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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
11 **SACRAMENTO DIVISION**

12 CENTER FOR BIOLOGICAL
DIVERSITY,

13 Plaintiff,

14 v.

15 U.S. FISH AND WILDLIFE SERVICE;
16 BRIAN NESVIK, in his official capacity as
Director of the U.S. Fish and Wildlife
17 Service; DOUG BURGUM, in his official
capacity as Secretary of the U.S.
18 Department of the Interior,

19 Defendants.

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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28 **INTRODUCTION**

1 8. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national, non-profit
2 conservation organization that works through science, law, policy, and the media to protect
3 imperiled species and their habitats. The Center is incorporated in California and
4 headquartered in Tucson, Arizona, with offices throughout the United States, including in
5 Oakland and Los Angeles. The Center has more than 101,000 active members throughout the
6 country, including many who live in California and Nevada and who recreate in and around
7 the Long Valley Caldera and Mono County, California.

8 9. The Center brings this action on behalf of its members who derive ecological,
9 cultural, recreational, aesthetic, educational, scientific, professional, and other benefits from
10 the Long Valley speckled dace. The Center's members are deeply interested in and
11 committed to the conservation of imperiled freshwater species, including the Long Valley
12 speckled dace, and to the effective implementation of the ESA to protect those species. The
13 Center's members have visited the historic habitat of Long Valley speckled dace for the
14 purpose of observing the species in the wild and have suffered aesthetic and recreational
15 injury when they were unable to find any Long Valley speckled dace. Many members reside
16 in close proximity to the Long Valley volcanic caldera ("Long Valley Caldera") and
17 Mammoth Lakes watershed and regularly use and enjoy the lakes, tributary streams, springs
18 and pools, unique hydrogeologic formations, and surrounding areas within the species'
19 historic habitat range, and plan to continue visiting and enjoying these areas frequently and
20 on an ongoing basis in the future.

21 10. The Center's members have been, are being, and will continue to be adversely
22 harmed by the Service's failure to issue a timely final listing rule protecting the Long Valley
23 speckled dace as an endangered species under the ESA. The Center and its members have
24 suffered actual and concrete injuries that are ongoing and will continue absent relief from
25 this Court. For example, one of the Center's members, Lynn Boulton, is a long-time
26 conservation advocate and volunteer leader, who regularly visits and studies the ecosystems
27 of Mono and Inyo Counties, including the springs, streams, and wetlands of Long Valley that
28 constitute habitat for the Long Valley speckled dace. Ms. Boulton has traveled to areas of

1 occupied or historically occupied habitat for the species, including Whitmore Marsh Hot
2 Springs, O’Harrel Canyon Creek, and other and other aquatic habitats in Long Valley, to
3 observe native wildlife and assess environmental conditions. Although the Long Valley
4 speckled dace is exceptionally rare and difficult to observe, Ms. Boulton has specifically
5 sought to locate and observe the species, and she intends to return to these habitats on
6 multiple occasions to look for the dace, including visits planned for June and in the fall this
7 year. Ms. Boulton derives recreational, aesthetic, scientific, spiritual, and conservation
8 benefits from the continued existence and recovery of the Long Valley speckled dace and the
9 biodiversity of the Long Valley ecosystem. The Service’s failure to issue the final rule listing
10 the Long Valley speckled dace as endangered deprives Ms. Boulton of the timely protections
11 Congress mandated under the ESA, increases the risk of further decline or extinction of the
12 dace, and thereby harms her ongoing interests in observing, studying, enjoying, and
13 conserving the Long Valley speckled dace and its habitat.

14 11. The Service’s failure to issue a timely final listing rule protecting the Long
15 Valley speckled dace as an endangered species under the ESA leaves the dace vulnerable to
16 the ongoing loss and degradation of habitat that is critical for its survival and recovery. The
17 relief sought herein—including an Order directing the Service to issue a final listing rule by a
18 date certain—would redress those harms. The Center and its members have no other
19 adequate remedy at law.

20 12. Defendant U.S. FISH AND WILDLIFE SERVICE is a federal agency within
21 the U.S. Department of the Interior. The Secretary of the Interior has delegated to the Service
22 the authority to conserve non-marine endangered and threatened species under the ESA. 50
23 C.F.R. § 402.01(b). This authority encompasses proposed and final listing determinations for
24 the Long Valley speckled dace.

25 13. Defendant BRIAN NESVIK is the Director of the U.S. Fish and Wildlife
26 Service and is charged with ensuring agency decisions comply with the law. The Center sues
27 Defendant Nesvik in his official capacity.
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1 14. Defendant DOUG BURGUM is the Secretary of the U.S. Department of the
2 Interior (“Secretary”) and has the ultimate responsibility to administer and implement the
3 provisions of the ESA regarding the Long Valley speckled dace and to comply with all other
4 applicable federal laws. The Center sues Defendant Burgum in his official capacity.

5 **LEGAL BACKGROUND**

6 **Endangered Species Act**

7 15. The ESA is “the most comprehensive legislation for the preservation of
8 endangered species ever enacted by any nation.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153,
9 180 (1978). Its fundamental purposes are to provide “a means whereby the ecosystems upon
10 which endangered species and threatened species depend may be conserved” and “a program
11 for the conservation of such endangered species and threatened species.” 16 U.S.C. §
12 1531(b).

13 16. The Act directs the Secretary of the Interior, through the Service, to determine
14 which species of plants and animals are “endangered” and “threatened” and place them on
15 the list of protected species—otherwise known as “listing” a species. *Id.* § 1533.

16 17. The Secretary has delegated its administration of the Act to the Service for
17 freshwater aquatic species, including the Long Valley speckled dace. 50 C.F.R. § 402.01(b).

18 18. ESA Section 4 requires the Service to protect imperiled species by listing
19 them as “endangered” or “threatened.” 16 U.S.C. § 1533(a)(1). A species is “endangered”
20 when it is “in danger of extinction throughout all or a significant portion of its range.” 16
21 U.S.C. § 1532(6). A species is “threatened” when it is “likely to become an endangered
22 species within the foreseeable future throughout all or a significant portion of its range.” *Id.* §
23 1532(20).

24 19. The Act defines “species” to include “any distinct population segment of any
25 species of vertebrate fish or wildlife which interbreeds when mature.” 16 U.S.C. § 1532(16).

26 20. The ESA requires the Service to determine whether any species is endangered
27 or threatened because of any one of, or combination of, the following factors: (A) the present
28 or threatened destruction, modification, or curtailment of its habitat or range; (B)

1 overutilization for commercial, recreational, scientific, or educational purposes; (C) disease
2 or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or
3 manmade factors affecting its continued existence. *Id.* § 1533(a)(1).

4 21. The Service must list a species if the species meets the definition of
5 “endangered” or “threatened” due to “any one or a combination of” these five listing factors.
6 50 C.F.R. § 424.11(c); *see* 16 U.S.C. § 1533(a)(1).

7 22. If the Service determines that the species is not endangered throughout all its
8 range, the ESA requires the agency to examine whether it is endangered or threatened
9 throughout any “significant portion” of its range. *Id.* §§ 1532(6), (20).

10 23. The Service must make listing determinations “solely on the basis of the best
11 scientific and commercial data available,” *id.* § 1533(b)(1)(A), and may not allow for
12 “economic considerations” when making “determinations regarding the status of species.”
13 H.R. Rep. No. 97-835, at 20 (1982).

14 24. The ESA allows any interested person to formally petition the Service to list a
15 species as endangered or threatened. 16 U.S.C. § 1533(b)(3)(A); 50 C.F.R. § 424.14(a).

16 25. To ensure the timely protection of species at risk of extinction, Congress set
17 forth a detailed process whereby interested persons may petition the Service to list a species
18 as endangered or threatened. 16 U.S.C. § 1533(b)(3). In response, the Service must publish a
19 series of three decisions according to statutory deadlines.

20 26. First, within 90 days of receipt of a listing petition, the Service must, “to the
21 maximum extent practicable,” publish an initial finding as to whether the petition, “presents
22 substantial scientific or commercial information indicating that the petitioned action may be
23 warranted.” *Id.* § 1533(b)(3)(A). This is known as the “90-day finding.” If the Service
24 determines in the 90-day finding that the petition does not present substantial information
25 indicating that listing may be warranted, the petition is rejected, and the process concludes.

26 27. If the Service determines that a petition presents substantial information
27 indicating that listing “may be warranted,” the agency must publish that finding and proceed
28 with a scientific review of the species’ status, known as a “status review.” *Id.*

1 28. Upon completing the status review, and within 12 months of receiving the
2 petition, the Service must publish a “12-month finding” with one of three listing
3 determinations: (1) listing is “warranted”; (2) listing is “not warranted”; or (3) listing is
4 “warranted but precluded” by other proposals for listing species, provided certain
5 circumstances are met. *Id.* § 1533(b)(3)(B).

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

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

15 31. A species does not receive substantive protections under the Act until it is
16 listed as endangered or threatened. Without these protections, endangered and threatened
17 species continue to decline toward extinction and become more difficult to protect from the
18 threat of extinction as their situations become even more dire.

19 32. Once a species is listed, the Act provides both procedural and substantive
20 protections to ensure not only the species’ continued survival, but also its ultimate recovery.
21 For example, Section 4(a)(3) of the Act requires the Service to designate areas that are
22 “essential to the conservation of the species” as “critical habitat,” and to develop and
23 implement recovery plans. *Id.* §§ 1533(a)(3), (f); 1532(5). In addition, Section 7(a)(2) of the
24 Act requires all federal agencies to consult with the Service to ensure their actions do not
25 “jeopardize the continued existence” of listed species or “result in the destruction or adverse
26 modification” of their critical habitat. *Id.* § 1536(a)(2). ESA Section 9(a)(1)(B) makes it
27 unlawful to “take” any endangered species, which means no person can “harass, harm,
28 pursue, hunt, shoot, wound, kill, trap, capture, or collect” an endangered species without first

1 receiving authorization from the Service. *Id.* §§ 1532(19), 1538. Thus, listing is the crucial
2 first step in the ESA’s system of species conservation and recovery.

3 **FACTUAL BACKGROUND**

4 **The Long Valley speckled dace**

5 33. The Long Valley speckled dace (*Rhinichthys nevadensis caldera*) is an
6 extremely rare freshwater fish that is uniquely adapted to survive in hot springs. The dace
7 historically could be found throughout seven historical sites, including Hot Creek and various
8 isolated hot and cold springs and ponds, within the 700,000-year-old Long Valley Caldera in
9 Mono County, California.

10 34. Today, the Long Valley speckled dace has disappeared from all historic sites
11 and suitable habitats within its range in its namesake Long Valley and is now believed to be
12 completely extirpated from the wild.

13 35. Whitmore Marsh once housed the last known wild Long Valley speckled dace
14 population within the fish’s native range, but a 2019 survey failed to locate any Long Valley
15 speckled dace there. While Whitmore Marsh is still considered occupied habitat, Whitmore
16 Marsh has since been developed into Whitmore Hot Springs and is now a recreational
17 swimming pool, posing further threats to the Long Valley speckled dace and making the
18 fish’s existence at the site tenuous.

19 36. Long Valley speckled dace currently are known to exist in a refugium
20 managed by the California Department of Fish and Wildlife, known as the White Mountain
21 Research Center (“WMRC”), which is outside of the Long Valley speckled dace’s historical
22 range. In 2022, this refuge population was used to translocate individuals to a site in
23 O’Harrel Canyon Creek within the dace’s historical range, but no Long Valley speckled dace
24 have been since located at this site, and it is unknown whether a population will successfully
25 establish there.

26 37. The Long Valley speckled dace continues to face a high risk of extinction due
27 to many significant threats, including geothermal energy development; dams and water
28

1 diversions; alteration of water sources and habitat, including from recreational, urban, and
2 rural development; livestock grazing; disease; predation; and climate change.

3 38. Given its near total loss, the Long Valley speckled dace currently has little
4 population redundancy to withstand the impacts of the many threats present within the Long
5 Valley Caldera, which have led to extirpations of the fish's historical populations.

6 **The Center's Petition and Listing History**

7 39. Confronted with the science showing that many threats risked imminent
8 extinction, the Center petitioned the Service on June 8, 2020, to list the Long Valley speckled
9 dace as an endangered species.

10 40. On September 29, 2021, the Service issued a positive 90-day finding that the
11 petition presented "substantial scientific or commercial information indicating that the
12 petitioned action[] may be warranted," and specifically found that the Long Valley speckled
13 dace may warrant endangered species listing due to various threats. 86 Fed. Reg. 53937.

14 41. When the Service failed to issue the legally required 12-month finding by
15 June 8, 2021, the Center sued the Service and secured a settlement requiring the Service to
16 make its 12-month finding for the Long Valley speckled dace by July 21, 2024.

17 42. The Service proposed to list the Long Valley speckled dace as endangered on
18 August 8, 2024. 89 Fed. Reg. 64852.

19 43. A final listing rule for the Long Valley speckled dace was due by August 8,
20 2025.

21 44. With limited exceptions, the ESA requires the Service to issue a final listing
22 rule within one year of a proposed listing rule. Nearly two years have now passed since the
23 Service issued its proposed listing rule for the Long Valley speckled dace.

24 45. The Service has failed to perform its nondiscretionary duty to publish a timely
25 final listing rule for the Long Valley speckled dace, in violation of the ESA. 16 U.S.C. §
26 1533(b)(6)(A). Until the Service publishes the legally required final listing rule, the Long
27 Valley speckled dace will continue to lack necessary endangered species protections under
28 the ESA.

1 46. Plaintiff provided Defendants with 60-days' notice of their ESA violations, as
2 required by 16 U.S.C. § 1540(g)(2)(C), by a letter to the Service dated November 25, 2025.
3 Defendants have not remedied the violations set out in the notice letter, and an actual
4 controversy exists between the parties within the meaning of the Declaratory Judgment Act,
5 28 U.S.C. § 2201.

6 **CLAIM FOR RELIEF**

7 ***Violation of the ESA in Failing to Publish a Timely Final Listing Rule for the***
8 ***Long Valley Speckled Dace***

8 47. Plaintiff realleges and incorporates by reference the preceding paragraphs.

9 48. With limited exceptions, the ESA requires the Service to publish a final listing
10 rule implementing its determination to list the species within 1 year of the proposed listing
11 rule. 16 U.S.C. § 1533(b)(6)(A).

12 49. In response to the Center's 2020 petition to list the Long Valley speckled
13 dace, and in response to a lawsuit by the Center, the Service published a proposed rule to list
14 the Long Valley speckled dace as an endangered species under the ESA on August 8, 2024.
15 89 Fed. Reg. 64852. Therefore, the final rule implementing the Service's determination to list
16 the species was due by August 8, 2025.

17 50. Defendants have not made the statutorily required final determination for the
18 Long Valley speckled dace.

19 51. Defendants failed to perform their nondiscretionary duty to timely publish the
20 final listing rule in violation of the ESA. 16 U.S.C. § 1533(b)(6)(A).

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff respectfully requests that this Court:

23 1. Declare that Defendants violated the ESA by failing to issue a timely final
24 listing rule;

25 2. Provide injunctive relief compelling Defendants to publish a final rule listing
26 the Long Valley speckled dace as threatened under the ESA by a date certain;

27 3. Retain continuing jurisdiction to review Defendants' compliance with all
28 judgments and orders herein;

