valley speckled dace under the
11 ESA.
12

13 45. Plaintiff provided Defendants with sixty-days' notice of their ESA
14 violations, as required by 16 U.S.C. § 1540(g)(2)(C), by a letter to FWS dated January
15 20, 2026. Defendants have not remedied the violations set out in the notice letter, and an
16 actual controversy exists between the parties within the meaning of the Declaratory
17 Judgment Act, 28 U.S.C. § 2201.
18

19 **CLAIM FOR RELIEF**

20 **Violation of the ESA for Failure to Publish a Timely 12-Month Finding for the** 21 **Amargosa toad and the Oasis Valley speckled dace**

22 46. Plaintiff re-alleges and incorporates all allegations set forth in the preceding
23 paragraphs.
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1 47. The ESA requires FWS to publish a 12-month finding within 12-months of
2 receiving a petition to list a species under the Act when FWS has made a positive 90-day
3 finding that listing may be warranted. 16 U.S.C. § 1533(b)(3)(B).
4

5 48. In response to the Center's listing petitions to list the Amargosa toad and
6 the Oasis Valley speckled dace, FWS issued 90-day findings for the species, finding that
7 the petitions may warrant listing the species under the ESA.
8

9 49. Because FWS found that the petitions to list the Amargosa toad and the
10 Oasis Valley speckled dace may be warranted, it was required to publish a 12-month
11 finding 12 months after receiving the listing petition or by May 29, 2025 for the
12 Amargosa toad, and July 2, 2025 for the Oasis Valley speckled dace.
13

14 50. Defendants have not made the statutorily required 12-month finding for the
15 Amargosa toad and Oasis Valley speckled dace.
16

17 51. Defendants failed to perform their nondiscretionary duty to timely publish a
18 12-month finding in violation of the ESA. 16 U.S.C. § 1533(b)(3)(B).
19

20 **REQUEST FOR RELIEF**

21 WHEREFORE, Plaintiff respectfully requests that the Court enter judgment
22 providing the following relief:

- 23 1. Declare that Defendants violated and continue to violate the ESA by failing to
24 make timely 12-month findings on the petitions to list the Amargosa toad and
25 the Oasis Valley speckled dace;
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2. Provide injunctive relief compelling Defendants to publish 12-month findings for the Amargosa toad and the Oasis Valley speckled dace by a date certain;
3. Retain continuing jurisdiction to review Defendants' compliance with all judgments and orders herein;
4. Grant Plaintiff its reasonable attorneys' fees and costs as provided by the ESA, 16 U.S.C. § 1540(g)(4); and
5. Provide such other relief as the Court deems just and proper.

Respectfully submitted and dated this 27th day of October 2026.

s/ Camila Cossio

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